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by

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“THE FUND CODE. A HISTORY OF INVESTMENT FUNDS  
IN LUXEMBOURG FROM THE HOLDING ACT TO THE  
UCITS LEGISLATION (1929-1989)”

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## **Thesis abstract**

This thesis introduces a comprehensive narrative of the history of Luxembourg's investment funds, tracing their evolution from the incorporation of closed-end funds as holding companies in the 1930s to the enactment of two harmonization fund laws in the 1980s. Through a focus on the actors "behind the industry", the thesis identifies three enduring patterns. First, policymakers consistently employed "bifurcation of sovereignty" practices to stimulate the local fund market during systemic economic crises (notably, during the interwar years and the steel crisis of the late 1970s). Second, a robust tradition of collaboration among policymakers, entrepreneurial actors, and financial intermediaries, which ensured the drafting of legislation aligned with the market's needs. Third, while its domestic market remained limited in scale throughout the entire period, Luxembourg's fund "code of capital" proved highly efficient in attracting non-resident investors, in a context of light capital taxation for the fund management companies and the absence of withholding tax on the funds' distributed dividends (particularly since 1981, within a national legal framework of "banking secrecy").

Ultimately, the findings of this thesis underscore the relevance of financialization phenomena well before the 1970s-1980s. Furthermore, they highlight the intricate interplay between a small state, like Luxembourg, and larger entities, including overarching structures such as the European Community. The thesis contends indeed that the success of Luxembourg's fund industry is closely associated with its legislators' ability to occupy independent spaces untouched by European norms, particularly by utilizing the freedom of national decisions on fiscal charges for its fund industry.



# **“The Fund Code. A History of Investment Funds in Luxembourg from the Holding Act to the UCITS Legislation (1929-1989)”**

## **Contents**

Figures.....	9
Tables .....	13
Pictures.....	14
Acknowledgements.....	15
<b>1. Introduction.....</b>	<b>17</b>
1.1. History of investment funds in Luxembourg: theoretical framework and general historical background.....	28
1.2. History of investment funds in Luxembourg: critical review of literature contributions and thesis’ research questions.....	36
1.3. Data and sources .....	42

<b>2. “A counterbalance to a fiscal hemorrhage”. From holding companies to investment trusts under the H29 regime.....</b>	<b>44</b>
2.1. The genesis of the Holding Act of July 31 <sup>st</sup> , 1929 .....	53
2.2. The letter of the Holding Act: a “race to the bottom” for the taxation of international holding companies.....	58
2.3. From holding companies to investment trusts within the boundaries of liberal interpretations of the Holding Act .....	65
2.4. Tax neutrality pursuance by Luxembourg-domiciled holding companies and investment trusts .....	75
<b>3. “The Age of Self-Control”: the “early days” of the fund industry (1959-1972) .....</b>	<b>81</b>
3.1. The birth of the open-end fund industry in Luxembourg .....	89
3.2. Luxembourg as the most competitive hub in Europe for the incorporation of open-end funds from a tax neutrality perspective in the 1960s.....	97

3.3. Open-end fund industry in Luxembourg between 1959 and 1972 .....102

3.4. Closed-end funds with a buyout company and state of the industry at the beginning of the 1970s.....124

**4. The fund industry in the 1970s: the end of Bretton-Woods, financial scandals, and regulations “to change nothing” .....131**

4.1. “Do you sincerely want to be rich?” IOS scandal in Luxembourg .....149

4.2. The arrêté grand-ducal of 1972 and the role of “Elvinger and Hoss” law firm .....159

4.3. Luxembourg’s repositioning as a node of the investment fund global city network throughout the 1970s .....164

**5. “We had to start a new niche”. The breakthrough of Luxembourg’s fund industry in the 1980s .....177**

5.1. Luxembourg’s code of capital on investment funds during the 1980s and its relationship with the debate at the European-level .....198

5.2. The European fund market in the 1980s: legislation and financial hubs competition.....	212
5.3. Reflections on the factors behind the skyrocketing growth of Luxembourg’s fund industry in the 1980s .....	217
<b>6. Conclusions .....</b>	<b>238</b>
<b>7. Bibliography and list of archives .....</b>	<b>248</b>
<b>8. Appendix: data, statistics, and interviews .....</b>	<b>263</b>
8.1. Interviews with the author .....	275



## Figures

**Figure 1.1.** Net Aggregate capital stock of Luxembourg-domiciled investment funds vs. Luxembourg GDP, 2022

**Figure 1.2.** Net Aggregate capital stock and number of Luxembourg-domiciled investment funds (billion EUR), 1967-2022

**Figure 1.3.** Net aggregate assets (millions of US dollars) of regulated open-end funds per continental area, 2015 vs. 2021

**Figure 1.4.** Region of sale of Luxembourg-domiciled funds, October 2016

**Figure 2.1.** Iron and steel exports (thousand metrics tonnes) of the five major producers (including Luxembourg) as a percentage of total world production 1913-1938.

**Figure 2.2.** Steel production in Luxembourg in the interwar years, 1918-1939 (1913 base year).

**Figure 2.3.** Luxembourg inflation rate (%), 1921-1931

**Figure 2.4.** Number of Luxembourg-domiciled holding companies between 1929 and 1939

**Figure 2.5.** Aggregate capital stock of Luxembourg-domiciled holding companies (in Luxembourg francs), 1929-1939

**Figure 2.6.** Capital Stock (in francs) of Union Internationale de Placement between 1931 and 1938

**Figure 3.1.** Total national revenues (million LUF) and population size in Luxembourg between 1913 and 1951 (selected years)

**Figure 3.2.** Geographical distribution (%) of FIP's portfolio assets, by continent, 1958 vs. 1962

**Figure 3.3.** FIP portfolio's total assets stock (thousands of Belgian Francs), 1957-1962

**Figure 3.4.** FIP's total redistributed revenues (thousands of Belgian Francs), 1956-1962

**Figure 3.5a.** Geographical distribution of portfolio assets (%) of Eurosyndicat's Eurunion, 1960

**Figure 3.5b.** Geographical distribution of portfolio assets (%) of Eurosyndicat's Patrimonial fund, 1961

**Figure 3.5c.** Geographical distribution of portfolio assets (%) of Finance-Union fund, 1964

**Figure 3.6a.** Eurunion's total assets, in million LUF adjusted for inflation (reference year 1978), 1959-1972.

**Figure 3.6b.** Patrimonial's total assets, in million LUF adjusted for inflation (reference year 1978), 1959-1972

**Figure 3.6c.** Finance-Union's total assets, in million LUF adjusted for inflation (reference year 1978), 1959-1972

**Figure 3.7.** Open-end funds aggregate capital assets for Fonditalia, I.I.T. and all the other funds in 1970.

**Figure 3.8.** I.I.T.'s capital stock compared to aggregate total assets of Luxembourg-domiciled open-end funds (1962-1966)

**Figure 3.9.** Aggregate capital stock of Luxembourg's open-end funds (million of LUF), 1962-1978, adjusted for inflation (reference year 1978)

**Figure 3.10.** Geographical distribution of portfolio assets for the fund Eurunion in 1964 (Jan.), 1970 (Jan.), 1974 (Jan.), and 1978 (Jan.).

**Figure 3.11.** Composition of portfolio assets for Eurunion by industry in 1965 (Dec.) and 1974 (Dec.)

**Figure 3.12.** Composition of portfolio assets for Finance-Union by industry in 1965 (Dec.) and 1975 (Dec.)

**Figure 3.13.** Number of open-end funds and closed-end funds incorporated in Luxembourg, 1967-1974.

**Figure 3.14.** Total net aggregate asset for investment funds (million LUF), open-end funds, closed-end funds, total investment funds (1967-1974)

**Figure 4.1.** Total sales and redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of aggregate investors (resident and non-residents in Luxembourg), 1968-1977

**Figure 4.2.** Total sales and redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of Luxembourg-resident investors, 1968-1977

- Figure 4.3.** Total sales and redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of Luxembourg-non-resident investors, 1968-1977
- Figure 4.4.** Sales of shares of Luxembourg-domiciled investment funds (thousand LUF) to Luxembourg-resident and non-resident investors, 1968-1977
- Figure 4.5.** Redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of Luxembourg-resident and non-resident investors, 1968-1977
- Figure 4.6.** Aggregate capital stock of Luxembourg-domiciled investment funds (LUF), open-end and closed-end, adjusted for inflation (ref. y. 1980), 1967-1980.
- Figure 4.7.** Total number of Luxembourg-domiciled investment funds (closed and open-end), 1967-1980.
- Figure 4.8.** BIL's budget items "Interests and Fees" (I&F) and "Revenues from Securities" (LUF) 1962-1978, adjusted for inflation (ref. year 1978)
- Figure 4.9.** Total sales and redemptions of shares of US-domiciled investment funds (thousand LUF) of aggregate investors (resident and non-residents in Luxembourg), 1968-1977
- Figure 4.10.** Total sales and redemptions of shares of Canada-domiciled investment funds (thousand LUF) of aggregate investors (resident and non-residents in Luxembourg), 1968-1977
- Figure 4.11.** Countries of domiciliation of non-domiciled funds traded in Luxembourg in the third trimester of 1977.
- Figure 4.12.** Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from the following countries: Luxembourg, Belgium, Germany, Netherlands, Canada, United States, Jersey Island, Netherlands Antilles, Bermudas, Bahamas, Panama. 1968-1977
- Figure 4.13.** Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from the Bahamas, 1970-1977
- Figure 5.1.** Quota of world total production (%) of steel for US, Europe, and Japan, 1920-1984

**Figure 5.2.** Raw steel production (tons) and average number of workers employed by steel-related factory in Luxembourg (1945-1981)

**Figure 5.3.** Luxembourg's GDP growth (%), 1961-1989.

**Figure 5.4.** Luxembourg's expected state budget (LUF), adjusted for inflation (ref. year 1989), 1972-1989.

**Figure 5.5.** Number of banks in Luxembourg, 1920-2000

**Figure 5.6.** Geographical origin of Luxembourg-domiciled banks, 1970 vs. 1974

**Figure 5.7.** Number of holding companies in Luxembourg, 1963-1978

**Figure 5.8.** UCITS net aggregate assets (billion ECUs) in Europe, five largest hubs, 1991

**Figure 5.9.** Luxembourg and France open-end fund aggregate net assets (million US dollars), 1998-2018

**Figure 5.10.** Number of Luxembourg-domiciled funds per year, 1967-1990

**Figure 5.11a.** Aggregate sales (LUF) of investment fund shares from five largest Luxembourg-resident bank intermediaries, 1976-1985 (trimesters).

**Figure 5.11b.** Aggregate redemptions (LUF) of investment fund shares from five largest Luxembourg-resident bank intermediaries, 1976-1985 (trimesters).

**Figure 5.12.** Number and aggregate net assets (million of LUF) of Luxembourg-domiciled SICAVs, IV trimester of 1983 – III trimester of 1985

**Figure 8.1a.** Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from Belgium, 1976-1977

**Figure 8.1b.** Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from Germany, 1976-1977

**Figure 8.1c.** Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from the Netherland, 1973, 1976, 1977

## Tables

**Table 2.1.** Yields of crops between 1929 and 1938 for Luxembourg and selected group of neighbouring countries

**Table 2.2.** Impact on state budget of fiscal revenues from holding companies (*droit d'apport, droit de timbre, taxe d'abonnement*) between 1929 and 1936

**Table 3.1.** Progression (%) of Luxembourg-domiciled open-end funds (1963-1966): Number of shares (a); total assets' value per fund (b).

**Table 4.1.** Non-domiciled funds traded in Luxembourg in the third trimester of 1977, by country of domiciliation.

**Table 5.1.** Steel sector relative input costs (\$ per net ton) per area of production, 1984

**Table 7.1.** Archives consulted for the thesis and overview of their data

**Table 8.1.** Harmonised series (euros) for Luxembourg-domiciled OPCs and their Net Asset Value (billion €) per year

**Table 8.2** Total Net Asset Value, NAV adjusted for inflation, and number of total shares in circulation for the fund *Eurunion*, February 1959 – March 1978

**Table 8.3.** Eurunion fund's portfolio composition

**Table 8.4.** Eurunion fund's revenues per single share

## **Pictures**

**Picture 1.1.** Advertisement pamphlet for the fund EY

**Picture 3.1.** Advertisement of Banque Lambert Luxembourg of its open-end funds Patrimonial Finance Union and Eurunion in d'Lezteburger Land

**Picture 4.1.** Advertisement of USIF Real Estate fund in Luxemburger Wort, 20 June 1972

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# 1. Introduction

*“[...] Luxembourg is run by a football team.”*

Words attributed to former prime minister of Luxembourg and president of the European Commission Gaston Thorn.<sup>1</sup>

When looking at nowadays figures of Luxembourg’s fund industry, the observer cannot but be astonished. As of December 2022, the value of the aggregate net assets of Luxembourg-domiciled investment funds amounted to ca. 5 trillion euros,<sup>2</sup> making the little Grand Duchy the world’s second-largest issuer of funds after the United States.<sup>3</sup> Probably the most vivid image of the contrast between the gargantuan scale of Luxembourg’s fund industry and the country’s geographical “smallness” is given by the comparison between the aggregate net assets of all Luxembourg-domiciled funds and the Grand Duchy’s GDP – accounting for 78 billion euros as of December 2022<sup>4</sup> – which can be depicted as two concentric circle areas. As it is visible in Figure 1, the GDP circle’s radius is ca. 1 per cent of that of the funds’ aggregate assets. In Figure 2, it is reported the progression of the number of investment funds together with their net aggregate assets between 1967, the starting year of the series on funds collected by Luxembourg’s financial surveillance and regulator CSSF (Financial Sector Supervisory Commission),<sup>5</sup> and 2022.

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<sup>1</sup> Claude Kremer, interview with the author, January 11, 2023.

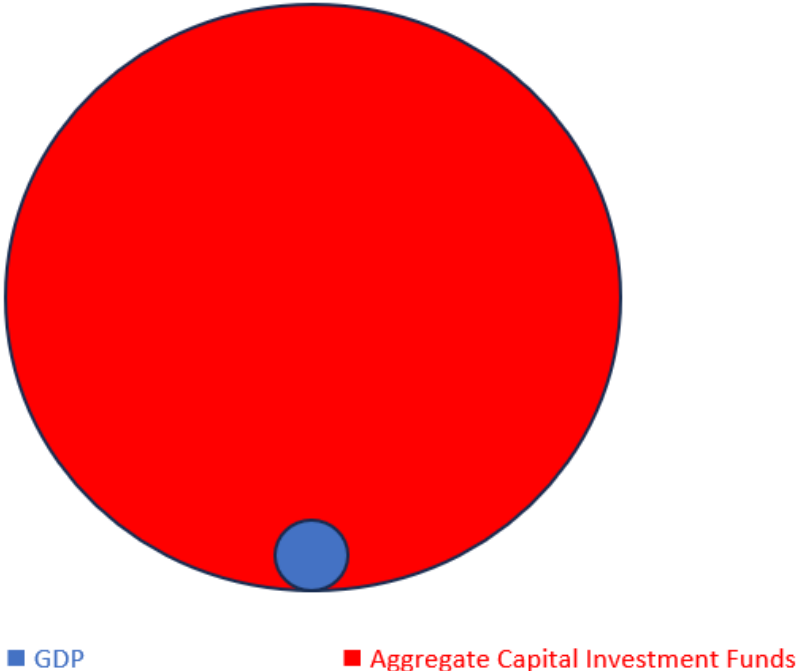
<sup>2</sup> <https://www.cssf.lu/fr/2023/01/politique-dinvestissement-des-opc/>, Consulted on June 17, 2023

<sup>3</sup> <https://www.state.gov/reports/2022-investment-climate-statements/luxembourg> Consulted on February 1, 2023.

<sup>4</sup> <https://stats.oecd.org/Index.aspx?QueryId=72632> Consulted on June 17, 2023.

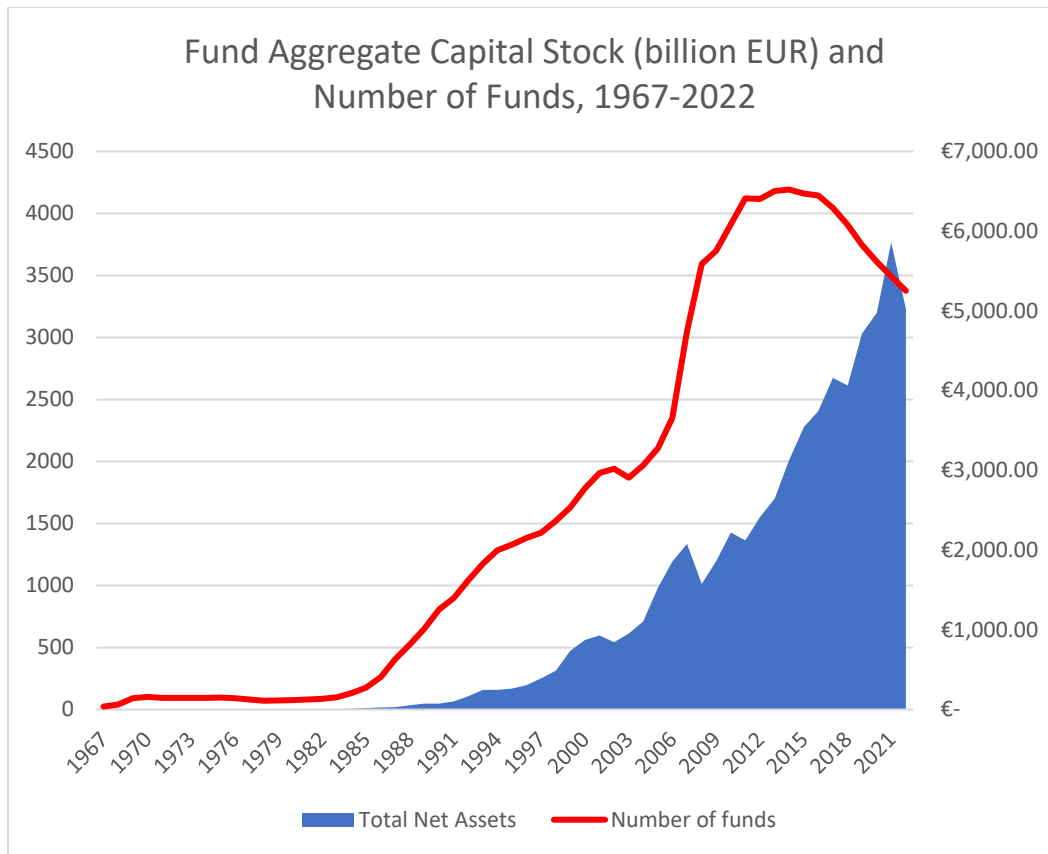
<sup>5</sup> [https://lustat.statec.lu/vis?lc=fr&pg=0&fs\[0\]=Th%C3%A8mes%2C1%7CEntreprises%23D%23%7CActivit%C3%A9s%20financi%C3%A8res%23D9%23&fc=Th%C3%A8mes&df\[ds\]=ds-release&df\[id\]=DF\\_D7300&df\[ag\]=LU1&df\[vs\]=1.0&pd=1968%2C2022&dq=.A](https://lustat.statec.lu/vis?lc=fr&pg=0&fs[0]=Th%C3%A8mes%2C1%7CEntreprises%23D%23%7CActivit%C3%A9s%20financi%C3%A8res%23D9%23&fc=Th%C3%A8mes&df[ds]=ds-release&df[id]=DF_D7300&df[ag]=LU1&df[vs]=1.0&pd=1968%2C2022&dq=.A) Consulted on June 17, 2023.

**Figure 1.1. Net Aggregate capital stock of Luxembourg-domiciled investment funds vs. Luxembourg GDP, 2022**



*Note:* Source: <https://stats.oecd.org/Index.aspx?QueryId=72632>; <https://lustat.statec.lu>  
Calculations of the author.

**Figure 1.2. Net Aggregate capital stock and number of Luxembourg-domiciled investment funds (billion EUR), 1967-2022**



Note: Source: <https://lustat.statec.lu>

See also Table 8.1. in the Appendix

This extraordinary performance needs to be considered from several angles, the first being the successful evolutionary history<sup>6</sup> of this financial vehicle. After the introduction of the initial<sup>7</sup> prototypes in the UK and the US between the late nineteenth century and World War I,<sup>8</sup> investment

<sup>6</sup>On the idea that, following their introduction in the UK and in the US, investment funds underwent a process of “natural selection” in terms of their organizational patterns (e.g., the dual structure of mutual funds, based on the co-existence of “funds and managers”) see Morley, J. (2013). The Separation of Funds and Managers: A Theory of Investment Fund Structure and Regulation. *The Yale Law Journal*, [123\(5\)](#), 1228-1287. On the practice of “learning from one another’s mistakes” see also Rutterford, J. (2009). Learning from one another's mistakes: Investment trusts in the UK and the US, 1868–1940. *Financial History Review*, *16(2)*, 157-181.

<sup>7</sup>On early pooled investment vehicles in the Netherlands in the second half of the eighteenth century see Rouwenhorst, K. (2004). The Origins of Mutual Funds. Yale School of Management Working Papers amz2450, Yale School of Management.

<sup>8</sup>See e.g., Hutson, E. (2003). The early managed fund industry: investment trusts in nineteenth century.

funds progressively adopted different organizational structures in terms of redemption rights and approach to risk diversification. Open-end funds, for example, were firstly introduced in the US in the 1920s;<sup>9</sup> unlike closed-end funds, were based on the direct refund of investors' shares without recourse to an equity market,<sup>10</sup> an elastic supply of new shares to investors,<sup>11</sup> and issuance of common stock rather than leveraging through senior securities.<sup>12</sup> At the same time, funds' portfolios became less "fixed", so offering more leeway in terms of choice for fund managers,<sup>13</sup> and once early strategies based on diversification through averaging had been abandoned,<sup>14</sup> they became progressively also more diversified, for example in terms of the geographical origin of their financial assets<sup>15</sup> or in terms of portfolio vocation towards investment in equities or fixed-income securities.<sup>16</sup> Modern investment funds eventually have emerged as being typically<sup>17</sup> characterised by a twofold pattern of organisation: on the one hand, the portfolio of securities that constitutes the entity commonly known as "fund"; on the other, a management company (known also as "general partners" or "advisers") in charge of the complex of operations aimed at ensuring the fund's viability and profitability.<sup>18</sup> In this regard, a mutual fund can be defined as an open-end

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*International Review of Financial Analysis*, 14, 439-454; Rutterford, J. (2009), *art. cit.*; Sotiropoulos, D. and Rutterford, J. (2018). Individual Investors and Portfolio Diversification in Late Victorian Britain: How Diversified Were Victorian Financial Portfolios? *The Journal of Economic History*, 78(2), 435-471; Sotiropoulos, D. P., Rutterford, J., and van Lieshout, C. (2021). The rise of professional asset management: The UK investment trust network before World War I. *Business History*, 63(5), 826–849.

<sup>9</sup> See e.g., Rouwenhorst, K. (2004), *art. cit.*; Rutterford, J. (2009), *art. cit.*; Fink, M. (2011). *The Rise of Mutual Funds: An Insider's View*. OUP Catalogue, Oxford University Press.

<sup>10</sup> Morley, J. (2013), *art. cit.*

<sup>11</sup> Fink, M. (2011), *op. cit.*; see also Fischer, E. (1935). *L'épargne française et les sociétés de placement*. PhD thesis, Université de Grenoble; Delvaux, B. (1956). Questions actuelles concernant la loi du 31 juillet 1929 sur le régime fiscal des sociétés de participations financières. *Pasicrisie luxembourgeoise*, 145-165.

<sup>12</sup> See e.g., Fink, M. (2011), *op. cit.*

<sup>13</sup> See e.g., Fischer, E. (1935), *op. cit.*

<sup>14</sup> Rutterford, J. (2009), *art. cit.*, p. 162.

<sup>15</sup> Sotiropoulos, D. and Rutterford, J. (2018), *art. cit.*

<sup>16</sup> See e.g., Fink, M. (2011), *op. cit.*

<sup>17</sup> Hybrid forms with investors being at the same time in charge of management are still present nowadays, also in Luxembourg (see Hazenberg, J. J. (2012). *Investment fund governance: an empirical investigation of Luxembourg UCITS*. PhD thesis, Luxembourg University).

<sup>18</sup> Morley, J. (2013), *art. cit.*

fund whose non-fixed portfolio is managed by one or more professional managers who tend to be “separate” from the investors.

Second, during the interwar years and throughout the second half of the twentieth century, the global fund market also became characterised by a progressive multiplication of listing platforms, from Europe<sup>19</sup> to Australia<sup>20</sup> and East Asia<sup>21</sup> (see also Figure 1.3). Luxembourg’s *place financière* emerged from the second half of the twentieth century as one of the most active players in Europe,<sup>22</sup> with its transformation into an international financial centre being accelerated by the progressive process of financialization of the global economy,<sup>23</sup> the emergence of the Euromarkets

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<sup>19</sup> See e.g., Godfrey, B., McNeill, J., and Menton, A. (2010). The Investment Funds Industry in Ireland - A Statistical Overview. *Quarterly Bulletin Articles*, Central Bank of Ireland, 81-98; Wójcik, D. Urban, M., and Dörry, S. (2022). Luxembourg and Ireland in global financial networks: Analysing the changing structure of European investment funds. *Transactions - Institute of British Geographers (1965)*, 47(2), 514–528.

<sup>20</sup> See e.g., Jones, S., van der Laan, S., and Frost, G. (2008). The Investment Performance of Socially Responsible Investment Funds in Australia. *Journal of Business Ethics* 80, 181–203.

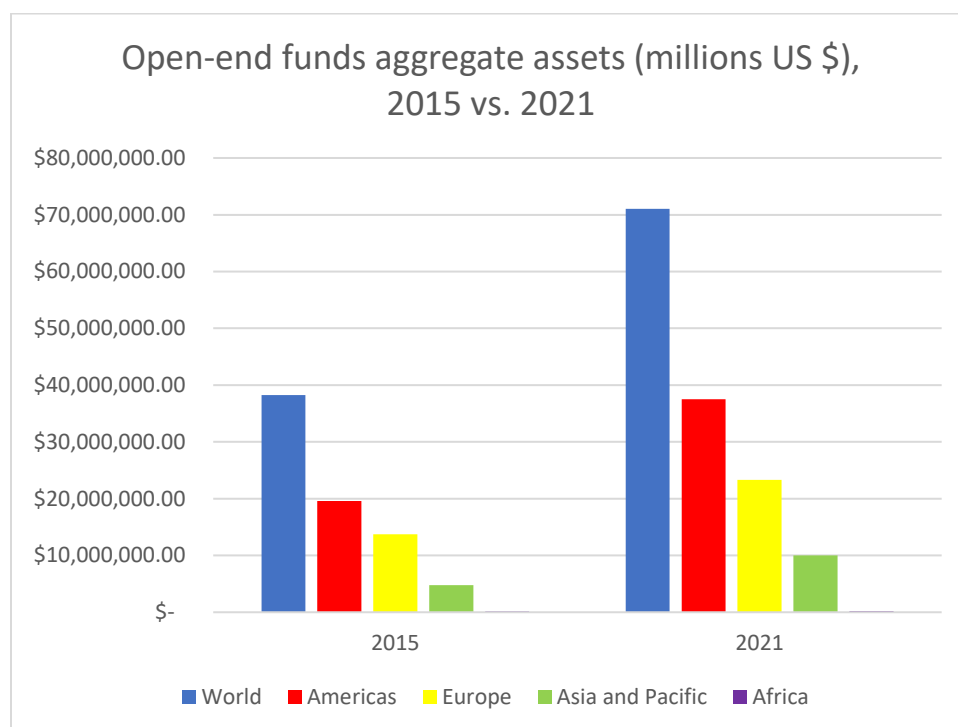
<sup>21</sup> See for example Shu, P., Yeh, Y., and Yamada, T. (2002). The behavior of Taiwan mutual fund investors—performance and fund flows. *Pacific-Basin Finance Journal*, 10(5), 583-600; Chen, D. (2013). Market Timing and stock selection ability of mutual fund managers in Taiwan: Applying the traditional and conditional approaches. *International Research Journal of Finance and Economics*, 4. 45-98; Hsu C., and Lin, J. (2007). Mutual fund performance and persistence in Taiwan: a non-parametric approach. *The Service Industries Journal*, 27(5), 509-52.

<sup>22</sup> Dörry, S. (2014). Global Production Networks in Finance. The Example of Luxembourg’s Investment Fund Industry. *L’Espace Géographique (English Edition)* 43(3), 207–219; Dörry, S. (2015). Strategic Nodes in Investment Fund Global Production Networks: The Example of the Financial Centre Luxembourg. *Journal of Economic Geography*, 15(4), 797–814.

<sup>23</sup> See Epstein, G.A. (2005). *Financialization and the World Economy*. Cheltenham, UK and Northampton, MA; Elgar, E.; Fasianos, A., Guevara, D., and Pierros, C. (2018). Have we been here before? Phases of financialization within the twentieth century in the US. *Review of Keynesian Economics*, 6(1), 34-61.

and the consequent use of Luxembourg Stock Exchange as a listing platform for Eurobonds<sup>24</sup> together with the rapid growth of the country's banking sector.<sup>25</sup>

**Figure 1.3. Net aggregate assets (millions of US dollars) of regulated open-end funds per continental area, 2015 vs. 2021**



<sup>24</sup> See Trausch, G., and de Vreese, M. (1995). *Luxembourg et les banques: de la révolution industrielle au 7e centre financier mondial*. Luxembourg: Banque Indosuez ; Cassis, Y. (2006). *Capitals of capital: a history of international financial centres, 1780-2005*. Cambridge University Press; Dörry, S. (2016). The Role of Elites in the Co-Evolution of International Financial Markets and Financial Centres: The Case of Luxembourg. *Competition & Change*, 20 (1), 21–36; Ogle, V. (2017). Archipelago Capitalism: Tax Havens, Offshore Money, and the State, 1950s-1970s. *American Historical Review*, 122(5), 1431–1458; Trausch, G. (2017). *Histoire Economique Du Grand-Duché de Luxembourg, 1815-2015*. Luxembourg: Statec.

<sup>25</sup> Moyse, L., Meiers, C., and Maquil. M. (2014). *Les artisans de l'industrie financière*. Luxembourg: Editions Saint-Paul; Trausch, G., and de Vreese, M. (1995), *op. cit.*; Trausch, G. (2017), *op. cit.*

Note: Source : Investment Company Institute (2022). *Investment Company Factbook, A Review of Trends and Activities in the Investment Company Industry*, pp.230-231, [www.icifactbook.org](http://www.icifactbook.org) Consulted on May 12, 2023.

Finally, the third angle from which analysing Luxembourg’s fund industry performance concerns the attractivity for managers and investors of the fund regulatory framework progressively introduced in Luxembourg during the twentieth century. Pistor has recently defined the process of “encoding of capital” in the following terms:

“ Capital [...] is coded in law. Ordinary assets are just that – a plot of land, a promise to be paid in the future, the pooled resources from friends and family to set up a new business, or individual skills and knowhow. Yet every one of these assets can be transformed into capital by cloaking it in the legal modules that were also used to code asset backed securities and their derivatives, which were at the core of the rise of finance in recent decades. These legal modules, namely contract, property rights, collateral, trust, corporate, and bankruptcy law, can be used to give the holders of some assets a comparative advantage over others. For centuries, private attorneys have molded and adapted these legal modules to a changing roster of assets and have thereby enhanced their clients’ wealth. And states have supported the coding of capital by offering their coercive law powers to enforce the legal rights that have been bestowed on capital”.<sup>26</sup>

As early as the late 1920s, Luxembourg’s “code of capital” for the taxation of holding companies was stretched to include also investment trusts<sup>27</sup> and was characterised by a high degree of *laissez-faire*, while at the same time remaining “stable and predictable”<sup>28</sup> (see chapter

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<sup>26</sup> Pistor, K. (2019). *The code of capital: how the law creates wealth and inequality*. Princeton, Princeton University Press, p. x (preface).

<sup>27</sup> Calabrese, M., and Majerus, B. (2023). Archaeology of a Treasure Island: Actors and Practices of Holding Companies in Luxembourg (1929–1940). *Contemporary European History*, 1–18.

<sup>28</sup> These two adjectives are used by Léon Metzler – most likely one of the drafters of Luxembourg’s law on holding companies of 1929 – to describe one of the reasons behind foreign investors’ interest in Luxembourg’s holding companies (ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937)).

2). During the second half of the twentieth century, Luxembourg further deepened this liberal approach to the interpretation of existing regulations on funds, thereby laying the foundations for its future success as a fund issuing platform, ultimately ensured by the rapid transposition into national legislation of the 1985 European directive on UCITS<sup>29</sup> and broad forms of cooperation between Luxembourgish as well foreign private and public actors<sup>30</sup> (see chapter 5). In this context, while the English common law and the laws of the State of New York consolidated their dominant position in the world of global capital,<sup>31</sup> a legally peripheral centre such as Luxembourg proved itself able to introduce a code of capital for investment funds characterised by a high degree of competitiveness. A code that was therefore attractive to managers and investors on the one hand, in the context of pursuance of tax neutrality strategies – to be here intended as optimization of net profits through fiscal cost minimization.<sup>32</sup> Yet, on the other hand, Luxembourg’s code of capital on funds was able to overcome major reputational crises – from the critiques emerging already in the interwar years (see chapter 2) and in the 1950s, especially in neighbor countries such as Belgium (see chapter 3) and in particular related to the disruptive event of the IOS (Investor Overseas Service) scandal in the early 1970s with a consequent sharp downsizing of Luxembourg’s fund industry in those years (see chapter 4) – and ensure a legal environment that was deemed solid for medium and long-term investment through investment funds and at the same time flexible enough to allow investment in innovative fund vehicles (see chapter 5). Luxembourg’s code of capital on funds, however, was eventually decisively shaped by the early characterization of the Grand Duchy as a fund hub prevalently oriented towards the international market rather than towards its small size domestic one. Fund managers from Europe first (see chapter 3.1), but then from North America, Asia (see chapter 3.3) and ultimately, starting from the late 1960s, from several emerging Offshore Financial Centres (OFCs), made wide use throughout

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<sup>29</sup> See Dörry, S. (2016), *art. cit.*; Wójcik, D. Urban, M., and Dörry, S. (2022), *art. cit.*; Dörry, S. (2022). The dark side of innovation in financial centres: legal designs and territorialities of law. *Regional studies*. [Online] ahead-of-print (ahead-of-print), 1–12.

<sup>30</sup> See also in this regard, the theoretical framework of Majerus and Zenner discussed in chapter 1.2. (Majerus, B. and Zenner, B. (2020). Too small to be of interest, too large to grasp? Histories of the Luxembourg financial centre. *European Review of History = Revue Européenne D’histoire*, 27(4), 548–562).

<sup>31</sup> Pistor, K. (2019), *op. cit.*, p. 19.

<sup>32</sup> In this regard, see also the seminal work of Piatier on tax neutrality strategies through holding companies and investment trusts already from the interwar years (Piatier, A. (1938). *L’évasion fiscale et l’assistance administrative entre États*. Recueil Sirey).



the time frame analysed in this thesis of Luxembourg’s regulatory and institutional frameworks on the one hand, for “round-tripping” practices, namely the use of Luxembourg-domiciled funds rather than funds domiciled in the home country of the investors user base.<sup>33</sup> On the other hand, also through the listing of non-domiciled funds in the LuxSE, in a context of an open-architecture distribution strategy<sup>34</sup> of Luxembourg-based banks (see chapter 4). For example, in the 1970s, Belgium-headquartered Banque Lambert incorporated in Luxembourg the Gulf Investment Fund, whose shares were sold to investors who were resident in the Gulf countries (chapter 4.3). Bahamas-domiciled USIF fund, instead, sold its shares in Luxembourg through the LuxSE, even though it was not incorporated in the Grand Duchy. In 1977, this fund reached its peak of sales in Luxembourg, accounting for 18 per cent of all sales of funds’ shares managed by Luxembourg-based banking operators mainly to investors non-resident in Luxembourg (see chapter 4.3).

The use of Luxembourg as a “gateway” in the international market of funds is one of the main traits of the industry still nowadays. Picture 1.1. shows for example a 2022 Taiwanese fund management group, managing a Luxembourg-domiciled fund, which advertises the sales of its shares to a Taiwanese audience of investors – Taiwan represented 0.3 per cent of the overall market of Luxembourg-domiciled funds once the regions of sale are taken into account as of October 2016.<sup>35</sup> By that date, an analysis of Luxembourg Fund Data Repository (LFDR) of the department of Finance at the University of Luxembourg gives an idea of the level of opening-up of Luxembourg investment funds market. As it is visible in Figure 1.4, the main region of sale of active Luxembourg-domiciled investment funds is Europe, while one third of all funds are sold at a global cross-border level, in particular in the East Asian markets, including Hong Kong, South Korea, Taiwan, Singapore as well as in the Gulf area, with the main centre of sales being the country of Bahrein.

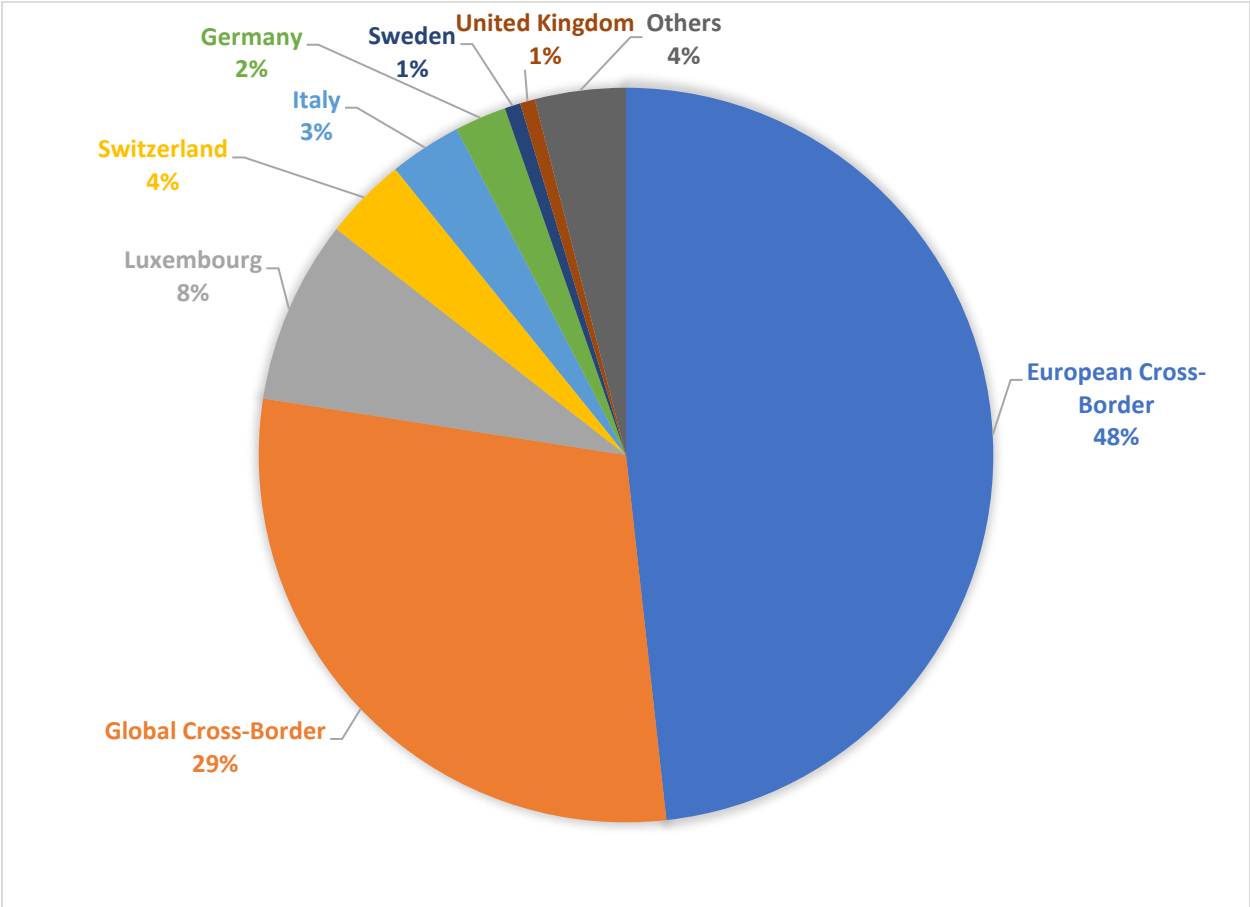
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<sup>33</sup> See Hazenberg, J. J. (2012), *op. cit.*, p. 20.

<sup>34</sup> A closed-architecture distribution strategy refers to distributor banks offering only funds managed by their in-house fund management company, while an open-architecture distribution strategy implies in principle the offer of funds also from non-in-house companies (see Hazenberg, J. J. (2012), *op.cit.*, pp. 20-21).

<sup>35</sup> Luxembourg Fund Data Repository (LFDR), database of investment funds available for academic research created at the Department of Finance of the University of Luxembourg. LFDR observations range from March 1988 to October 2016 (see also Skoura, A., Presber, J., and Schiltz, J. (2020). Luxembourg Fund Data Repository. *Data*, 5(3), 62. MDPI AG.). Calculations of the author.

**Figure 1.4. Region of sale of Luxembourg-domiciled funds, October 2016**



*Note:* Source : Luxembourg Fund Data Repository (LFDR), database of investment funds available for academic research created at the Department of Finance of the University of Luxembourg. LFDR observations range from March 1988 to October 2016 (see also Skoura, A., Presber, J., & Schiltz, J. (2020). Luxembourg Fund Data Repository. *Data*, 5(3), 62. MDPI AG.). Calculations of the author.

Picture 1.1. Advertising pamphlet for the fund EY



为了加强对投资者的保护及增加信息透明度，面对国际税收环境的变化，迎合欧洲投资者对资产配置于新兴市场（包括中国内地）的兴趣及帮助基金管理人吸引欧洲投资者的资金，我们看到越来越多的亚洲（包括中国内地）基金管理人开始设立在岸卢森堡基金。2020年2月18日，欧洲联盟共同体（欧盟）将开曼群岛列入“不合作税务管辖区”黑名单。鉴于欧盟尚未出台具体的制裁措施，其行动带来的直接影响目前相对有限。尽管如此，在现时复杂多变的监管环境下，亚洲基金管理人应审视其现有或拟成立在开曼及其他离岸金融中心的基金架构，尤其主要投资标的为欧洲资产的基金。换言之，对基金管理人来说，要选择具备完善的基金监管制度及备受国际认可，且提供税收确定性及可持续性的地区作为基金注册地变得尤其重要。卢森堡为其中一个具备以上优势的地方。

本文为我们卢森堡基金系列文章中的第一篇，旨在简要介绍卢森堡的基金制度，从商业及税务角度分析设立卢森堡基金的优势及必要性，以及基金管理人在设立卢森堡基金时的相关考量等。

Note: Source : [https://assets.ey.com/content/dam/ey-sites/ey-com/en\\_lu/topics/financial-services/chinese-business-services/ey-understanding-luxembourg-fund-in-10-minutes-cn.pdf?fbclid=IwAR0m3\\_twrw8XJgz07sv8Zbx4byBVe5Kxg1eOQTyTvGExpVPafMOIRV4gLA](https://assets.ey.com/content/dam/ey-sites/ey-com/en_lu/topics/financial-services/chinese-business-services/ey-understanding-luxembourg-fund-in-10-minutes-cn.pdf?fbclid=IwAR0m3_twrw8XJgz07sv8Zbx4byBVe5Kxg1eOQTyTvGExpVPafMOIRV4gLA)

Consulted on June 16, 2023

## *1.1. History of investment funds in Luxembourg: theoretical framework and general historical background*

Small states' varieties of capitalism<sup>36</sup> in the second half of the twentieth century have been extensively analysed in the literature. Katzenstein's seminal analysis on European small states<sup>37</sup> or that of Touwen for the Netherlands<sup>38</sup> for example, describe small states that have proved to be able to turn their dependency on world markets into economic openness. However, as effectively argued by Katzenstein, giving up on protectionism or on long-term plans for their industrial domestic sectors came up with a parallel process of democratic concertation at the domestic level – Touwen has spoken for the Netherlands of a “coordination in transition”<sup>39</sup> – among all major political and entrepreneurial domestic elites, typically implying an overlapping of formal and informal political power, in particular through the intermingling of *de jure* and *de facto* political and economic institutions.<sup>40</sup> Katzenstein has famously stated in this regard that small states “live with change by compensating for it”.<sup>41</sup> Because of their limited population and territory, small states have been argued to be vulnerable from a military point of view and inevitably exposed to a lack of negotiating power against the “big states”.<sup>42</sup> Small states are also characterised by limited size domestic markets and have been therefore progressively developing a tendency throughout

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<sup>36</sup> Hall P., and Soskice D. (2001), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*. Oxford University Press.

<sup>37</sup> Katzenstein, P. J. (1985). *Small States in World Markets: Industrial Policy in Europe*. Cornell University Press.

<sup>38</sup> Touwen, J. (2014). *Coordination in Transition*. Leiden, The Netherlands: Brill.

<sup>39</sup> *Ibid.*

<sup>40</sup> See also Acemoglu, D., and Robinson J. A. (2006). De Facto Political Power and Institutional Persistence. *American Economic Review*, 96 (2), 325-330. See also Gilles, R. P., Lazarova E. A, and. Ruys, P. H.M (2015). Stability in a network economy: The role of institutions. *Journal of Economic Behavior & Organization*, 119(C), 375-399.

<sup>41</sup> Katzenstein, P. J. (1985), *op. cit.*, p. 24.

<sup>42</sup> See Moravcsik, A. (1998). *The Choice for Europe*. Ithaca, Cornell University Press; O. Keohane, R, and Hoffmann S. (1991). *The New European Community: Decision-Making and Institutional Change*. Boulder, Westview; Elgström, O (2003). Introduction, in O. Elgström (ed.), *European Union Council Presidencies : A Comparative Perspective*, Londres, Routledge, p. 1-17.

the twentieth century to become more export-oriented,<sup>43</sup> in particular in terms of exports of their service sector.<sup>44</sup>

Small states have been in this regard consistently following developmental paths based on the use of their regulatory sovereignty as a leverage to effectively engage in fiscal arbitrage dynamics,<sup>45</sup> most typically by offering competitive fiscal and organizational services so to attract capital that otherwise would have stayed elsewhere. Palan has spoken in this respect of a “bifurcation of the sovereign space” that he defines as so:

“By this process of bifurcation of the sovereign space, the state system is dealing with the more mobile economic sectors by providing them with areas where government interference is less stringent. And since these more mobile elements are increasingly bracketed out of the state, the state can carry on discharging its traditional roles as if nothing had happened, thus helping to alleviate some of the tension between globalization and the state system. To be precise, in most cases states are using the tactics of sovereign bifurcation, not necessarily to isolate themselves from the economic impact of globalization [...] but as a way of providing less regulated and taxed spaces without undermining their claim to regulate and tax other areas of economic activities.”<sup>46</sup>

Practices of bifurcation of the sovereign space have been argued to have been consistently put in place in Europe by small states starting from the Interwar period, in the context of the macroeconomic implications at the monetary and fiscal level emerging from the need of all the countries involved in the war to repay the reconstruction effort and the war debts in a high inflation-driven environment following the exit from the Gold Standard system (see also chapter 2). Eventually, this resulted in growing taxation charges on income and capital since the aftermath

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<sup>43</sup> Katzenstein, P. J. (1985), *op. cit.*

<sup>44</sup> See also Kattel, R., Randma-Liiv, T., and Kalvet, T. (2011). Small States, Innovation and Administrative Capacity. In: Bekkers, V., Edelenbos, J., and Steijn, B. (eds) *Innovation in the Public Sector*. IIAS Series: Governance and Public Management. Palgrave Macmillan, London.

<sup>45</sup> See also Dörry, S. (2016), *art. cit.*; Dörry, S. (2022), *art. cit.*

<sup>46</sup> Palan, R. (1998). Trying to Have Your Cake and Eating It: How and Why the State System Has Created Offshore. *International Studies Quarterly*, 42(4), 625–643.

of WWI, as described for Europe by Farquet<sup>47</sup> and Hollis and McKenna.<sup>48</sup> Multinationals, but also wealthy families and individuals began thus to research strategies on how to divert capital away from their residency countries.

Scholars such as Farquet,<sup>49</sup> Guex,<sup>50</sup> and Eichenberger<sup>51</sup> have in recent years progressively unlocked the understanding of how a small size and multilingual state such as Switzerland emerged as the first country in Europe able to offer legal and procedural devices through which foreign companies and individuals could dodge taxation or financial surveillance controls in their home countries. In particular, by opening the way to Liechtenstein<sup>52</sup> and from the late 1920s to Luxembourg<sup>53</sup> (see chapter 2), Switzerland made broad use of foreign capital encoded in particular in the Canton of Glarus through locally domiciled holding companies. Not only to avoid double taxation for multinational companies managing industrial networks spread through different countries as described by Paquier,<sup>54</sup> but also to surreptitiously foster practices of tax avoidance based on profit transfer.<sup>55</sup>

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<sup>47</sup> Farquet, C. (2012). Le marché de l'évasion fiscale dans l'entre-deux-guerres. *L'Économie politique*, 2 (54), 95-112.

<sup>48</sup> Hollis, J., and McKenna C. (2020). The Emergence of the Offshore Economy, 1914–1939". In *Capitalism's hidden worlds*, edited by Lipartito, K., and Jacobson, L., 157–77. Philadelphia: University of Pennsylvania Press.

<sup>49</sup> Farquet, C. (2016). *La défense du paradis fiscal suisse avant la Seconde Guerre mondiale : une histoire internationale*. Neuchâtel, Editions Alphil.

<sup>50</sup> Guex, S. (2022). The Emergence of the Swiss Tax Haven, 1816–1914. *Business History Review*, 96(2), 353-372.

<sup>51</sup> Eichenberger, P. (2022). Swiss Capitalism, or the Significance of Small Things. *Capitalism: A Journal of History and Economics* 3 (1), 215-252.

<sup>52</sup> Farquet, C. (2012), *art. cit.*; Lussy, H., and López, R. (2005). *Finanzbeziehungen Liechtensteins zur Zeit des Nationalsozialismus*. Vaduz: Historischer Verein für das Fürstentum Liechtenstein, Zürich: Chronos.

<sup>53</sup> Calabrese, M., and Majerus, B. (2023), *art. cit.*

<sup>54</sup> Paquier, S. (2001). Swiss holding companies from the mid-nineteenth century to the early 1930s: the forerunners and subsequent waves of creations. *Financial History Review*, 8 (2), 163-182.

<sup>55</sup> Farquet, C. (2016), *op. cit.*

Commentators from the interwar years, such as Druart,<sup>56</sup> Fisher,<sup>57</sup> and Delvaux and Reiffers,<sup>58</sup> as well more recently Calabrese and Majerus<sup>59</sup> have highlighted the presence in the European jurisprudence of the time of a general agreement towards the acknowledgement of forms of legal contiguity among the juridical frameworks regulating the holding companies and an institution that in the 1920s was moving its first steps in continental Europe: the investment trust.

Several investment vehicles that shared some of the characteristics of early nineteenth century investment trusts, had already emerged in the Netherlands around the eighteenth century.<sup>60</sup> Rouwenhorst has described two forms of pooled investment of this type, which can be categorized as contracts of survival and plantation loans. The first were usually issued in the form of tontines, sort of mixed financial vehicle between an annuity and a life insurance. The second could be instead seen as an early form of a portfolio of mortgages subscribed by planters, and organized by merchants and traders as brokers between the investors and the owners of the plantations. In 1774, the first pooled investment in securities with the characteristics of a modern closed-end investment fund was established in Amsterdam<sup>61</sup> under the name “Eendragt Maakt Magt” (EMM), which can be evocatively translated from Dutch as “unity is strength”. The core of the EMM idea was to include practices of portfolio diversification compared to the previous rudimentary types. Furthermore, the EMM had a fixed number of shares and redemption was possible only by selling to third parties.

However, Dutch early experiments on proto-funds should be considered as uncommon and isolated.<sup>62</sup> As argued by a group of scholars that have thoroughly analysed the changes characterizing the British investment market between the second half of the nineteenth century and WWI – including in particular Rutterford, Sotiropoulos, van Lieshout, and Hutson – it was only

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<sup>56</sup> Druard, A. (1929). *Le trust de placements*, Robert Louis Bruxelles. See also R. P. (1930). [Review of *Les Investment trusts; Le trust de placement*, by J. de Lander & A. Druart]. *Revue d'histoire Économique et Sociale*, 18(2), 253–254.

<sup>57</sup> Fischer, E. (1935), *op. cit.*

<sup>58</sup> Delvaux, B. and Reiffers, E. (1933). *Les Sociétés “Holding” au Grand-Duché de Luxembourg: Etude théorique et pratique de la loi du 31 juillet 1929*. Luxembourg, Victor Bück.

<sup>59</sup> Calabrese, M., and Majerus, B., *art. cit.*

<sup>60</sup> Rouwenhorst, K. (2004), *art. cit.*

<sup>61</sup> *Ibid.*; Rutterford, J. (2009), *art. cit.*; Fink, M. (2011), *op. cit.*

<sup>62</sup> Fink, M. (2011), *op. cit.*, p. 8.

from the late 1860s that investment companies organized in the form of closed-end investment trusts began to take hold in the UK. In 1868, the Foreign and Colonial Government Trust, which invested in a pooled portfolio of government and colonial bonds, became the first investment trust established in the UK.<sup>63</sup> The early trusts created between the 1860s and the 1880s were typically organized as legal trusts, with the trustees being in charge of management. By the 1880s, as described by Sotiropoulos, Rutterford, and van Lieshout,<sup>64</sup> UK investment trusts were instead at that point making large use of the limited liability company form and were organized around an inelastic supply of shares, so that the investors could redeem only through access to the London Stock Exchange or other secondary markets, and were managed by boards of directors that have been described as the first professional asset managers. These managers usually addressed their portfolio investment strategies towards three main directions. First, by creating portfolios based on pooled investment in just one market sector, likely in sectors characterised by the presence of market exogenous risks – such as in shipping companies, colonial infrastructure, extraction of minerals. Second, by investing in securities not listed in stock exchanges, in particular mortgages. Third, by pursuing “averaging” diversification strategies, and therefore investing in a broader range of securities, belonging to different sectors and progressively widening also the geographical distribution of the assets.<sup>65</sup>

Until the early 1920s, investment trusts were largely a British phenomenon.<sup>66</sup> The overall sector was affected by a series of vulnerabilities, including those deriving for example from a lack of disclosure of investment strategies and portfolio composition by the assets managers. UK investors were indeed often not able to identify the three types of investment strategies mentioned above since the managers were not obliged to disclose the list of portfolio securities and rarely went into details to justify their investment choices.<sup>67</sup> Moreover, practices of excessive leveraging through the issuance of senior securities, and the issuance of underpaid “founders’ shares” reserved to the

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<sup>63</sup> Rutterford, J. (2009), *art. cit.*; Hutson, E. (2005), *art. cit.*

<sup>64</sup> Sotiropoulos, D. P., Rutterford, J., and van Lieshout, C. (2021), *art. cit.*; see also Rutterford, J. (2009), *art. cit.*

<sup>65</sup> *Ibid.*

<sup>66</sup> Rutterford, J. (2009), *art. cit.*; Hutson, E. (2005), *art. cit.*

<sup>67</sup> Sotiropoulos, D. P., Rutterford, J., and van Lieshout, C. (2021), *art. cit.*



funds' promoters only,<sup>68</sup> further exposed the industry to the risk of speculative bubbles and to sudden confidence crises of investors. Yet, compared to coeval US investment trusts, UK trusts, especially from the 1890s, began to adopt more conservative policies especially in terms of accounting practices.<sup>69</sup> UK trusts were also more often of smaller capital size and pursued investment strategies based on averaging diversification rather than market-timing investment.<sup>70</sup>

US investment trusts entered a speculative bubble during the 1920s and their market inefficiencies contributed to the 1929 crisis. Fink has listed among the factors producing instability in the overall US financial market for example the fact that trusts' shares were traded at premiums much higher than the actual value of the portfolio, and the presence of excessive (and pyramidal) leveraging, with minimal control of US financial surveillance institutions. Also, US trusts were typically organized and sold by securities firms, that got soon involved in the malpractice of hiding some of their bad performing securities in the trusts' pooled portfolios. Finally, trusts increasingly purchased securities on margin, therefore by borrowing from a broker, who took the same securities as collateral in case of insolvency. In the context of the 1929 stock exchange crash, this practice produced a vicious circle with more and more broker intermediaries taking back the securities and putting them back on the market, creating oversupply and therefore further lowering the price of the securities.<sup>71</sup>

The crisis of 1929 produced two main outcomes for the US market. On the one hand, US authorities intervened diffusely throughout the 1930s – with the “Securities Act” of 1933, the “Securities and Exchange Act” of 1934, the “Revenue Act” of 1936, and the “Investment Company Act” of 1940 – to introduce a consistent legal and fiscal jurisprudence for US investment funds. This was aimed at curbing the opaque practices that had emerged in the previous years, particularly by establishing stricter guarantees for leveraging practices and fostering an open disclosure

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<sup>68</sup> Fink, M. (2011), *op. cit.*

<sup>69</sup> *Ibid.*; Rutterford, J. (2009), *art. cit.*

<sup>70</sup> *Ibid.*

<sup>71</sup> Fink, M. (2011), *op. cit.*

approach between asset managers and investors,<sup>72</sup> and eventually by encouraging to convert investment trust to an open-end status.<sup>73</sup>

On the other hand, indeed, as argued by Rutterford,<sup>74</sup> the pre-1929 crisis instability characterizing the US investment trust market compared to the UK one together with the newly introduced legislative framework, facilitated an earlier wave of interest in open-end funds in the US. In 1924, in Boston, the first open-end fund had been established under the name of Massachusetts Investors Trust (MIT). While in the same way as early investment trusts were managed by their own trustees, open-end funds such as the MIT differed from closed-end funds due to the following features. They issued only common stock, while investment trusts, as seen, used leveraging through the issuance of senior securities. Open-end funds indeed continuously issued new shares and were therefore characterised by an elastic supply of shares on the contrary of investment trusts whose supply was instead anelastic. Finally, already in the case of the MIT, a direct redemption option for the investor' shares had been included in its statute.

Due to these factors, the US open-end fund industry went through a constant process of growth starting from the 1940s. As it is visible in Figure 1.5, US-domiciled mutual funds exponentially increased their net aggregate asset value and number between the 1940s and nowadays, although cyclical phases of recession have at times slowed down this upwards progression. For example, the 1970s represented a caesura decade at the international level – see also chapter 4 and 5 and the trend reported by Giddey for Switzerland's fund industry between 1973 and 1980<sup>75</sup> – with the effects of the persistent stagflation from these years resulting in a prolonged phase of bear market which magnified the exposure of mutual funds investing only in equities stocks. US-domiciled equity funds' aggregate assets went indeed from 56 billion dollars in 1972 to 31 billion in 1974. Fink, has argued that the market recovery from the end of the decade and throughout the 1980s should be mainly attributed to the adoption of new portfolio diversification strategies, for example those of money market mutual funds that combined the investment in equities with that in liquid

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<sup>72</sup> Ibid.

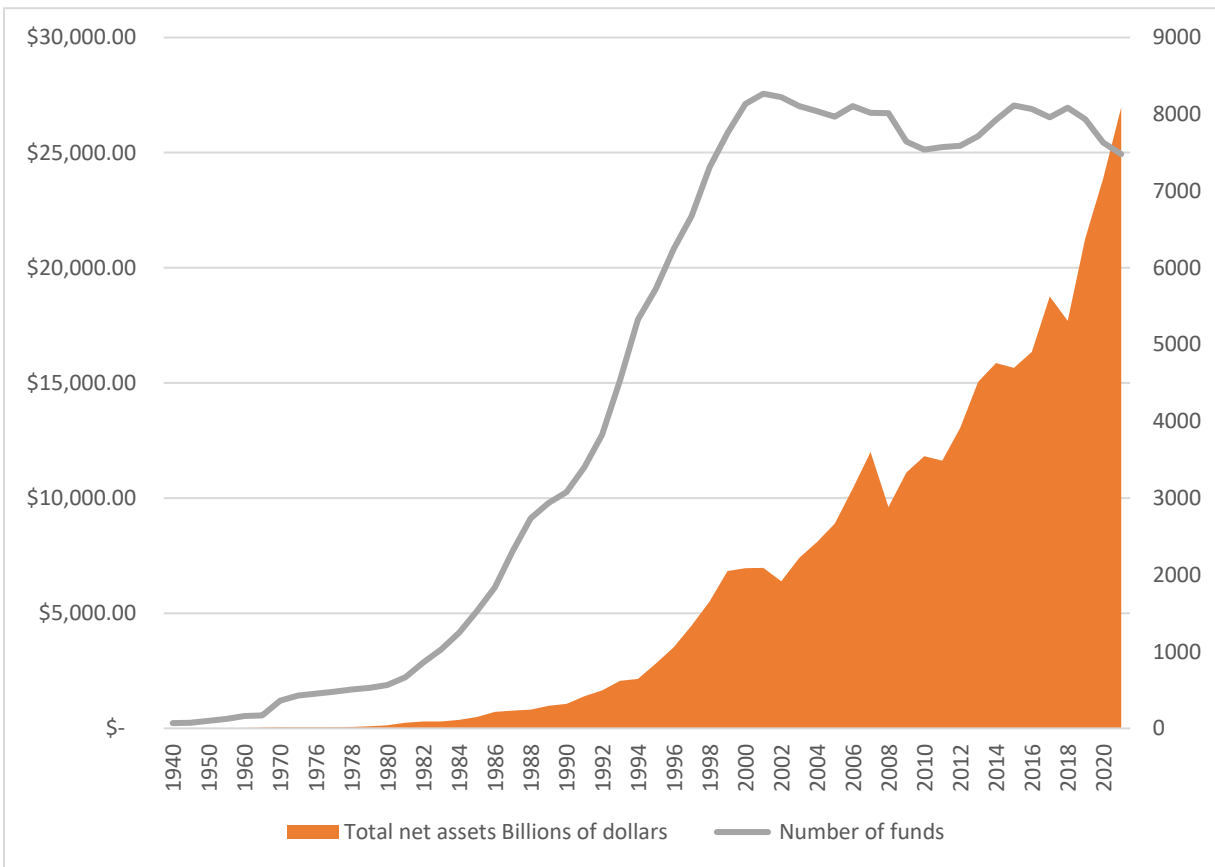
<sup>73</sup> Rutterford, J. (2009), *art. cit.*

<sup>74</sup> Ibid.

<sup>75</sup> Giddey, T. (2019). *Histoire de la régulation des Banques en Suisse (1914-1972)*. Librairie Droz, pp. 525-526.

financial assets such as Treasury bills, certificates of deposits and other short-term financial instruments.

**Figure 1.5. US-domiciled mutual funds, aggregate capital stock (billion \$) and number of funds, 1940-2021**



Note: Source : Investment Company Institute (2022). *Investment Company Factbook, A Review of Trends and Activities in the Investment Company Industry*. [www.icifactbook.org](http://www.icifactbook.org) Consulted on May 12, 2023.

## 1.2. *History investment funds in Luxembourg: critical review of literature contributions and thesis' research questions*

Scholars such as Pauly, Weeks, and Dörry have argued that Luxembourg as an international financial centre did not become full-fledged until the early 1980s,<sup>76</sup> and consistently, that Luxembourg's take-off as an international fund centre should be placed after the promulgation of a national law on the investment fund regulation and surveillance, that transposed in 1988 a Council directive of 1985 on the harmonisation of the European Economic Community (EEC) fund market – the first UCITS (Undertakings for the Collective Investment in Transferable Securities) directive. In particular, Dörry and Wojcik et al. have argued that the first mover advantage gained by the Grand Duchy being the first EEC member able to transpose in its juridical framework the Council directive of 1985 should be considered as a decisive factor in ensuring the subsequent exponential growth of Luxembourg's fund industry between the 1990s and nowadays.<sup>77</sup>

These studies have in the first place, the merit of identifying the transposition of the Council directive under Luxembourgish law as a watershed moment for the fund industry in Luxembourg. It is indeed true, as seen in Figure 1.2, that the number and the aggregate size of assets of Luxembourg funds began a phase of exponential trend growth concurrently with the opening-up of the EEC market under the regulatory framework introduced by the Council – however, as it is demonstrated in chapter 5.3, also the expectation of the approval of the directive was already able to produce a stabilizer effect on Luxembourg fund market, starting from the early 1980s, and therefore even before its adoption.

Moreover, they constitute important pieces of a nascent historiography centred on Luxembourg's investment fund industry, a subject for too long neglected by historians and social scientists and confined, at the academic level, to specialistic studies lacking a consistent historically driven methodological approach. The works of Dörry, Wojcik et al., Weeks, Majerus, Majerus and Zenner,

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<sup>76</sup> Pauly, M. (2013), *Histoire du Luxembourg*. Brussels, PUB, p. 132; Weeks, S. (2023). Channeling the capital of others: How Luxembourg came to be asset managers' "plumber" of choice. *Environment and Planning A: Economy and Space*; Dörry, S. (2022), *art. cit.*

<sup>77</sup> See Dörry, S. (2016), *art. cit.*; Wójcik, D. Urban, M., and Dörry, S. (2022), *art. cit.*; see also Hazenberg, J. J. (2012), *op.cit.*

and Calabrese and Majerus have just started to highlight the role of investment funds as one of the main determinants of Luxembourg's transformation into a nodal international financial centre<sup>78</sup>

This growing literature on the subject, however, appears as still lacking a comprehensive view of the history of Luxembourg's fund industry on a *longue durée* perspective. On the one hand, although some studies have been recently focused on Luxembourg's investment trusts during the interwar years (Calabrese and Majerus<sup>79</sup>) and on the 1970s fund crisis following the outbreak of the IOS scandal in Luxembourg (Majerus<sup>80</sup>), the overall picture remains still scattered and eventually missing an encompassing historical analysis able to consistently connect the early developments around the industry in the interwar years to its evolutions in the second half of the twentieth century. On the other hand, as seen above, the historiography on Luxembourg's fund industry seems to over-magnify the role of the first mover advantage of Luxembourg in transposing Council's UCITS directive of 1985 as a key-determinant for the subsequent success of the industry in the following years. This approach appears as flawed under two main respects: first, it seems to be more applicable to cycle analysis rather than trend one – where cycle should be here intended as referring to the factors altering a trend economic performance in an open economy during a conjunctural phase.<sup>81</sup> The literature using the “first mover” argument lacks at the moment a convincing explanation on how an event that undoubtedly produced favourable consequences (in terms of listing of new funds) in the short-run, should be considered as one of the main determinants – if not the main determinant<sup>82</sup> – of the success of Luxembourg fund industry on a temporal perspective spanning through more than three decades. Furthermore, the emphasis on the “first mover” interpretation eventually overlooks a wide range of determinants

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<sup>78</sup> See Dörry, S. (2014), (2015), (2016), *artt. cit.*; Weeks S. (2020). Collective effort, private accumulation: Constructing the Luxembourg investment fund, 1956–2019. In: Benquet M, Bourgeron T (eds) *Accumulating Capital Today: Contemporary Strategies of Profit and Dispossession Policies*. Oxford: Routledge, pp. 89–103; Zucman, G. (2015). *The Hidden Wealth of Nations: The Scourge of Tax Havens*. The University of Chicago Press; Majerus, B. and Zenner, B. (2020), *art. cit.*; Majerus, B. (2020). This is not a scandal in Luxembourg. *Entreprises et histoire (Paris)*, 101 (4), 75–87; Calabrese, M., and Majerus, B. (2023), *art. cit.*; Wójcik, D. Urban, M., and Dörry, S. (2022), *art. cit.*; Hazenberg, J. J. (2012), *op.cit.*

<sup>79</sup> Calabrese, M., and Majerus, B. (2023), *art. cit.*

<sup>80</sup> Majerus, B. (2020), *art. cit.*

<sup>81</sup> Cf. e.g., van Leeuwen, B., Calabrese, M., and Wang, M. (2023). Italy's Total Factor Productivity in a Global Economy: Growth and Spillover Effects (c. 1400–2010). *Italian Economic Journal*.

<sup>82</sup> Dörry S. (2015), *art. cit.* See also chapter 5.3.

that have equally – if not to a greater extent – contributed to ensure the attractiveness and the comparative advantage at the world-level of Luxembourg fund industry in the long-run. These factors include for example, the stability and flexibility of the fund code of capital under Luxembourgish law and the positive externalities resulting from the long-term experience accumulated by Luxembourgish financial intermediaries (law firms and banks in particular) and from a consistent history of cooperation and convergence of shared goals among Luxembourg’s entrepreneurial and policymaking classes.

The story narrated in this thesis, thus, instead of starting in the 1980s, on the contrary, ends in that decade. This thesis indeed argues that Luxembourg’s fund industry emergence and success were not a product of a “fluke”,<sup>83</sup> and should be necessarily considered in a *longue durée* perspective, starting from the interwar years.

It firstly does so by introducing a theoretical framework that asserts continuity in the code of capital, between the early forms of investment trusts (closed-end funds) registered as holding companies in Luxembourg in the 1930s and open-end funds since the 1960s. In this respect, Eurunion, an investment fund listed in Luxembourg from 1959 to 1978, should be considered as the first open-end fund in Luxembourg,<sup>84</sup> while incorporations of closed-end funds were therefore antecedent.

Second, by using fundamental notions of the theory of fund assets and portfolio analysis – e.g., analysis of aggregate total assets, sales and redemptions of funds’ shares, geographical origin of portfolio’s assets, etc. – this research investigates the main trends and cycles<sup>85</sup> characterising the fund industry in Luxembourg, during a time frame that begins with the appearance of the first investment trusts after the promulgation of the Holding Act in 1929 and ends in 1989, the first year after the transposition of the Council UCITS directive under Luxembourgish law. To this purpose,

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<sup>83</sup> See Pauly, *op. cit.*, p. 131.

<sup>84</sup> In Luxembourg legal terminology, open-end funds are known as “*Fonds communs de placement*” or “*Fonds contractuelles*”, while closed-end funds as “*Sociétés d’investissement*” or “*Fonds corporatives*” (see e.g., Biel, A. and Stuyck, C. (1978). *Les fonds d’investissement en droit luxembourgeois*. Luxembourg: Institut universitaire international).

<sup>85</sup> I use the notion of trend and cycle in the rest of this thesis as respectively local (trend) development of the industry and external spill over effects (cycle) (see e.g., Calcagnini, G., Giombini, G., and Travaglini, G. (2021). The Productivity Gap Among Major European Countries, USA and Japan. *Italian Economic Journal* 7, 59–78; van Leeuwen, B., Calabrese, M., and Wang, M. (2023), *art. cit.*).

furthermore, it highlights the variable speeds at which open-end and closed-end investment funds grew in the time frame of interest. For example, unlike contemporary commentaries,<sup>86</sup> more recent literature on the subject<sup>87</sup> does not address the issue of the variable speeds at which Luxembourg's open-end and closed-end investment funds grew between the late 1960s and early 1970s, and it implicitly suggests a positive correlation between the growing number of overall investment funds based in Luxembourg in the 1960s-1970s and the level of capital return for the aggregate national fund industry.<sup>88</sup> Analysis of coeval sources instead indicate that the growth of the aggregate net assets of Luxembourg's open-end investment funds in this period should be mainly ascribed to the extraordinary performance of two Luxembourg-domiciled mutual funds, both managed by Investors Overseas Services (IOS): IIT and Fonditalia (see chapter 3.2). At the same time, while many open-end funds were experiencing a negative performance cycle, the overall number of investment funds nevertheless rose between 1967 and 1969, mainly because of a sudden wave of closed-end fund listings, after the Luxembourg's regulatory authorities accepted the incorporation in Luxembourg of closed-end funds associated with a buyout firm in 1968 (see chapter 3.3).

Third, in line with a research paradigm introduced for Luxembourg by Majerus and Zenner,<sup>89</sup> this thesis assesses both the endogenous and exogenous characterization of a group of factors that played a decisive role in shaping Luxembourg's fund industry between 1929 and 1989. As mentioned by the two authors:

“With specific regard to Luxembourg, scholars have generally centred their narratives on a few landmark events, such as the passing of a 1929 law on holding companies, or the listing of the Autostrade bond (considered to be the first Eurobond issue) on the Luxembourg Stock

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<sup>86</sup> Wietor, M. (1969). *Les fonds communs de placement*. Dissertation présentée en vue de l'obtention du grade de professeur de sciences commerciales. Luxembourg; Bechet, Y. (1971). *L'internationalisation de la place financière de Luxembourg: Mémoire présenté pour l'obtention du grade de licencié en Sciences commerciales et consulaires*. Institut catholique des Hautes Études commerciales ; Biel, A. and Stuyck, C. (1978), *op.cit.*

<sup>87</sup> See e.g., See Dörry, S. (2014), (2015), (2016), *artt. cit.*; Weeks S (2020), *art. cit.*

<sup>88</sup> On the difficulties of grouping funds according to their performance see also Sotiropoulos et al. (Sotiropoulos, D. P., Rutterford, J., and van Lieshout, C. (2021), *art. cit.*, who discuss methodological issues in this regard for investment trusts in the UK in the pre-WWI period.

<sup>89</sup> Majerus, B. and Zenner, B. (2020), *art. cit.*

Exchange in 1963. [...] [Yet], important aspects such as the framework provided by the Belgium-Luxembourg Economic Union [...], or the absence of a central bank in the country, are often ignored. Similarly, the domestic banking system and its connection to the growing internationally oriented financial sector tends to go unmentioned. [...] Luxembourg case could benefit from further study of the ways the centre is embedded in the broader inter- and transnational context.”<sup>90</sup>

Among the external factors analysed in the present research there are for example, the climate of raising taxation on income and wealth characterizing the overall European scenario during the interwar years (see chapter 2); the creation of the European single market in 1957 and the international vocation of Brussels-based Banque Lambert (see chapter 3); the rise of the Euromarkets, in a context of increasing internationalization of financial markets<sup>91</sup> and progressive financial integration in Europe through Americanization<sup>92</sup> (see chapter 4 and 5); the characterization of the fund domestic markets of the EEC members and their role in the context of the debate at the Council for the formulation of the harmonisation UCITS directive of 1985 (see chapter 5).

Fourth, based on a theoretical framework outlined among the others by Ogle,<sup>93</sup> this research focuses on the people behind the industry and therefore, on the role of agency in the determination of the historical developments of the fund industry in Luxembourg in the time span considered. Politicians, entrepreneurs, and notably business lawyers – evocatively defined by Pistor as “code masters”<sup>94</sup> – became, throughout the twentieth century, the architects of Luxembourg’s transformation from a country mainly relying on agriculture and steel extraction into an international financial centre. Moreover, this thesis assesses the role that the small yet dense and overlapping networks of individuals – active at the same time within Luxembourg business

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<sup>90</sup> Ibid., p. 4.

<sup>91</sup> See e.g., Eichengreen, B. (2008). *The European Economy since 1945: Coordinated Capitalism and Beyond*. Princeton University Press.

<sup>92</sup> Wójcik, D. (2002.) Cross-border corporate ownership and capital market integration in Europe: evidence from portfolio and industrial holdings. *Journal of Economic Geography*, 2(4), 455–491.

<sup>93</sup> Ogle, V. (2017), *art. cit.*

<sup>94</sup> Pistor, K. (2019), *op. cit.*



environment and at the national regulatory level – played in determining the outstanding performance outcome reached by Luxembourg’s fund industry nowadays.<sup>95</sup> Gaston Thorn, former Luxembourg’s prime minister in the 1970s and former president of the European Commission in the 1980s, synthesized this concept by using the vivid image of Luxembourg being “run by a football team”. This metaphor has been indeed interpreted as a way to describe the capability of Luxembourg’s entrepreneurial and political elites to frame the main instances emerging within Luxembourg business environment as well in the overall society through the work of a small number of highly interconnected representatives.<sup>96</sup>

Finally, at a more general level, this research, besides providing a deep investigation of an under researched topic such as the evolution of the investment fund industry in Europe and its internationalization process, aims also to contribute to the literature which analyses how “small states” such as Switzerland and Luxembourg became in the twentieth century able to determine important transformation in the underlying structure of modern capitalism.<sup>97</sup> A regional state such as the Grand Duchy, which in theory should have played in the international arena just a role of observer<sup>98</sup> or “honest broker”,<sup>99</sup> revealed instead itself able to play a primary role in the networked dynamics of capital transferring involving the galaxy of international financial centres that had been on the rise already during the so called “Golden Age” of capitalism between the end of WWII and the oil crisis of 1973<sup>100</sup> (see also chapter 4) and that magnified their scale during the subsequent phase of increasing inequality starting from the mid-1970s.<sup>101</sup> Ultimately, by closely looking at the interpretative path suggested by Eichenberger for Switzerland, this thesis aims to

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<sup>95</sup> Cf. Alguezaui, S., and Filieri, R. (2010). Investigating the role of social capital in innovation: sparse versus dense network. *Journal of Knowledge Management*, 14(6), 891-909.

<sup>96</sup> Claude Kremer, interview with the author, January 11, 2023

<sup>97</sup> Eichenberger, P (2022), *art. cit.*

<sup>98</sup> See e.g., Moravcsik, A. (1998), *art. cit.*

<sup>99</sup> Elgström, O (2003), *art. cit.*

<sup>100</sup> Marglin, S.A., and Schor, J. B. (1992). *The Golden Age of Capitalism: Reinterpreting the Postwar Experience*. Oxford University Press.

<sup>101</sup> See Piketty, T. (2014). *Capital in the twenty-first century*. Belknap Press of Harvard University Press; Milanovic, B. (2016), *Global inequality: a new approach for the age of globalization*. Harvard University Press.

demonstrate that also Luxembourg through its investment fund industry acted as a “cog in the machinery of global capitalism”.<sup>102</sup>

### *1.3 Data and sources*

Trends and cycles characterizing the history of Luxembourg investment fund industry as well as the history of the people and institutions that shaped it throughout the time frame of this thesis are analysed by making use of quantitative and qualitative primary sources but also grey literature sources – including material from Belgian and Luxembourgish coeval newspapers, law studies reviews and the proceeding of business lawyers’ conferences. A complete list of all datasets and archives can be found in section 7, “List of archives and datasets consulted (or created)”.

Among the datasets used, two of them have been purposely created in the context of the research for the present thesis and that of the studies in financial history at C2DH department at Luxembourg University, whose first research outcome has been the article “Archaeology of a treasure island. Actors and practices of holding in Luxembourg (1929-1940)”, written by the author together with Benoît Majerus. In the first place, there is the FINLUX database, that contains all holding companies listed in the *Mémorial du Grand-Duché de Luxembourg* (Luxembourg’s business register) between 1929 and 1939 and was curated by the author, Alexander Davidov, Othmane Djebbar, Benoît Majerus, Christelle Timis, and Luca Uhrig. Second, the “Luxembourg-listed funds and their characteristics: Fund Dataset per year (1959-1987), an Access Database created by the author and collecting data on Luxembourg-domiciled funds from 1959 to 1988, based on archival material from Luxembourg National Archives, the CSSF Archive in Luxembourg, Belgium National Bank Archive, the Fonds Lambert at Belgium National Archives, and the Archive of the Graduate Institute of International and Development Studies in Geneva (CH).

A special thanks furthermore goes to Prof. Jang Schiltz and the department of Finance at the University of Luxembourg that allowed the consultation of the Luxembourg Fund Data Repository (LFDR), which includes a complete collection of all the funds issued in Luxembourg from March 1988 and October 2016 together with time series of the main fund’s market characteristics.

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<sup>102</sup> Eichenberger, P (2022), *art. cit.*

Throughout the work of data mining and archival research for the present thesis, the main limitations arose in particular around the availability of nominal data and information of the individuals and companies who invested in Luxembourg-domiciled investment funds or bought funds' shares listed in the LuxSE. The IML/CSSF (the financial surveillance institution in Luxembourg, which changed its name throughout the time frame of interest of this thesis) did not have access to these data and Luxembourg banks, such as BGL – which allowed the author to consult its archives – cannot share them for confidentiality reasons. This limitation has been partially overcome through the use of aggregate data series, available among the dossiers of the CSSF's archives, in particular with regards to aggregate data on the residency of the investors. Through them, it has been possible to outline a valuable estimation of the size of the domestic market of investment funds in Luxembourg compared to its non-domestic one.

Finally, a wide range of legal sources have been used. From the text of the laws, their drafts, and specialists' commentaries to the parliamentary debates for their approval. In particular, the genesis of the main laws having a determinant impact on Luxembourg's fund industry as well as the motives of their drafters have been thoroughly analysed. Oral history, with the use of a series of first-hand interviews of the author with Luxembourg's policymakers and entrepreneurial actors having a role in the events of Luxembourg's fund industry, has finally been one of the most effective tools able to integrate the documental evidence emerging from primary and secondary sources used for the present thesis.

## 2. “A counterbalance to a fiscal hemorrhage”. From holding companies to investment trusts under the H29 regime.

*“This day of national mourning has become an hour of patriotic crisis and national affirmation. An entire people, unanimous, has just paid a supreme, sorrowful and fervent tribute to one of Luxembourg's finest and greatest [...] In his life, there were attacks and controversies, but never denigration! And if in our internal struggles and petty lows the words have not yet lost all their meaning: a great civil servant and an honest man...”*

(“In Memoriam” epitaph for Pierre Dupong in the *Lëtzebuenger Land* of 1 January 1954).

*[...] Fortunately, the new legislation on holding companies has counterbalanced quite an abundant fiscal haemorrhage.*

(Pierre Dupong, 1932<sup>103</sup>)

The European economic landscape emerging in the aftermath of the First World War presented profoundly changed features compared to that of the “networking Europe”<sup>104</sup> built between the nineteenth century and the first decade of the twentieth century. During those years of increasing economic intertwining between Western Europe’s countries, Luxembourg deepened its vocation first, as an agriculture-based centre.<sup>105</sup> At the same time, despite being in that phase a society with

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<sup>103</sup> ANL, FIN, box 00291, Budget de l’exercice 1932, Ministry of Finance Pierre Dupong’s introduction to yearly Budget Law.

<sup>104</sup> See van der Vleuten, E., and Kaijser, A. (2005). Networking Europe. *History and Technology*, 21:1, 21-48; See also Jones, G. (2004). *Multinationals and Global Capitalism: From the Nineteenth to the Twenty First Century*. Oxford University Press.

<sup>105</sup> Trausch, G. (2017), *op. cit.*

a slow pace of industrial development<sup>106</sup>, it became nevertheless able to increase the output of its extractive steel industry. In this context, it was able to enhance its competitiveness within the export-trade of raw steel and agricultural commodities towards neighbouring countries – in the increasing globalised economy of the period 1870-1913 (linked to higher circulation of knowledge and global diffusion of productivity spill over effects<sup>107</sup>). This process, favoured in the first place by its central geographical position within Europe – a feature that the Grand Duchy shares with Switzerland<sup>108</sup> – could furthermore benefit from the manifold economic and monetary interactions (as well in terms of circulation and embodiment of fiscal law principles<sup>109</sup>) between the Grand Duchy and the confederation of German States. For years, since 1842, Luxembourg had indeed been part of the *Zollverein*, the customs union of the German states created under Prussia’s hegemony.<sup>110</sup>

At the dawn of the 1920s, though, the scenario had completely changed. The sudden economic isolation resulting from the collapse of the German empire and the end of the *Zollverein* urged Luxembourg authorities to independently reframe their policymaking in terms of inter-state commercial agreements and monetary policy. The launching in 1921 (under the government Reuter) of the “Union économique belgo-luxembourgeoise (UEBL)”, a monetary union between the Luxembourgish and the Belgian franc<sup>111</sup>, and the signing in 1926 under the government of the conservative Bech of an agreement with France and Germany aimed at the reorganization of the steel trade in Europe – namely, the “Entente Internationale de l’Acier” (EIA), sort of precursor of the future European Coal and Steel Community (ECSC) agreements of 1951<sup>112</sup> – should be both seen in this respect.

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<sup>106</sup> Ibid, p.88.

<sup>107</sup> See e.g., van Leeuwen, B., Calabrese, M., and Wang, M. (2023), *art. cit.*

<sup>108</sup> See in this regard the analysis of geographical features of Switzerland as a substrate for internationally-oriented business attitude (Paquier, S. (2001), *art. cit.*).

<sup>109</sup> See Delvaux, B., and Reiffers, E. (1933), *op. cit.*

<sup>110</sup> See e.g. Murphy, D. T. (1991). Prussian Aims for the Zollverein, 1828–1833. *The Historian*, 53(2), 285–302. See also Trausch, G. (2017), *op. cit.*

<sup>111</sup> See Jungblut M. P. (1995). L’étrange Histoire du Décrochement du Franc Luxembourgeois. In *Belgique – Luxembourg: Les Relations Belgo-Luxembourgeoises et La Banque Générale Du Luxembourg (1919-1994)*, edited by Gilbert Trausch. Luxembourg: Imprimerie Centrale.

<sup>112</sup> See Trausch, G (2017), *op.cit.*

However, Luxembourg’s main industries’ performance during the interwar years appears either as erratic or, in particular for agriculture exports, as declining. The main determinant of the crisis of Luxembourg’s agriculture has been individuated in the difficulty of the Grand Duchy in innovating its agriculture productivity efficiency<sup>113</sup> in a context of rising protectionism and tariff wars that affected the international trade also for agricultural products<sup>114</sup> (see Table 2.1, which depicts the comparison of the yields for four crops between Luxembourg and its more direct international competitors during the interwar years).

**Table 2.1. Yields of crops between 1929 and 1938 for Luxembourg and selected group of neighbouring countries**

Country	Wheat	Rye	Oat	Apples
Luxembourg	15.9	15.6	15.9	120.8
Belgium	26.1	23.4	25.7	210.2
Luxembourg (province of Belgium)	18.2	20.2	20.2	158.8
Germany	22.2	17.4	19.9	162.4
France	15.4	11.5	14.3	110.2

Source: Trausch (2017), *op. cit.*, p. 203

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<sup>113</sup> *Ibid.*, pp 201-205.

<sup>114</sup> See for example the analysis on international competition and the protectionist economic policies of neighbour states during the interwar years related to agricultural international trade in Martin, J. (2000.) *British Agriculture in the 1930s. In: The Development of Modern Agriculture*. Palgrave Macmillan.

The interwar wave of protectionism affected also the international market for the steel trade. General tariff retaliation<sup>115</sup>, with trade blocs<sup>116</sup> and higher tariffs so to have a boost-up reaction for domestic prices (e.g., in Weimar Republic<sup>117</sup>), produced a concurrent downsizing of the steel total exports for the main steel producers (including Luxembourg) compared to the value reached in 1913. As it is shown in Figure 2.1, while a reduction of the export size is present already in the early 1920s, the effect of the trade wars is particularly evident throughout the 1930s (moreover enhanced by the further combined effect of the economic crisis of 1929 on protectionist dynamics<sup>118</sup>).

**Figure 2.1. Iron and steel exports (thousand metrics tonnes) of the five major producers (including Luxembourg) as a percentage of total world production 1913-1938.**

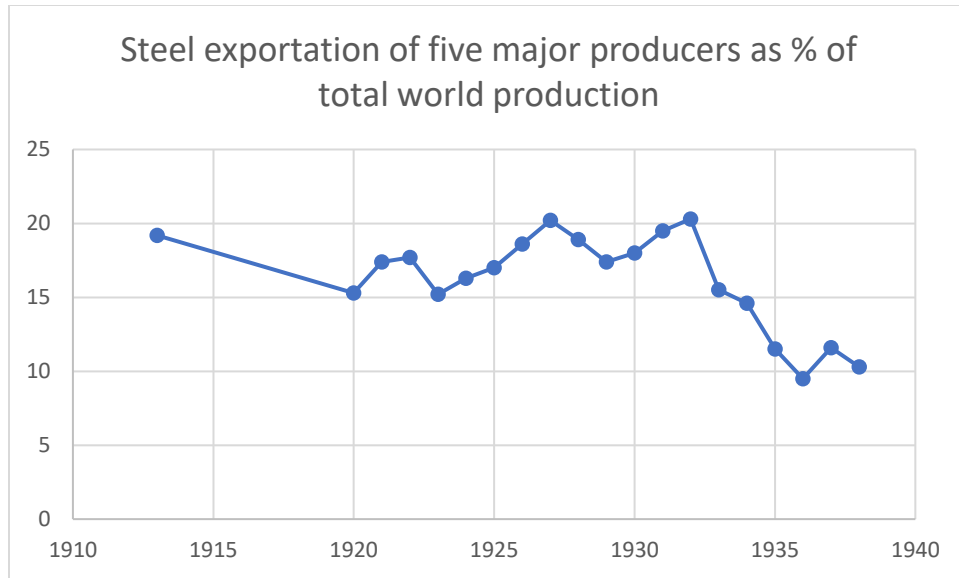
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<sup>115</sup> Christopher A., M. (2019). Return of the tariffs: The interwar trade collapse revisited. *Diskussionsbeiträge*, No. 2019/8, Freie Universität Berlin, Fachbereich Wirtschaftswissenschaft, Berlin; Chase, K. A. (2004). Imperial protection and strategic trade policy in the interwar period. *Review of International Political Economy*, 11:1, 177-203.

<sup>116</sup> Jacks, D.S., and Novy, D. (2020). Trade Blocs and Trade Wars during the Interwar Period. *Asian Economic Policy Review*, 15: 119-136.

<sup>117</sup> Chase, K. A. (2005). *Trading Blocs: States, Firms, and Regions in the World Economy*. University of Michigan Press., pp. 95-98.

<sup>118</sup> See e.g., Eichengreen, B., and Irwin, D. A. (2010). The Slide to Protectionism in the Great Depression: Who Succumbed and Why? *The Journal of Economic History*, 70(4), 871–897.



Source: Berger, F. (2009). Iron and steel trade. in Iriye Akira, Pierre-Yves Saunier, *The Palgrave*

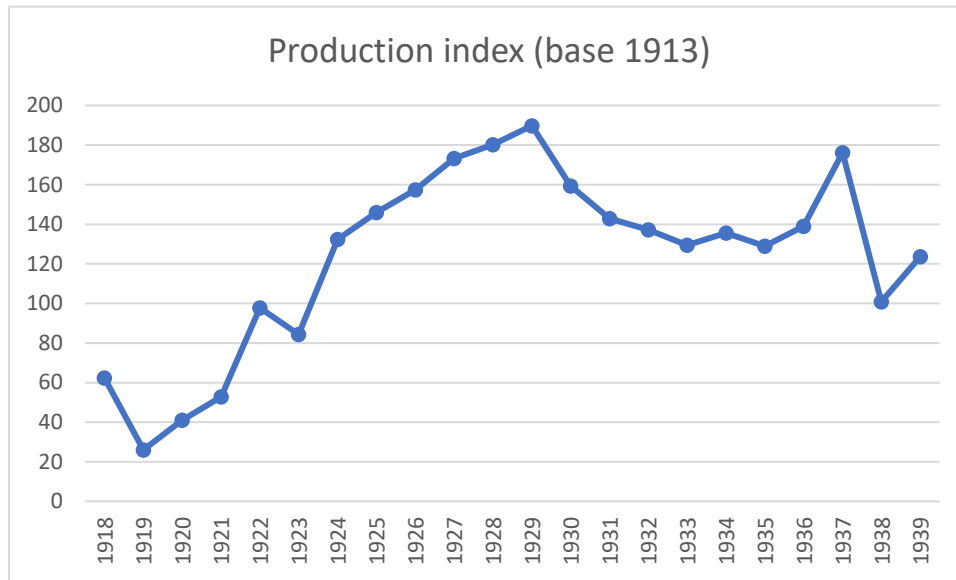
*Dictionary of Transnational History: from the mid-nineteenth century to the present day,*

PalgraveMacmillan, Transnational History Series.

Due to its position as a net-exporter of raw steel, these dynamics had a clear reflection on Luxembourg's national production figures. As it is visible in Figure 2.2, the production of steel in the Grand Duchy firstly decreased in the immediate aftermath of World War I. Then, after a recover in the second half of the 1920s, the production declined again throughout the 1930s.



**Figure 2.2. Steel production in Luxembourg in the interwar years, 1918-1939 (1913 base year).**



Source: Trausch, G. (2017), *op. cit.*, p. 201

At the same time, the high level of debt issued by the countries involved in World War I resulted in an instable post-war monetary environment. A general inflation wave, during the pre-1929 crisis and in particular in the two-year period 1919-1920, was mainly a consequence of the temporary suspension of the Gold Standard system<sup>119</sup> prior to the war, so to allow central banks to adopt expansionary regimes in a war economy to buy war orders.

The attempt of central banks of curbing the curve of rising inflation, led by the decision of the American Federal Reserve to raise the interest rates up to 7 per cent<sup>120</sup>, resulted in the first place

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<sup>119</sup> The Gold Standard had been the monetary system regulating monetary emissions from the 1870s, ensuring an environment of null or low inflation and high credibility for central banks in a pre-second industrial revolution context (see Caprio, G. (2012). *Handbook of Key Global Financial Markets, Institutions, and Infrastructure*. Elsevier Science).

<sup>120</sup> See the seminal work of Friedman, M., and Schwartz A., J. (1963). *A Monetary History of the United States, 1867–1960*. NBER Books, National Bureau of Economic Research, Inc, number frie63-1.

in a deflationary two-year period in 1921 and 1922 (e.g., in France the inflation rate was -13.3 per cent in 1921 and -2.1 per cent in 1922<sup>121</sup>). However, in a context of insolvency of the German state, which was unable to pay its war debts and had fallen in a major hyperinflation crisis,<sup>122</sup> general inflation was on the rise again until, at the end of the 1920s, a partially revised Gold Standard (at that point known as the Gold Exchange Standard) produced some stability effects – just before the contagion effect of the crisis of 1929 produced a new major deflationary wave.

The decision of Luxembourg authorities to enter the above mentioned UEBL, the monetary union with Belgium, besides being the outcome of a strategical reallocation in the post-*Zollverein* scenario, should be seen also as a reaction to the general climate of monetary uncertainty at the international level. Inflation rates were extremely high in Luxembourg until 1927 (see Figure 2.3), due to the combined effect of the international inflationary spiral and of the fluctuations of the Belgian franc (related to the high Belgian national debt<sup>123</sup>). While remaining in the UEBL, the weakness of the Belgian franc eventually brought Luxembourg's government to first refer to the pound sterling for debts and bonds (from 1926) and afterwards to abandon the perfect parity between the two francs, in favour of an exchange rate established at 1 Luxembourgish franc against 1.25 Belgian francs (see the *arrêté grand-ducal* of April 1, 1935<sup>124</sup>).

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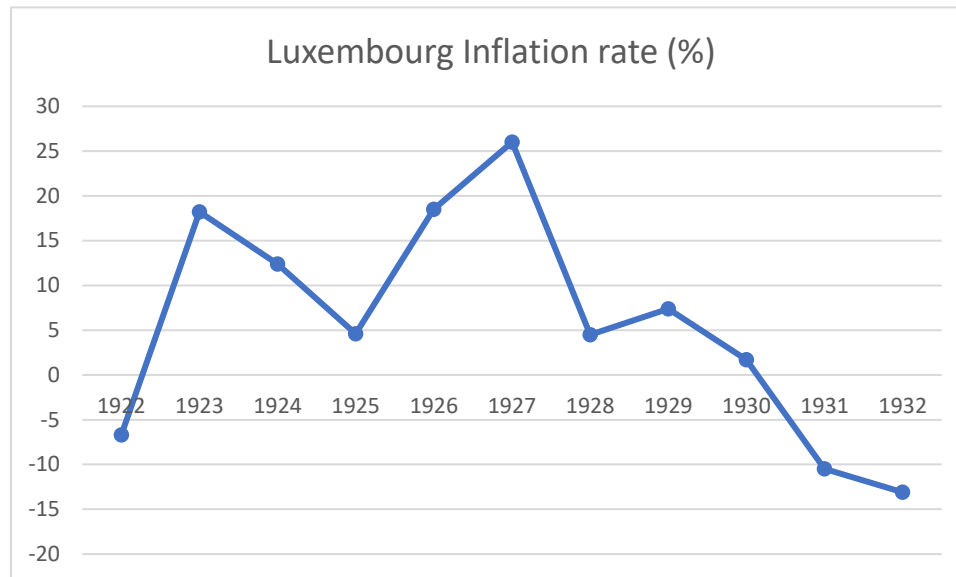
<sup>121</sup> Retrieved on February 8, 2023 from <https://france-inflation.com/inflation-depuis-1901.php>.

<sup>122</sup> Dornbusch, R., & Fischer, S. (1986). Stopping Hyperinflations Past and Present. *Weltwirtschaftliches Archiv*, 122(1), 1–47.

<sup>123</sup> See Jungblut M. P. (1995), *art. cit.*

<sup>124</sup> *Ibid.*, pp. 147-148.

**Figure 2.3. Luxembourg inflation rate (%), 1921-1931**



Source: Retrieved February 8, 2023 from <https://statistiques.public.lu/stat>

High inflation meant rapidly rising prices, and Luxembourg's governments of the second half of the 1920s had moreover to face a group of urgent matters heavily impacting their national budget. On the one hand, the modernization of the main infrastructure network of the country, in particular the railway system and the national electric grid.<sup>125</sup> On the other, in the above-mentioned context of post-war general raising taxation<sup>126</sup> and increasing custom tariffs, both socialists and liberal parties were pressing for the reduction of the custom duties (especially for agricultural products, that as seen were suffering the competition of neighbour countries) for Luxembourg's exportations as well as for a general reduction of business turnover taxes ("*impôt sur le chiffre d'affaires*").<sup>127</sup>

<sup>125</sup> See ANL, CdD, CR-0129, Session ordinaire de la Chambre des Députés 1928-1929 (Compte rendu des séances publiques); see also ANL, FIN, boxes 00286 and 00287, Budget de l'exercice 1927 and 1928.

<sup>126</sup> See also Farquet, C. (2012), *art. cit.*

<sup>127</sup> See ANL, CdD, CR-0129, Session ordinaire de la Chambre des Députés 1928-1929 (Compte rendu des séances publiques) ; ANL, FIN, Administration de l'Enregistrement et des Domaines, box 3788, Réformes concernant les différents droits et taxes fiscales ainsi que relevés et avis y relatifs, 1907-1929.

In this context, looking for alternative sources of tax income, Luxembourg's government turned its interest towards the financial sector.<sup>128</sup> At the time, Luxembourg's financial services were essentially limited to a small number of banks that had mainly a local dimension, or basic insurance agencies, with both industries relying on a strong bourgeoisie network<sup>129</sup> of lawyers and notary firms. The active population classifiable as bourgeoisie, in the decade before World War I, accounted for just 2 per cent of the overall population, while the working class (including agrarian and industrial employees) to 70 per cent, and the rest as an intermediate class accounting for 28 per cent of the population.<sup>130</sup> The percentage of people classifiable as bourgeoisie was nevertheless to grow throughout the next decades, until it became in the 1940s around 9 per cent of the active population.<sup>131</sup> Whereas the local industrial bourgeoisie was also in constant increment, concurrently with the expansion of a national "steel economy", the growth of a type of bourgeoisie (still minoritarian once compared to industrial one<sup>132</sup>) definable as financial can be undoubtedly put in relation with the financial opening-up of the Grand Duchy during the interwar years. While the other European nations were progressively reducing their space for inter-commercial relations and at the same time raising the fiscal burden for their resident commercial and financial firms – due to the post-war debts and the galloping inflation<sup>133</sup> – Luxembourg's conservative governments of that period turned instead towards a complete opposite direction. With the promulgation of the so-called Holding Law of 1929 (H29), they opted for extreme freedom of circulation of international financial capitals, by lowering the tax burden for locally domiciled holding companies and extensively interpreting the idea of researching legal tools for the avoidance of double taxation, Luxembourg's policymakers not only made the Grand Duchy a competitive and reliable domicile for international holding companies. They also laid the foundations for the transformation of Luxembourg in an international financial centre – at the Chamber debate, Pierre

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<sup>128</sup> See also Trausch, G. (2017), *op. cit.*, pp. 201-214.

<sup>129</sup> *Ibid.*, pp. 161-166.

<sup>130</sup> Trausch, G. (2017), *op. cit.*, 157-158.

<sup>131</sup> *Ibid.*, p. 160.

<sup>132</sup> See also Leboutte, R., Puissant, J., and Scuto, D. (1998). *Un siècle d'histoire industrielle, (1873 - 1973), Belgique, Luxembourg, Pays-Bas : industrialisation et sociétés*. SEDES.

<sup>133</sup> See e.g., Farquet, G. (2016), *op. cit.*

Dupong would go as far as to provocatively define the future Luxembourg as a free port (“*franc-port*”<sup>134</sup>).

Ultimately, the overall operation behind the implementation of H29 as a loophole in the European (and international) “code of capital” for holding companies and derivative financial vehicles<sup>135</sup> was going to become a sort of archetype for Luxembourg’s governmental path of action in these matters. On the one hand, a strong interest at the state-level in pursuing policies and regulations that through the encoding of international capital of holding companies and investment funds could contribute to ensure alternative fiscal resources for the state during phases and cycles of crisis or downsizing of the other traditional economic sectors of Luxembourg economy. On the other, the presence of pervasive and disseminated forms of mutual cooperation – either structured as informal lobbying within the inner circles of the bourgeoisie of such a small state such as Luxembourg, or through institutionally-recognized round tables at the policy-level (see in particular the process of implementation of Luxembourg’s laws on funds in the 1980s) – between policymakers and private actors in the formulation of the code of capital for these financial instruments.

### 2.1. *The genesis of the Holding Act of July 31, 1929*

On May 27, 1929, Pierre Dupong – that was at the time the minister of finances (“*Directeur Général des Finances, de la Prévoyance sociale et du Travail*”) in the first Government led by Joseph Bech, backed up by a coalition led by the Party of the Right (*Parti de la Droite*)<sup>136</sup> – received a technical report, that was going to be decisive for the future history of Luxembourg’s financial sector and for Luxembourg’s history in general. The report, signed by Pierre Braun, director of the fiscal registration office (the *Administration de l’Enregistrement et des domaines*,

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<sup>134</sup> “[...] If it were possible for us to create here a kind of free port for all the taxpayers who could come to us in return for a fee that would be interesting for our country, we would not hesitate for a moment to do so” (ANL, CdD, CR-0129, Session ordinaire de la Chambre des Députés 1928-1929 (Compte rendu des séances publiques). Original in French, translation of the author.

<sup>135</sup> See Pistor, K. (2019), *op. cit.*

<sup>136</sup> Thewes, G. (2006). *Les gouvernements du Grand-Duché de Luxembourg depuis 1848*. Imprimerie centrale, Luxembourg, Service information et presse du gouvernement luxembourgeois, Département édition, pp. 92-104.

AED<sup>137</sup>), contained informative material on a governmental proposal for the introduction of a new law on the definition and fiscal charges<sup>138</sup> of holding companies domiciled in Luxembourg. After being firstly examined by the State Council (“*Conseil d’Etat*”) – the intermediary institutional body which was (and still is) charged in Luxembourg to advise and prepare the discussion of projects of laws (whose president at the time was Victor Thorn<sup>139</sup>) – the draft was going to be then used as starting basis for the debate at national Chamber, set-up on the calendar on July 16 and 17, for Parliamentarian approval or rejection.

The author of the report, Pierre Braun, had been trained as a lawyer.<sup>140</sup> After a first governmental experience at the municipal-level as district commissioner in Luxembourg-City,<sup>141</sup> he had then been appointed as Minister of the Interior in Eyschen’s cabinet between 1910 and 1915,<sup>142</sup> and in the same 1915 as director of AED and as *conseiller* in the Council of State.<sup>143</sup> After having been also proposed as mayor of Luxembourg City in 1920,<sup>144</sup> he was later going to hold a position as governmental commissioner within the BIL (“*Banque Internationale à Luxembourg*”),<sup>145</sup> a bank that was going to have a primary role in the nascent galaxy of holding companies and *holdings de*

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<sup>137</sup> The state fiscal agency for the register and the domaines (*Enregistrement et Domaines*) was one of the three fiscal administrations of the Grand Duchy, and is still active in the current institutional system (see <https://aed.gouvernement.lu/fr.html>, consulted on 8 February, 2023). Among other tasks, it is also in charge of devising and managing the collection of taxes on financial companies (see e.g. ANL, FIN, Administration de l’Enregistrement et des Domaines, box 3788, Réformes concernant les différents droits et taxes fiscales ainsi que relevés et avis y relatifs, 1907-1929).

<sup>138</sup> H29 was indeed defined by contemporary commentators as a “purely fiscal law” (Metzler, L. (1930). *Aspects et évolution du droit des sociétés et des associations. L’Écho de l’Industrie*; Delvaux, B. and Reiffers, E. (1933), *op. cit.*, p. 43).

<sup>139</sup> ANL, CE, box 2467, *Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937)*

<sup>140</sup> (9 October, 1894). Jury d’examen [in the occasion of the graduation of Pierre Braun in law studies], *L’indépendance luxembourgeoise*, p. 2.

<sup>141</sup> (11 January, 1910). *Petites Nouvelles – A travers le Grand-Duché, L’indépendance luxembourgeoise*, p. 3.

<sup>142</sup> *Ibid.* See also Thewes, G. (2006), *op. cit.*

<sup>143</sup> <https://conseil-etat.public.lu/fr/conseil-d-etat/historique/membresdepuis1857.html> Consulted on February 28, 2023; ANL, FIN, Administration de l’Enregistrement et des Domaines, box 3788, Réformes concernant les différents droits et taxes fiscales ainsi que relevés et avis y relatifs, 1907-1929.

<sup>144</sup> (1 May, 1920). *Chronique du Pays, L’indépendance luxembourgeoise*, p. 1.

<sup>145</sup> (24 April, 1930). *Untitled. L’indépendance luxembourgeoise*, p. 2.

*placement* (see chapter 1.4). Furthermore, after suddenly leaving his position as head of AED in 1930 (just one year after the promulgation of H29) he was hired in 1934 as an administrator of the biggest Luxembourg's steel industrial conglomerate, Aciéries Réunies de Burbach Eich Dudelange (ARBED).<sup>146</sup>

Documental evidence, coeval observers (in particular, the notary Bernard Delvaux<sup>147</sup>) as well as later reconstructions of the origin of the law<sup>148</sup> are however rather contradictory on who was the first proponent of this law and its purposes. Not by chance, recently, it has been evocated the image of an “amnesia of the genesis” of H29.<sup>149</sup> The well-informed Bernard Delvaux – with all the doubts that can be casted around his role of impartial jurist and analyst of the juridical matters on holding companies and investment funds in the Grand Duchy (see next chapter) – said in an interview given in 1967 to Fernand Rau<sup>150</sup> that “[...] It is almost 40 years since this law [ the Holding Law] came into force, and it is difficult today to determine its actual purpose”.<sup>151</sup> In the same interview, though, Delvaux also talked of “[...] the liberal attitude of the legislator [...] probably partly due to the advocacy of a large domestic company”.<sup>152</sup>

While the role of AED director Pierre Braun as the drafter of the ultimate project of H29 as it was sent on May 27, 1929 to the Council of State cannot be doubted,<sup>153</sup> the above-mentioned words of

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<sup>146</sup>Barthel, C. (2006). *Bras de fer: Les maîtres de forges luxembourgeois, entre les débuts difficiles de l'UEBL et le Locarno sidérurgique des cartels internationaux, 1918-1929*. Saint-Paul, Luxembourg.

<sup>147</sup> See also Delvaux, B. and Reiffers, E. (1933), *op. cit.*

<sup>148</sup> See for example the mémoires of Harmel, X. (2001). *Souvenirs très personnels d'un banquier à Luxembourg*. Luxembourg. The retired Luxembourgish banker indicates the American company Ford as the instigator of the law (p.95).

<sup>149</sup> Thomas, B. (5 August, 2016). Naissance d'un paradis fiscal. *d'Lëtzebuurger Land*. Retrieved on February, 82023 from <https://www.land.lu/page/article/336/9336/FRE/index.html>

<sup>150</sup> Fernand Rau was a journalist of *Luxembourg Wort* at the time. Later he was going to become a CSV (Christian Social People's Party) congressman in the 1980s as well as a primary voice in the debate around the funds laws of 1983 and 1984.

<sup>151</sup> Rau, F. (22 april 1967). Luxemburg: ein internationales Finanzzentrum. Zwiegespräch mit Maître Delvaux über die umstrittene luxemburgische Holdingsgesetzgebung. *Luxemburger Wort*, p. 14. Original in German, translated by the author.

<sup>152</sup> *Ibid.*

<sup>153</sup> ANL, Conseil d'Etat (CE), box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937).

Delvaux together with the historical reconstruction of Luxembourgish historian Charles Barthel seem to point instead at the presence of a lobbying activity at the origin of the law, in particular from that same ARBED that would have later hired Braun as an administrator. According to Barthel, it was the head of ARBED's legal department ("*chef du contentieux*") Léon Metzler that devised already in 1928 an "*étude holding*" describing the main features of the soon to come legislative framework on holding companies in the Grand Duchy and in which he theorized the transferring of part of the financial assets of ARBED under a Luxembourg-domiciled holding.<sup>154</sup> This reconstruction is notable for clearly identifying, for the first time in the literature, Metzler as the true architect of H29. Barthel's thesis gains further credibility considering Metzler's role as the "rapporteur de la section centrale" in the Chamber during the approval of the law on commercial companies in 1915.<sup>155</sup> Additionally, Metzler authored a detailed legal analysis on the fiscal regime of limited liability companies under Luxembourgish law.<sup>156</sup> Unfortunately, probably due to a recent reorganization of ARBED's archives, the documental evidence used by Barthel to support his thesis is at the moment either unavailable for consultation or even lost.

The existence in 1929 of some lobbying activity regarding the legislation on holding companies from ARBED on Luxembourg's institutional apparatus is corroborated by further archival evidence. In particular, by a letter that the AED of Pierre Braun received from ARBED on May 10, 1929<sup>157</sup> – so roughly two weeks before Braun submitted the project of the law to the Ministry of Economic Affairs on May 27.<sup>158</sup> The letter appears as signed, among others, also by Léon Metzler. It essentially enquired into a possible reduction of the annual taxes ("*taxe d'abonnement sur titres de société*") collected from stock companies that "have shares in other stock companies" – which is the case of a holding company meant to manage the two Luxembourgish steel

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<sup>154</sup> Barthel, C. (2006), *op. cit.*

<sup>155</sup> (14 January, 1930). Au jeune barreau, *L'indépendance luxembourgeoise*.

<sup>156</sup> Metzler, L. (1933). *Le régime juridique et fiscal des sociétés à responsabilité limitée dans le Grand-Duché de Luxembourg: Étude critique et commentaire pratique de la loi du 18 septembre 1933*. Victor Bück.

<sup>157</sup> ANL, FIN, Administration de l'Enregistrement et des Domaines, box 3788, Réformes concernant les différents droits et taxes fiscales ainsi que relevés et avis y relatifs, 1907-1929, lettre de l'ARBED et réponse de Pierre Braun.

<sup>158</sup> ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937).



companies ARBED and *Terres Rouges* under the same umbrella while keeping them (and their liabilities) formally separated (“for practical or legal reasons”<sup>159</sup>).

The director of AED, in an answer forwarded to Finance Minister Pierre Dupong on May 21, gave initial positive advice on the possibility of adopting a law to regulate the matter: “In principle, the claimant’s reasoning is justified. In order to satisfy the claims, a law amending the existing legislation will have to be enacted.”<sup>160</sup>

ARBED ultimately did not create a holding company. The reason given to the press was that the financial crisis of 1929 made the company change its plans on this matter due to the economic crisis.<sup>161</sup> Oddly enough, with the same Léon Metzler, ARBED even indirectly started a campaign against H29 through the Luxembourgish press in the early 1930s.<sup>162</sup> An hypothetical explanation which may account to this contradictory behaviour would be that the steel conglomerate had been apparently more interested in stronger governmental action on the annual tax on holding companies, rather than an elimination of the taxes on capital stock, as it was ultimately devised by the law (see chapter 1.2). ARBED’s public criticism of the “abuses of the law”<sup>163</sup> could be therefore interpreted as a reaction of the firm to the fact that the government had only agreed to some of its requests.

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<sup>159</sup> ANL, FIN, Administration de l’Enregistrement et des Domaines, box 3788, Réformes concernant les différents droits et taxes fiscales ainsi que relevés et avis y relatifs, 1907-1929, lettre de l’ARBED. Original in French, translation of the author.

<sup>160</sup> Ibid. Original in French, translation of the author. The advice of Braun to the Ministry of Finance on the issue raised by ARBED around the introduction of a new legislation on holdings appears as the first official mention of the law, that will be discussed in the Parliament roughly two months later. In my research, I did not find any previous mentions of the law in earlier parliamentary debates, in the expenditure and revenues estimates and advice of the years 1928 and 1929, as well as in all prior analyses and advice on fiscal matters drafted by the *Enregistrement*.

<sup>161</sup> (December, 1930). Les sociétés de participation financières. *L’Écho de l’Industrie*, p. 3.

<sup>162</sup> ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937). See also Metzler, L. (1933), *op. cit.*

<sup>163</sup> ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937).

## 2.2. The letter of the Holding Act: a “race to the bottom” for the taxation of international holding companies

Irrespective of where the idea of H29 initially originated, the law immediately found unconditioned support from the Minister of Finance Dupong. The leader of the Party of the Right (the “*Parti de la droite*” that will later become CSV) appears as one of the most well-informed<sup>164</sup> proponents of the law during the debate at the Chamber in July 1929<sup>165</sup> as well as the “face” of the government fostering the project. Later, especially in the context of the post-Great Depression, he became a relentless advocate of the successful effects of the law, which, according to his view, played an important role in ensuring additional fiscal revenues in the context of the post-1929 economic depression. In 1932, for example, he stated in the annexed documents to the budget law for that year that “[...] the revenues collected by the *Enregistrement* are the most heavily affected by the economic crisis [...] Luckily, the new legislation on holdings has been able to counterbalance at least a bit a fiscal hemorrhage by too far large”.<sup>166</sup>

H29 was however very specific about defining the type of companies that were going to provide this additional flow of tax revenues as highlighted in the words of Dupong. Namely, only those financial companies having as business purpose the composition and management of a portfolio of financial assets of any type (“*sous quelque forme que ce soit*”) from other national or foreigner companies. The holding company was meant to this purpose and was not allowed to be involved in any other industrial or commercial activity.<sup>167</sup> It had essentially to be a “pure” holding with no other mixed interests within the so-called “real economy”.<sup>168</sup> Furthermore, H29 was

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<sup>164</sup> For example, already the 16<sup>th</sup> of July during the first day of debate at the Chamber, so roughly one month and half after the begin of the rebounds of the project of the law between him, Braun, and the Council, Dupong is comfortable enough to claim that his government has “the certitude that a certain number of holding companies will move their residence to Luxembourg in case of approval of the project of law” ANL, CdD, CR-0129, Session ordinaire de la Chambre des Députés 1928-1929 (Compte rendu des séances publiques).

<sup>165</sup> Ibid.

<sup>166</sup> ANL, FIN, boxes 00291, Budget de l’exercice 1932, Ministry of Finance Pierre Dupong’s introduction to yearly Budget Law. Original in French, translation of the author.

<sup>167</sup> See Loi du 31 juillet 1929 sur le régime fiscal des sociétés de participations financières (Holding companies). <https://legilux.public.lu/eli/etat/leg/loi/1929/07/31/n1/jo>

<sup>168</sup> See Delvaux, B., and Reiffers, E. (1933), *op. cit.*; Paquier, S. (2001), *art. cit.*

thought essentially as a liberal fiscal law.<sup>169</sup> In his report, Braun identified a group of reasons behind the implementation of the law ranging from the “economic and monetary problems sprung from the war” to the necessity of regulating forms of “double taxation” emerging for national and international holding companies alike.<sup>170</sup>

Yet, a rather unambiguous picture emerges from the folders of the project: H29 was essentially structured so to become a loophole in the European financial law landscape, by prospecting a fully-fledged “race to the bottom” against Luxembourg’s most direct competitors. The cases of Germany, France, Belgium, Switzerland, and Liechtenstein are indeed thoroughly examined in the report – not by coincidence, in a world that was struck, after the war, by waves of protectionism and trading blocs, those were the countries with the highest geographical proximity to Luxembourg. Notably, the two main competitors were the two countries that in the previous years had lowered the most the bar for the taxation of holding companies: Switzerland<sup>171</sup> and Liechtenstein.<sup>172</sup>

In the text, Braun uses the following example: how much a holding company with a capital of 20 million (of Belgian francs) would spend in taxes if it has revenues for 1 million francs in Luxembourg, in Switzerland, and in Liechtenstein? The result is respectively: 334,000, 38,000, and 38,000. “Enormous disparities” (“*écarts énormes*”) is the comment of Braun on this regard in the text. The gap was mainly due to the Luxembourgish revenue tax (“*impôt sur le revenu*”) of 9 per cent and other communal taxes (“*impositions communales*”) of 13 per cent. These and other additional taxes were not levied in the other two countries. The solution prospected by Braun was therefore to reduce the whole fiscal pressure to a sole yearly tax (“*taxe d’abonnement sur les titres de société*”) of 0,16 per cent. With this reduction, the tax burden for the holding companies – with the above-mentioned capital stock – moving their domicile to Luxembourg would have become

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<sup>169</sup> Metzler, L. (February 1930). Aspects et évolution du droit des sociétés et des associations. *L’Écho de l’Industrie*; Bernard Delvaux and Edmond Reiffers, *op. cit.*, p. 43.

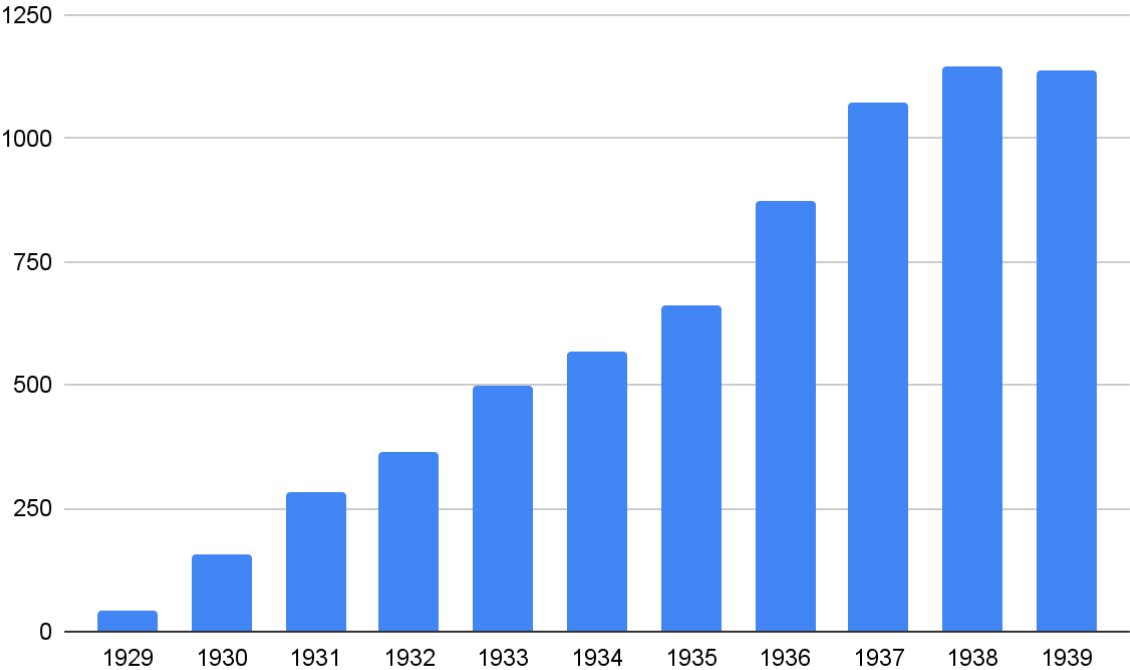
<sup>170</sup> ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937).

<sup>171</sup> See Paquier, S. (2001), *art. cit.*; Farquet, C. (2016), *op. cit.*; Giddey, T. (2019), *op. cit.* See also Cassis, Y. (2006), *op. cit.*

<sup>172</sup> Farquet, C., and Leimgruber, M. (2015). Catch me if you can! Tax havens, the market for tax evasion and fiscal diplomacy from the League of Nations to the OECD, 1920-1990. Archive UNIGE; Farquet, C. (2012), *art. cit.*; Lussy, and H., López, R. (2005), *art. cit.*

32 000 francs against 38 000 francs for Switzerland and Liechtenstein. The forecast of the civil servant was that the aggregate capital stock of the holding companies domiciled in Luxembourg was going to reach in the next years a value between 1.5 to 2 billion Belgian francs. However, the analysis of the database “FINLUX” on finance-related companies in Luxembourg (banks, holding companies, insurances, notaries, etc.) reveals that a total value of 2 billion Luxembourg francs had been reached by the holding companies already in 1931.<sup>173</sup> The peak in the period 1929-1939, before the liquidation of many companies with the first winds of war in the late 1930s, was around 6 billion Luxembourg francs – see Figure 2.4 on the number of holding companies and Figure 2.5 on their aggregate capital stock.

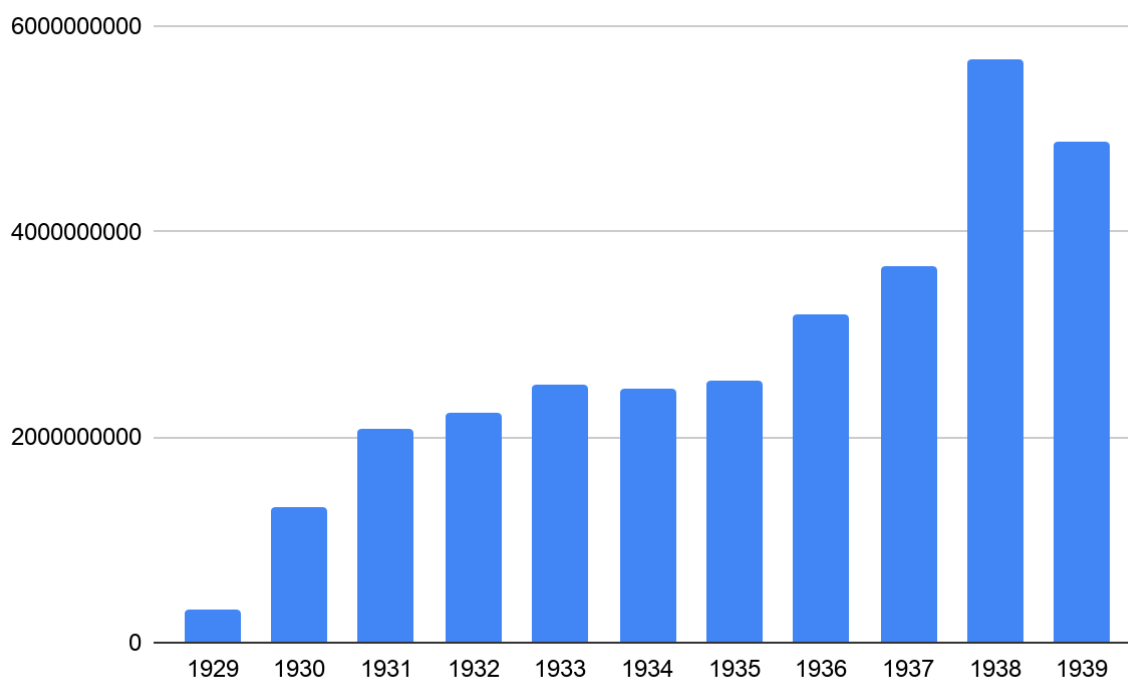
**Figure 2.4. Number of Luxembourg-domiciled holding companies between 1929 and 1939**



*Note:* Source: ANL, Chef der Zivilverwaltung (CdZ), box A-6596, Kurzgefasste Betrachtungen über die Holdinggesellschaften in Luxemburg - January 1941

<sup>173</sup> FINLUX database.

**Figure 2.5. Aggregate capital stock of Luxembourg-domiciled holding companies (in Luxembourg francs), 1929-1939**



*Note:* Source: ANL, Chef der Zivilverwaltung (CdZ), box A-6596, Kurzgefasste Betrachtungen über die Holdinggesellschaften in Luxemburg - January 1941

The impact on the state budget was meticulously calculated by the AED in the years prior to the World War II, due to multiple requests coming from Parliamentary commissions on financial matters.<sup>174</sup> These commissions (“*sections*”) included prominent socialist members such as René Blum, Pierre Krier, or Jean-Pierre Bausch that had been strong opponents of the law during the debate at the Chamber in July 1929, and among the 11 parliament members that voted against the approval of the project of the law (while those in favour were 32, from the parliamentary

<sup>174</sup> ANL, FIN, boxes 00288 to 00301, Budget de l’exercice, Observations des sections (1929-1938).

majority).<sup>175</sup> In the years after the promulgation of H29, guided by the principle summarized by the iconic words of the socialist lawyer René Blum at the Chamber on July 16 1929,<sup>176</sup> namely Schiller's motto "*Fluch der bösen Tat, die fortzeugend immer Böses muß gebären*" – which can be translated as "the curse of the evil deed, which always has to give birth to evil" – the socialist deputies at the Chamber often raised worries on the "abuses of the law",<sup>177</sup> requested "more controls on the international trusts having their headquarters in Luxembourg",<sup>178</sup> and in general "more serious controls on the holding companies' capitals".<sup>179</sup>

The answer of the AED to one of those requests from the parliamentary commissions, namely on the quantification of the actual impact of holding companies on the state's revenues,<sup>180</sup> gives a clear picture of the increasing contribution in fiscal terms of the holding companies to the state budget and of the reasons behind a progressive smoothing of the critical voices against H29 within the socialist wing of the Chamber. Already in 1929, just four months after the promulgation of the law, the holding system appears to have been contributing to 0.40 per cent of the yearly state budget and to 1.4 per cent of the overall revenues of the AED. The increasing figures of the following years show an initial peak in the contribution to the state budget already in 1930, during the first year of the Great Depression. Despite a decline between 1931 to 1933, due also to the reduced number of new holding companies moving their domicile to Luxembourg in the context of the post-1929 crisis, already in 1934, the trend was again upwards. In 1936, the contribution of

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<sup>175</sup> ANL, CdD, CR-0129, Session ordinaire de la Chambre des Députés 1928-1929 (Compte rendu des séances publiques).

<sup>176</sup> Ibid. In the same debate, Blum was probably one of first to use the expression "letterbox companies" referring to holding companies having in Luxembourg only a fictional residence for tax optimization purposes.

<sup>177</sup> See the debate on the above mentioned article of Léon Metzler on the « abuses of the law » (ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937)).

<sup>178</sup> ANL, FIN, box 00293, Budget de l'exercice 1934, Observations des Sections. Original in French, translation of the author.

<sup>179</sup> ANL, FIN, box 00289, Budget de l'exercice 1930, Observations des Sections. Original in French, translation of the author.

<sup>180</sup> ANL, FIN, box 00296, Budget de 1937 – observations des sections.

holding companies to the general state budget was of 1.44 per cent, while it accounted for 9.5 per cent of the total revenues of AED – see Table 2.2.

**Table 2.2. Impact on state budget of fiscal revenues from holding companies (*droit d’apport, droit de timbre, taxe d’abonnement*) between 1929 and 1936**

Year	Total Budget Enreg. LUF	Tot Budget State LUF	Holding revenues LUF	% of State budg	% over total revenues of Enregistrement
1929	LUF 91,674,782.00	LUF 325,349,409.00	LUF 1,288,626.00	0.40%	1.4%
1930	LUF 91,290,123.00	LUF 402,191,342.00	LUF 5,506,475.00	1.37%	6.0%
1931	LUF 75,131,976.00	LUF 504,991,319.00	LUF 5,943,301.00	1.18%	7.9%
1932	LUF 56,583,635.00	LUF 340,913,575.00	LUF 3,277,165.00	0.96%	5.8%
1933	LUF 53,535,476.00	LUF 368,466,823.00	LUF 3,362,189.00	0.91%	6.3%
1934	LUF 51,894,881.00	LUF 294,479,106.00	LUF 3,209,618.00	1.09%	6.2%
1935	LUF 56,481,577.00	LUF 260,702,277.00	LUF 3,607,761.00	1.38%	6.4%
1936	LUF 59,383,232.00	LUF 388,725,752.00	LUF 5,611,854.00	1.44%	9.5%

*Note:* Calculations of the author based on: ANL, FIN, box 00296, Budget de 1937 – observations des sections; ANL, FIN, boxes 00288 to 00300, Budget 1929-1937.

Requests for greater transparency made by the Socialist Party from the beginning of the 1930s – for example, in terms of a more detailed balance sheet as required by French legislation, or for greater representation of Luxembourg’s residents within the holding companies’ administration boards (an issue that had in fact already been brought up during the debate for H29 at the Chamber) – went essentially overall unheeded. In this regard, also the promulgation of the first *arrêté grand-ducal* on a subsequent governmental interpretation of H29 in December 1938, implemented as a way to further enhance the “competence of the executive power in economic affairs” and on holding companies in particular, should be seen as a restatement of the favorable attitude of Luxembourg’s government in terms of maintaining the international competitiveness of the low-taxation regime for holding companies rather than a partial reception of the criticisms addressed in a 1937 project of modifications of H29 as presented by socialist MP Clement – in particular, establishing an entrance threshold of 300 000 Luxembourg francs as initial capital stock for any holding company listed in Luxembourg.<sup>181</sup> The *arrêté* of 1938 subjected the holding companies that had an initial capital stock of (or a recapitalization up to) one billion of Luxembourg francs to a “decision” of the Ministry of Finance based on the “regularity and observance of legal prescriptions” prior to their listing in the National Business Register.<sup>182</sup> An initial formulation for increased “competence of the Executive Power” in the holding sector could be in effect already found in a “Project of Law” of November 1937 whose main rationale was once again “increasing national revenues through an appropriate reform of our legislation on commercial and holding companies”.<sup>183</sup> The main innovation, besides a somehow closer involvement of the Ministry of Finance, was “indicating a minimum and a maximum” for the capital stock taxes to be paid by a holding company with 1 billion or more capital stock.<sup>184</sup> However, the State Council was explicit

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<sup>181</sup> ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937), Proposition of modifications to Holding Act of deputy M.H. Clement, February 1937).

<sup>182</sup> Mém. A 1938 No. 87, 1331, Arts 1, 2.

<sup>183</sup> ANL, FIN, box 02255, Société à responsabilité limitée et société holding – renseignements demandés au sujet e statistiques y relatives ; Projet de loi fixant la compétence du pouvoir exécutif en matière économique.

<sup>184</sup> (ANL, FIN, box 02255, Société à responsabilité limitée et société holding – renseignements demandés au sujet e statistiques y relatives; Rapport de la Commission Spéciale).



in “warning against the risks of generating an atmosphere of instability and unsafety” in the holding business environment. In fact, “all the measures of this type that can be introduced through simple governmental regulations (so the *arrêtés grand-ducal*) can induce mistrust [...] for who wants to place foreign capital in our country”. At the same time though, the Council was perfectly aware that this *arrêté* was nothing but a “legal abstraction”, since according to Luxembourg’s Constitution Law, “any tax aimed at increasing the fiscal revenues of the State should be established by law [so not through a governmental regulation]”.<sup>185</sup> For this reason, the measures of the *arrêté* would have correctly been received (by international investors) just as an interpretation of the combined provisions of Luxembourg’s existing legislation rather than a source of instability for the tenure of the holding-act taxation regime.<sup>186</sup>

### 2.3. *From holding companies to investment trusts within the boundaries of a liberal interpretation of H29*

Braun’s report, together with the analysis of the law and its first drafts, introduced also further theoretical elements that can be considered as decisive in laying the foundations of subsequent liberal<sup>187</sup> interpretations of H29. The project of the law was evidently thought so to prospect a wider range of application than the letter of the law. First, the choice of the word “*société*” to define to holding companies was intended to refer not only to those “*sociétés à responsabilité limitée*” whose legislative theorization within Luxembourg’s juridical system had been deeply studied by ARBED’s legal department, led by Léon Metzler.<sup>188</sup> It also pointed to a more elastic interpretation of the type of companies that could be considered as holding companies under H29 capital code framework. Thus, holding companies, for example, were going to be easily listed as

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<sup>185</sup> ANL, FIN, box 02255, Société à responsabilité limitée et société holding – renseignements demandés au sujet e statistiques y relatives; Avis du Conseil d’Etat.

<sup>186</sup> ANL, FIN, box 02255, Société à responsabilité limitée et société holding – renseignements demandés au sujet e statistiques y relatives; Rapport de la Commission Spéciale.

<sup>187</sup> About the liberal character of H29 see e.g., Delvaux, B. and Reiffers, E. (1933) *op. cit.*, p. 58; p. 39; p. 50.

<sup>188</sup> Metzler, L. (1933), *op. cit.*

joint stock companies, in the form of limited liability companies<sup>189</sup>, once the Luxembourgish legal system would have recognize the latter.<sup>190</sup> Second, in the rebounds of the law draft between the AED and the State Council, Braun insisted on adding a further line to describe those *participations* (in terms of financial assets) in other societies that constitute the core of a holding company: “[...] participations, of any type [underlying of Pierre Braun], [...] where these general terms include shares, bonds, cash advances, shares in different kinds of companies such as a limited liability company in a foreign country”<sup>191</sup>.

The openness for extensive interpretations of the definition of a holding company is furthermore reflected also in another passage of the appendix of Braun’s report, where the civil servant explains the reasons behind the choice of introducing the expression “*la mise en valeur*” once referring in the law to the process of enhancement of the aggregate value of the capital stock managed by the holding company. “[...] The expression ‘*mise en valeur*’ is added to the term ‘management’ to underline that the operations, which are indispensable due to the fluctuations of the portfolio, are not of a commercial nature from the special point of view we are dealing with [the reference is to the absence of industrial or commercial character for a holding company].”<sup>192</sup>

These references to a possible extensive interpretation of the law did not fall to deaf ears. Whereas the holding companies went to ca. 360 in 1933 to ca. 1100 in 1938 (see Figure 4), overcoming as seen the already optimistic forecast of Braun, in many quarters, internal and external observers began to suggest equal fiscal treatment for holding companies and a financial tool that at that time, in Europe, was still in its early days. A tool known in the Anglo-Saxon world

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<sup>189</sup> See also chapter 3 and Israel, E. (1970). Luxembourg: The taxation and legal regime of investment funds and investment companies. In *Luxembourg The taxation and legal regime of investment funds and investment companies*.

<sup>190</sup> In the report Braun writes that “[...] the word <<société>> was intentionally chosen, so to allow the creation of holding companies in the form of limited liabilities companies, once, the day that we hope will come soon, this form of company will be introduced in Luxembourg juridical system”. ANL, CE, box 2467, *Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937)*. Original in French, translation of the author.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

as “*investment trust*” (on the definition of investment fund’s types throughout the twentieth century see chapter 1).

Alongside the late 1920s and the 1930s, Luxembourg’s press seems to look with increasing interest to the American investment trust model. The outbreak of Wall Street’s crisis in 1929, though, compelled Luxembourgish financial commentators to a somehow more disillusioned attitude towards the potentialities of this financial instrument. The risks of an unregulated market,<sup>193</sup> of concentration dynamics,<sup>194</sup> and in general of a reckless attitude of the investment trusts’ managers<sup>195</sup> were negatively assessed in many newspaper articles published in the first years of the Great Depression. However, while in the U.S., under Roosevelt’s presidency, the American Congress was going to approve in 1934 the “Securities Exchange Act” and in 1936 the “Revenue Act”,<sup>196</sup> with the purpose of containing reckless speculations and tax evasion practices of holding companies and investment trusts’ managers alike, Luxembourg government, as seen, was instead pushing towards more liberal policies in this domain. Not only in terms of tax exemptions for

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<sup>193</sup> “[...] For months, the US government, Congress and the Senate have been passing around draft legislation on holding companies, and Wall Street has been watching with mixed feelings. Even more than the Banking Bill, the fight for control of holding companies has become a symbol of the fight for the Right of State Control“. (27, August, 1935). *Le Contrôle des holdings et des investment trusts. Le Luxembourg*, p.3. Original in French, translation of the author.

<sup>194</sup> “[...] A new mode of banking concentration is taking place, in more or less accentuated forms, thanks to the development of the ‘Trust’ and the ‘Holding Companies’“. (April 1, 1930). *Le mouvement de concentration bancaire aux Etas Unis. Indépendance luxembourgeoise (L’)*, p. 1. Original in French, translation of the author

<sup>195</sup> “[...] The state is ensured by a commissioner, appointed by the government, who is especially responsible for checking whether the holding company complies with all legal provisions, - concerning the law against trusts, those guaranteeing savings, those on companies, as well as for controlling the accounting and the situation of the capital and the portfolio. In order to avoid stock exchange manoeuvres, all the securities of the holding company must also be registered and nominative“. (September 9, 1935), *Le Contrôle des holdings et des investment trusts. Le Luxembourg* , p. 4. Original in French, translation of the author.

<sup>196</sup> See e.g., Jacobson, J., and Johnson, M. H. (1936). The revenue act of 1936: pyramiding gains and losses through tax-free exchanges. *New York University Law Quarterly Review*, 14(1), 59-78; Alvord, E. C. (1940). An analysis of the revenue act of 1939. *Taxes The Tax Magazine*, 18(7), 432-443. See also Fink, M. (2011), *op. cit.*

holding companies, but also in terms of legal intermingling of holding companies and investment trusts, when this legal construct was meanwhile being called into question in the U.S.<sup>197</sup>

As seen in the previous chapter, the idea of acknowledgement of legal continuity between holding companies and early prototypes of investment trusts had been discussed in the legal literature of the time for example in Belgium,<sup>198</sup> France,<sup>199</sup> and Germany.<sup>200</sup> In Luxembourg, in their theoretical study published in 1933, Delvaux and Reiffers were the first specialists to argue for an interpretation of H29 asserting fiscal equivalence between holding companies and investment trusts. Together with the other three forms of holding companies – namely, control holding companies, asset holding companies (or “family holdings”) and patent holding companies<sup>201</sup> – the two specialists defined, under Luxembourgish law, also a fourth financial entity, defined as “*société holding de placement*” and essentially summing up the characteristics of Anglo-Saxon investment trusts, ranging from inelastic supply of shares to redemption linked to shares’ exchange on secondary markets.<sup>202</sup> The main business purpose of these financial entities was then to “ [...] merely manage a portfolio of securities. The technical administration [...] done by competent specialists who are surrounded by information that are not available to the ordinary capitalist. They [...] make their capital grow, observing the rule of the division of risks”.<sup>203</sup>

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<sup>197</sup> “In the United States, the holding company principle is clearly separate from the investment trust principle. The law defines a ‘Holding’ as a company whose sole business is to ‘hold’ the securities of other companies, with the aim of ‘controlling their affairs and management’. As such, the US holding company, like the similarly defined Luxembourg company, is exempt from certain tax charge [...]. It is the extension and ease of the effect exercised that has provoked the reproaches of the American legislators” (August 27, 1935). *Le Contrôle des holdings et des investment trusts. Le Luxembourg*, p.3. Original in French, translation of the author),

<sup>198</sup> Druard, A. (1929), *op. cit.*

<sup>199</sup> Fischer, E. (1935), *op. cit.*

<sup>200</sup> See Delvaux, B. and Reiffers, E. (1933), *op. cit.*

<sup>201</sup> See Calabrese, M., and Majerus, B. (2023), *art. cit.*

<sup>202</sup> See e.g., Rouwenhorst, K. (2004), *art. cit.*; Rutterford, J. (2009), *art. cit.*; Sotiropoulos, D. P., and Rutterford, J. (2018), *art. cit.*; Sotiropoulos, D. P., Rutterford, J., Tori, D., Kyparissis, A. (2023). Fund management in the interwar period: UK investment trust portfolio asset allocation in the 1920s, *European Review of Economic History*, 27 (2), 250-277.

<sup>203</sup> Delvaux, B. and Reiffers, E. (1933), *op. cit.*. Original in French, translation of the author. On the difference between traditional holding companies and investment trusts see also Fischer, E. (1935), *op. cit.*, p. 76.

It is therefore no surprise that, already from the end of 1929,<sup>204</sup> there is record of some pioneering experiments, namely on the incorporation of investment trusts that can be considered as sort of prototypes of closed-end investment funds, listed as holding companies in the national Business Register of Luxembourg (“*Memorial Recueil Special*”). For example, on April 30, 1931, Union Internationale de Placement was listed in Luxembourg as a holding company. Its business purpose was described in the press as oriented towards the “creation in Luxembourg of a major international investment trust”.<sup>205</sup> This company had the features of an ancestor of a closed-end hedge fund, with many selected fixed investors and no possibility of direct redemption (see chapter 1). Among the consortium of initial stakeholders, there were banks, such as German Warburg and Banque de l’Union Parisienne, insurance companies (such as French Compagnie des Assurances Générales and Le Fenix), private companies – notably, the management company of the maritime channel of Suez – and investment companies such as the British “Lonsdale Investment Trust Limited”.<sup>206</sup> In the administration board of Union Internationale sat important figures of the European capitalism of the time.<sup>207</sup> For example, Paris-resident Edgar Bonnet and Georges-Edgar Bonnet, who were also in the management board of the Suez Canal Company, and the administrators of the German bank Warburg, that, in the subsequent years, was then going to leave Germany due to the Nazi persecution, and eventually move to the UK – the UK-based Warburg bank had then a prominent role in the issuing of the first Eurobonds, and in their listing in Luxembourg Stock Exchange Market in the early 1960s.<sup>208</sup> Among the stakeholders there was also

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<sup>204</sup> See FINLUX database. The attribution of a Luxembourg-domiciled holding company, based on the information retrieved from their statutes deposited into Luxembourg’s National Business Register, is in many cases undecisive, due to the fact that their description of the business purpose was often a sort of template text which just broadly referenced the text of H29. Therefore, while in FINLUX archive the authors have in some cases used the attribution “holding de placement”, the determination is currently still object of further research.

<sup>205</sup> (April 10, 1930). *Chronique local. Indépendance luxembourgeoise (L’)*, p.2. Original in French, translation of the author.

<sup>206</sup> See FINLUX database ; BNL, *Memorial Recueil Special 1931*, p..483-484; ANL, box CN-00892, Minutier Central des Notaires, Kuborn Paul – Minutes, 1931 (Dossier)

<sup>207</sup> See also (April 10, 1930) *Chronique local. Indépendance luxembourgeoise (L’)*, p.2. Original in French, translation of the author.

<sup>208</sup> See next chapter of the present thesis and also Dorry, S. (2016), *art. cit.*

the Luxembourgish bank BIL, one of the most active actors in the networked holding system in Luxembourg.<sup>209</sup>

Union Internationale had essentially the structure of a closed-end private equity fund (this is also the description that the New York Times gave of this fund in an article of 1994<sup>210</sup>). Therefore, a closed-end fund with the presence of access barriers based on the wealth of investors, not differently from a modern hedge fund (which has access limitations to investors as well, yet with the organizational structure of an open-end fund<sup>211</sup>). Not by chance indeed, Union Internationale was going to be transformed into a hedge fund during the 1970s, in Panama, where its domicile had been transferred since the beginning of World War II.<sup>212</sup> However, during the 1930s, the structure of this fund was still that of a closed-end fund, due to the essential overlapping of the management board of the fund and its stakeholders-investors, resulting in a non-completed separation of fund and managers – which characterises the majority of modern investment funds.<sup>213</sup> Yet, by looking at the provisions of the statute (“*Principales Dispositions Statutaires*”), agreed and signed by all the stakeholders or their representatives in the office of the Luxembourgish notary Paul Kuborn on April 2, 1931,<sup>214</sup> it is possible to individuate further modern features in the regulations adopted by this fund. In particular, the statute includes partial rights of refund through direct redemption under certain specific circumstances. The article 32 of the statute stipulates indeed that “[...] once the first budget assessment will be published in the Memorial [Luxembourg’s Business Register], all the owners of the profit shares of the type A will have the right to ask to the company the refund of their shares. [...] the refund will occur 24 hours before [the next] session of the administration board”.<sup>215</sup>

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<sup>209</sup> See Calabrese, M. and Majerus B., (2023), *art. cit.*

<sup>210</sup> <https://www.nytimes.com/1994/05/28/your-money/IHT-the-saga-of-two-french-survivorsthe-philippe-family-and-its.html>

<sup>211</sup> See e.g., Morley, J. (2013), *art. cit.*

<sup>212</sup> <https://www.nytimes.com/1994/05/28/your-money/IHT-the-saga-of-two-french-survivorsthe-philippe-family-and-its.html>

<sup>213</sup> See Morley, J. (2013), *art. cit.*

<sup>214</sup> ANL, Minutier Central des Notaires, CN-00892 Kuborn Paul – Minutes, 1931 (Dossier).

<sup>215</sup> ANL, Minutier Central des Notaires, CN-00892 Kuborn Paul – Minutes, 1931 (Dossier).

The presence of redemption rights, as seen in chapter 1, is a decisive condition for the process of determination of the nature of an investment fund. Closed-end funds, and so investment trusts, are distinguished from open-end based on the absence of any direct form of redemption rights for the investors, that have to go through an equity market (through third parties, so a secondary market) in case they desire to sell their fund's shares. In order to eventually assess whether Union Internationale de Placement was or not an open-end fund, it should be considered first, that the refund was not granted to all the investors of the fund. Only the owners of the “*titres* of type A” – that can be considered as “senior securities”<sup>216</sup> – could access the redemption option: “[...] In addition to the shares [which were initially established in 1000], that alone represent the capital stock, two categories of profit shares without par value [nominal value] are created, which do not contribute to the formation of the share capital and whose rights are determined by the [present] articles. [...] The profit shares of the first category, known as “A” profit shares, are [considered as] at the origin of the Company [and] in the number of fifty thousand; they are subscribed at a price of one hundred dollars each. [...] Other “profit shares A” may be created, similar in all respects to the original shares created, and this by virtue of a double vote of the administration board [...] The proceeds of the subscription of all A shares, whether originally created or subsequently, shall be transferred to a Special Reserve”.<sup>217</sup>

The owners of the “*titres A*” were therefore essentially the first subscribers of the fund (see for example at the numbers 21 and 22 of the Memorial's list of stakeholders for this company,<sup>218</sup> the Suez Company of the Bonnet family and Warburg bank), while new “A” owners could be potentially included through a double voting of the administration board.<sup>219</sup> The proceeds of their subscriptions were significantly registered as “Special Reserves” in the liability section of the balance sheet of the company, and therefore suggesting that these resources had to stay liquid so to ensure the refund in case of request of the investors.

This set of statutory conditions could give Union Internationale de Placement some of the features of modern open-end hedge funds. However, the statute of the fund established at the same time a

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<sup>216</sup> See Fink, M. P. (2011), *op. cit.*, p. 13.

<sup>217</sup> BNL, Memorial Recueil Special 1931, p..483-484.

<sup>218</sup> *Ibid.*

<sup>219</sup> ANL, Minutier Central des Notaires, CN-00892 Kuborn Paul – Minutes, 1931 (Dossier).

very strict clause for the process of refunding: “[...] This option to obtain the reimbursement of A shares will be definitively cancelled if the said shares are listed before the end of the quarter in question in on one of the following markets: Paris (Agents de Change or Coullisse); Brussels (Official List), London (Official or Supplementary List), New York (Stock Exchange or Curb Market), Basel (Official List), Zurich (Official List), Geneva (Official Listing), Amsterdam (Official Listing)”.<sup>220</sup>This clause of the statute therefore limited the redemption process only to shares not listed in one of the main equity markets of the time.

Union Internationale de Placement can be hence ultimately considered as an investment trust with some limited features of a modern hedge fund, that were progressively expanded once the fund’s domicile was moved to Panama. Union Internationale, after its capital stock exponentially grew during the 9 years of its listing in Luxembourg, and after becoming the second largest holding company in terms of capital stock after the control holding company incorporated in Luxembourg by the European branch of the American motor company Ford<sup>221</sup> in the years between 1929 and 1939,<sup>222</sup> was suddenly liquidated on September 1, 1939<sup>223</sup> - emblematically, the same day of the beginning of Nazi’s occupation campaign in Poland. A common fate followed by many Luxembourg-domiciled holding companies managed by Jewish entrepreneurs, such as for example those connected to the holding companies’ network of the Lévy family.<sup>224</sup>

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<sup>220</sup> BNL, Memorial Recueil Special 1931, pp. 483-484.

<sup>221</sup> The Henry Ford Archives, Reminiscences of Herman Moekle, p. 124.

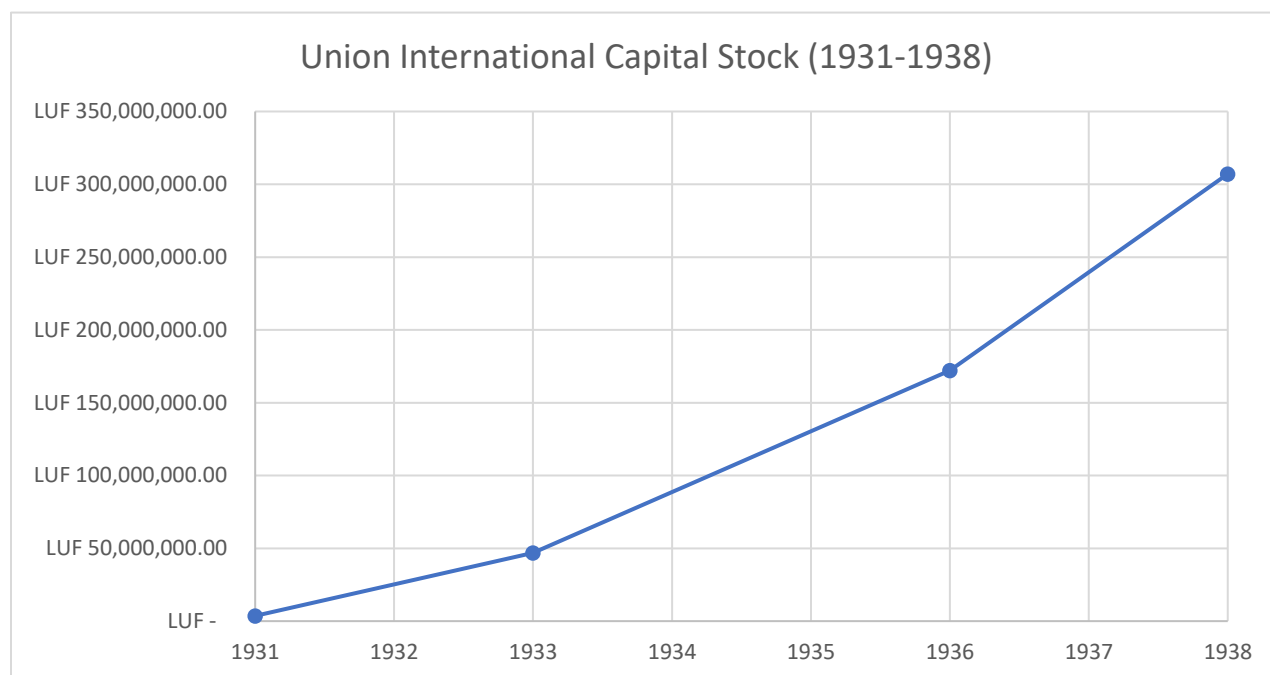
<sup>222</sup> The Société d’Investissement Ford (SA) had the largest capital stock among all the holding companies listed in the period 1929-1939: 480.000.000 Belgian Francs. Union Internationale de Placement was instead the second largest one with a capital stock of 307.080.000, reached in 1938 (see FINLUX database and Figure 2.6).

<sup>223</sup> See FINLUX database.

<sup>224</sup> See Calabrese, M. and Majerus B. (2023), *art. cit.*



**Figure 2.6. Capital Stock (in francs) of Union Internationale de Placement between 1931 and 1938**



Source: FINLUX database

The fears for the soon to come German occupation in Luxembourg resulted already in 1938 in a stasis and then decline (see Figures 2.4 and 2.5) in the number of holding companies and investment trusts listed in Luxembourg. Behind the decision to liquidate these companies there were on the one hand, the fears that the Nazi occupiers could persecute Jewish entrepreneurs involved in the holding system (such as for example the Lévy family<sup>225</sup> or the Warburg group) or retaliate against the companies where French, English, or American investors owned shares (for example, the French Bonnet family of Union Internationale de Placement, or American Société d'investissement Ford, that was liquidated in April 1939<sup>226</sup>). On the other hand, the Nazi

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<sup>225</sup> Ibid.

<sup>226</sup> See FINLUX database.

occupation prospected the fading of those criteria of “stability and predictability” of Luxembourg’s code of capital on holding companies as well as of the overall Luxembourgish political and social environment, that had been a primary factor for the success of H29.<sup>227</sup> At the beginning of 1940, AED reported that many holding companies had inquired into the possibility of moving the actual residence of their headquarters abroad, while maintaining the Luxembourgish fiscal regime.<sup>228</sup> Conrad Stumper, who had succeeded to Pierre Braun as the head of the AED since April 1930, in his answer to the observation of a Parliamentary economic commission that was reporting changes of this type in the statutes of a certain number of holding companies, showed an open attitude due to the fact that “[...] this modification of the statutes will not have any consequence on the collection of the yearly tax (“*taxe d’abonnement*”) for the State”.<sup>229</sup> After all, as initially theorized by Braun in his report, the holding companies were expected to move their residence to Luxembourg as a form of “*fiction du siège social*” (fictional fiscal residence).<sup>230</sup> In any case, though, in the same analysis contained in the annexed document of the AED to the “Budget Law” of 1940, the same Stumper correctly forecasted that “[...] needless to say [...] the [state] revenues from registration and listing taxes [of new companies] will be heavily affected by the international situation, seen that the biggest share of those comes from holding companies”.<sup>231</sup>

However, while the number of holding companies and investment trusts dropped substantially (at the end of the war there were going to be only 476 holdings listed<sup>232</sup>), the Nazi regime in Luxembourg ultimately maintained a neutral attitude towards the Luxembourg holding (and investment trust) system. Conrad Stumper, for example, was re-confirmed as head of AED.<sup>233</sup> Most importantly, the continuity among the previous administration and the new was ensured by the absence of any direct legislative interventions towards a reformulation of the code of capital for holding companies in Luxembourg. In particular, the body of regulations on public limited

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<sup>227</sup> See Calabrese, M. and Majerus B. (2023), *art. cit.*

<sup>228</sup> ANL, FIN, box 00303, Budget de l’exercice 1940, Observations des Sections.

<sup>229</sup> *Ibid.* Original in French, translation of the author.

<sup>230</sup> ANL, CE, box 2467, Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937).

<sup>231</sup> ANL, FIN, box 00303, Budget de l’exercice 1940, Budget Law of 1940. Original in French, translation of the author.

<sup>232</sup> See Calabrese, M. and Majerus B. (2023), *art. cit.*

<sup>233</sup> ANL, FIN, box 00304, Budget de l’exercice 1941.

companies issued at the end of 1941 by the German occupier did not address any reference to the holding juridical framework, that essentially remained in force through the war.<sup>234</sup>

#### *1.4. Tax neutrality pursuance by Luxembourg-domiciled holding companies and investment trusts*

It is possible to argue that the success of H29 between 1929 and the late 1930s was due in large part to its fiscal core.<sup>235</sup> H29 had been explicitly framed so to regulate and solve an “especially severe and urgent” conflict of international legislations that had produced “double taxation” issues for this type of companies.<sup>236</sup> Throughout the 1920s, international double taxation issues and their relation with several forms of fiscal evasion had been matter of debate in many international assemblies, such as the League of Nations, the Institute of International Law and the International Chamber of Commerce.<sup>237</sup> Concurrently with a general increase of domestic taxes on income and capital in the European states that were at that time coming out of the war heavily indebted and in a context of high inflation (see chapter 1 and the introduction of chapter 2<sup>238</sup>), also the estimated attempts of inter-state transfers of capital classifiable as “fiscal evasion” at the hands of private individual and companies were as well on the rise.<sup>239</sup> After a long process of analysis and discussion on the issue, for example, in October 1936, the League of Nations’ Assembly proposed the implementation of a resolution that “[...] noting that only comprehensive action, based on specific international co-operation agreements, can ensure the accurate assessment and equitable apportionment of taxes [...] invites the Committee on Fiscal Affairs to pursue actively its work with a view to avoiding, as far as possible, double taxation, and also its work on international tax

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<sup>234</sup> See Calabrese, M. and Majerus B. (2023), *art. cit.*

<sup>235</sup> *Ibid.*

<sup>236</sup> ANL, CE, box 2467, *Projet de loi sur le régime fiscal des sociétés de participations financières dites holding companies (1929-1937)*. Original in French, translation of the author.

<sup>237</sup> See e.g., Piatier, A. (1938). *L'évasion fiscale et l'assistance administrative entre États*. Recueil Sirey.

<sup>238</sup> See e.g., Farquet, C. (2012), *art. cit.*

<sup>239</sup> Piatier, A. (1938), *op. cit.*

assistance, with a view to promoting practical solutions capable of counteracting tax evasion as far as possible”.<sup>240</sup>

The League of Nations was therefore in principle promoting more cooperation among the states of the League and fostering forms of simplification and harmonisation of the national fiscal legislations on intra-state transferring of capitals, identifying in double taxation “[...] both a cause of tax evasion and a serious obstacle to the development of international economic and financial relations [...]”.<sup>241</sup>

Braun and Dupong – supported by the overall Luxembourgish political and industrial liberal milieu, that meanwhile had become more and more involved in the holding system<sup>242</sup> – had presented their draft legislation on holding companies as a regulation aimed at solving double taxation issues.<sup>243</sup> Yet, H29 was at the same time introducing a conflicting legislation involving capitals originally resident in other European states as well as in the United States and from Eastern Europe.<sup>244</sup> H29 was therefore essentially creating a legal loophole further incentivizing international fiscal avoidance. The forms through which fiscal avoidance was implemented by making use of the system of holding companies and investment trusts in Luxembourg during the first ten years of existence of the law (so between 1929 and 1939, before the disruption created by the Nazi occupation) were theorized by contemporary observers from the very first years after the introduction of the law. For example, the socialist deputy and lawyer René Blum already in his interventions at the Chamber during the debate on the promulgation of H29 in July 1929, was able

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<sup>240</sup> Rapport au Conseil, document n° C. 450, M. 266, 1936, in Piatier, A. (1938), *op. cit.* Original in French, translation of the author.

<sup>241</sup> *Ibid.*

<sup>242</sup> See Calabrese, M. and Majerus B. (2023), *art. cit.*

<sup>243</sup> See for example this declaration of Dupong given to the press some months after the promulgation of the law: “The law of 31 July 1929 [...] not only is it one of the most advanced and flexible laws, but it can also be considered as the most liberal law in the world. [...] Its legal and economic value is obvious. By removing the obstacles of double taxation, the new tax regime of the Holdings will facilitate the development of large companies in the Grand Duchy and will contribute to strengthening the role of Luxembourg as an international financial centre (Bastian, P. (November 29, 1929). La législation fiscale des Sociétés de participations financières (Holding Companies) dans le Grand-Duché de Luxembourg. *Indépendance luxembourgeoise (L')*). Original in French, translation of the author.

<sup>244</sup> On the geographical residence of stakeholders and administrators of holding companies and investment trusts in Luxembourg during 1929-1939, see FINLUX database.

to correctly forecast, in case of implementation of the holding system in Luxembourg, “opaque financial operations between the holding and its subsidiaries”, “overpriced loans of the holding to its subsidiaries” – as seen he was moreover probably the first commentator to describe the practice of moving the holding company to a fictional address as creation of “letterbox domiciles” (“*domicile de boîte à lettres*”).<sup>245</sup> An even more explicit analysis and judgement on this subject (and with a first focus on the case of Luxembourg-domiciled holding companies) can be instead found in the work “*L’évasion fiscale et l’assistance administrative entre États*” of 1938 written by André Piatier, a professor of Law at the “Faculté de droit” in Paris, and secretary of the “Institute International de Finances Publiques”. By referring to the current debate in course in the academic literature of the time, Piatier recognized essentially three main forms of fiscal evasion. First, the “special fiscal evasion”, based on dodging a single tax for a single capital stock (e.g., the taxes on capital stock deposits in a state different than that of the residency of the owner, typically to avoid inheritance taxes). Second, the “general fiscal evasion”, based on avoiding the overall taxation levied on a certain form of wealth possession (e.g., real estate or also through purchasing foreign financial assets) and counting on the difficulties, especially in terms of information sharing, of both the state of original residency of the asset and that of the buyer to trace back the latter for fiscal purposes. A third form of evasion is instead based on the “choice” of those tax regimes that are more functional in terms of tax avoidance for single or multiple, and more or less liquid financial stocks. The difference of this third type with the other two is that the loss for the residency state of the physical or juridical person owning the asset(s) is total. Moreover, on the contrary of the second type, it was in principle legal since a legit procedure to avoid double taxation of the same assets.<sup>246</sup> In this regard, it is possible to say with Piatier that the capitalist pursuing of “tax neutrality” is “in general, [...] the only easily determined cause of capital movements, [seen] the capitalist's own appreciation of the benefits to be derived from the transfer”.<sup>247</sup>

At the origin of the decision of transferring the domicile of financial assets under a holding company (or as well, an investment trust) in Luxembourg there was therefore the subjective evaluation of a capitalist or of a group of capitalists pursuing the best form of optimization for

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<sup>245</sup> ANL, CdD, CR-0129, Session ordinaire de la Chambre des Députés 1928-1929 (Compte rendu des séances publiques).

<sup>246</sup> Piatier, A. (1938), *op. cit.*, p.46

<sup>247</sup> *Ibid.*, p.70.

their individual or corporate fiscal costs put in comparison with those deriving by moving the domicile of the assets in other countries, as in the third form of fiscal evasion described by Piatier – for a definition of the concept of tax neutrality as a form of cost minimization see also chapter 1. A decision, moreover, not only based on accounting criteria but also on a personal evaluation of the short and medium-run financial and political scenarios of the country itself, therefore a forecast of the reliability of the overall “solidity and predictability” of the holdings’ code of capital, as discussed above. In this regard, the profit shifting deriving from transferring the residency of financial assets previously resident elsewhere into trusted entities resident in Luxembourg and subject to H29 was considered, even by a liberal thinker such as Piatier as a “refined form of fraud”.<sup>248</sup>

In the context of a holding company, tax avoidance could be typically obtained by means of “profit and loss consolidation” practices, namely the shifting of capital gains from the subsidiaries resident in countries with higher taxation to the mother holding company resident in the country with lower taxation.<sup>249</sup> An often used tool used to this purpose is the sale by the holding company to the subsidiary of overpriced services or patents, whose ownership had been previously transferred to the holding company.<sup>250</sup> In our estimation made through the analysis of the statutes of the holding companies that we introduced in the FINLUX database, we detected for the period 1929-1939 the presence of at least 123 holding companies with clear features of “*holdings de brevets*”<sup>251</sup> (patent

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<sup>248</sup> Ibid, p.120. Original in French, translation of the author.

<sup>249</sup> See e.g., Weichenrieder, A. J., and Mintz, J. (2008). What determines the use of holding companies and ownership chains? Working Papers 0803, Oxford University Centre for Business Taxation; Coquillette, W. H. (1980). Guaranty of and Security for the Debt of a Parent Corporation by a Subsidiary Corporation, 30 Case W. Rsrv. L. Rev. 433.

<sup>250</sup> This process is thoroughly described by Piatier: “A company leases goods or equipment to a branch or subsidiary at an exorbitant rent. It transfers patents, licences and trade secrets to them at prohibitive prices. It charges them personnel costs and even management fees for work that is of no use to the paying agency. It provides for extremely severe penalty clauses which the branches or subsidiaries must pay to it if a particular condition is not met. It sells products to them at premium prices. It employs them to sell its products, paying them a small commission. It sets up buying houses for its raw materials and pays them only a small fee. The result of all these procedures is to reduce the profit of the subordinate establishments by inflating their cost price or by legally deducting sums from the results of their operations, and even to replace it by an operating deficit” (Piatier, A. (1938), *op. cit.*, p.118. Original in French, translation of the author).

<sup>251</sup> See FINLUX database.

holding companies), a category of holding whose theorization could be for example found in Delvaux and Reiffers' 1933 analysis of H29, and which in its most pure form has among its financial assets only the property of one or more patents.

At the same time, while similar forms of profit shifting were put in place also for holding companies structured as investment trusts, two further reflections should be introduced for this latter type of financial vehicle. First, in the case of investment trusts (intended as *holding de placement*<sup>252</sup>), it can be identified a risk diversification criterium<sup>253</sup> in the construction of the portfolio of securities, which at the same time was paired with the creation of potential new nodes in the network of capitalist interests involved. For example, in the above-described Union Internationale de Placement investment trust the shareholders included insurances, banks, commercial companies, and even private individuals (among the shareholders, for example there are Jules Desurmont and his wife Therese Motte, that will become the only representative once her husband died during the preparation of the trust, from where he was crossed out<sup>254</sup>). All the involved actors in the trust were not part of a pre-existing industrial cluster, as it typically was in the case of control holding companies and patent holding companies. The main purpose of the latter two types, was pursuing tax avoidance strategies together with the traditional business objectives pursued by holding companies, ranging from achieving economies of scale and scope to incentivizing – by smoothing losses risks – riskier (but at the same time with potentially higher returns) investment behaviors within the network subsidiaries-parent holding, thanks to the principle of separation of liabilities.<sup>255</sup> Diversification of the portfolio of securities of investment trusts ensured therefore on the one hand, stronger flexibility and reactivity to negative conjuncture of the capital markets. On the other, the creation of new nodes (although potentially only in the rank of “weak ties”<sup>256</sup>) both at the level of stakeholders and through the investment in securities

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<sup>252</sup> In this phase, many holding companies presented hybrid features, often being at the same time for example “family holdings” and “holding de placement” or “control holdings” and “patent holding” (See Calabrese, M. and Majerus B. (2023), *art. cit.*

<sup>253</sup> See also Fischer, E. (1935), *op. cit.*, p. 80.

<sup>254</sup> ANL, Minutier Central des Notaires, CN-00892 Kuborn Paul – Minutes, 1931 (Dossier)

<sup>255</sup> See e.g., Coquillet, W. H. (1980), *art. cit.*; Calabrese, M. and Majerus B. (2023), *art. cit.*

<sup>256</sup> See Granovetter, M. S. (1973). The Strength of Weak Ties. *American Journal of Sociology*, 78(6), 1360–1380.

issued by commercial and industrial firms within capitalist network structures, between Europe, the U.S., and Eastern Europe.<sup>257</sup>

Finally, a second reflection can be made on the chronological criterium on the basis of the investment strategy in investment trusts. Contemporary observers<sup>258</sup> identified for the investment trusts of the “classic type” two different approaches to the management of capital flows deriving from the revenues of the trust’s portfolio of securities. Luxembourg’s holding and investment trusts were exempted, as seen, from any revenue tax. The three (light) taxes H29 were all levied, as seen, on the capital stock of the company (two at the listing and a yearly one). While the capital stock could be in principle modified throughout the years, due to the reinvestment of (untaxed) revenues obtained through the reorganization of a more or less fixed portfolio or due to the potential inclusion of new investors (as seen for Union Internationale), the investors of the investment trust could at the same time pursue an intertemporal investment, based on the expectations of future increments of the total value of the trust’s portfolio, followed by the eventual sale of their shares to third parties when interested to capitalize.

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<sup>257</sup> See FINLUX database.

<sup>258</sup> See Fischer, E. (1935), *op. cit.*, pp. 105-106.



### 3. The age of “self-control”: the “early days” of Luxembourg’s fund industry between 1959 and 1972

*“Looked at it with today’s eyes,  
such a system granting tax relief against a minimum of regularity constraint will appear,  
to the least as pragmatic, leaving a considerable amount to self-control”*

André Elvinger, in Association luxembourgeoise des fonds d’investissement. (2008). *Alfi - twentieth Anniversary Jubilee Report: 1988 - 2008*. Association of the Luxembourg Fund Industry.

Between 1945 and 1955, Luxembourg’s conservative government of Prime Minister Pierre Dupong and of his dauphin<sup>259</sup> Pierre Werner (both of them were politicians of the CSV, the former *Parti de la droite*<sup>260</sup>) was going to be at the forefront of the European integration process. On April 18, 1951, Joseph Bech, who in this government had become Minister of Foreign Affairs, signed the ECSC (European Coal and Steel Community) treaty. While representing the foundation and symbol of a reconciled Europe, this treaty at the same time established an ideal continuation of the Entente Internationale de l’Acier (EIA) previously signed with France and Germany in 1926 (see previous chapter). Furthermore, the ECSC represented the first step towards an integrated European market, whose foundations would have been laid by the treaty of Rome in 1957, with the birth of the European Economic Community (EEC).<sup>261</sup> The governments of Dupong and then

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<sup>259</sup> See Werner, H. (n.d.). Interview d’Elena Danescu (CVCE) avec Henri Werner [Interview]. [https://www.cvce.eu/content/publication/2012/10/17/93968f9a-80e5-4de7-8811ef4e3d15fa2e/publishable\\_en.pdf](https://www.cvce.eu/content/publication/2012/10/17/93968f9a-80e5-4de7-8811ef4e3d15fa2e/publishable_en.pdf), p.6.

<sup>260</sup> See Thewes, G. (2006), *op. cit.*, p.140. Werner was minister of Economic Affairs at the time.

<sup>261</sup> See e.g., Trausch, G. (2017), *op. cit.*

Bech (after the sudden death of Dupong in 1953) swiftly conjugated on the one hand, an open attitude towards a unified Europe with on the other, a reprise of *laissez-faire* policies in finance, not so differently from what they did throughout the 1930s. As seen, the Nazi occupier had essentially left untouched the juridical framework on holding companies, that in the immediate aftermath of World War II was therefore still in force in Luxembourg legislation. However, the uncertainties related first, during the war, to a never clearly disclosed attitude of the German occupier towards the law, and then, to the post-war adjustment phase in a quickly resurgent European and international integrated financial system, played a determinant role in the decline of Luxembourg's holding system in the period 1938-1945 and then in the slow process of resurgence of the industry in the aftermath of the war. As described in the previous chapter, the fortune of H29 in the 1930s had been based also on a reputational image of "stability and predictability" of the juridical-political framework of the Grand Duchy that had been nevertheless fading away due to the international upheaval produced by the war. Some commentators were even going to talk of a Luxembourgish "holding formula" "fallen into oblivion" between 1940 and the 1960s.<sup>262</sup> However, the number of holding companies from the 1950s was again on the rise. At the end of the war, the number of outliving holding companies amounted to 473 units with their total capital assets accounting for 4.7 billion Luxembourgish francs. However, in 1952, the number of holding companies had more than doubled and reached 1109 units, with their aggregate assets accounting for 6.5 billion Luxembourgish francs.<sup>263</sup> In 1955, their number became 1177, with a total capital stock of 7 billion Luxembourgish francs. The impact for this year of holding companies' fiscal revenues on the overall state budget accounted for 0.44 per cent.<sup>264</sup> This value appears as modest compared for example to that, analysed in Table 2 of the previous chapter, for 1936, which was 1.44 per cent. However, it has to be considered also that in this phase, real revenues for the state

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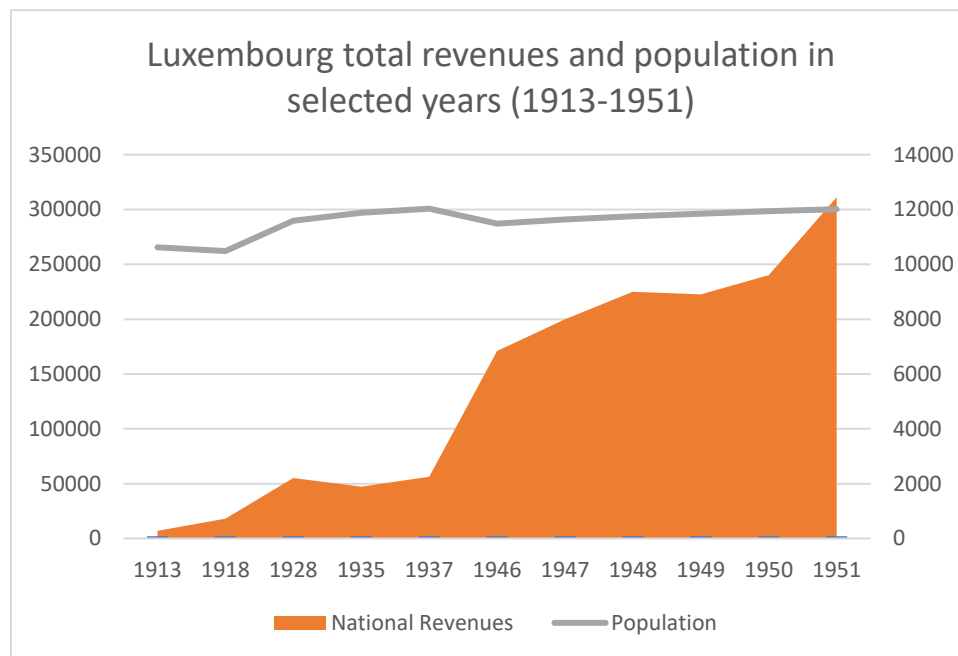
<sup>262</sup> Eich, E. (1979). *La législation holding et son impact sur l'économie luxembourgeoise* [Mémoire de licence]. UCL, p. 36.

<sup>263</sup> ABNB, box A244, Note: "Développement des holding luxembourgeoises et son incidence sur les finances publiques (7 octobre 1952)".

<sup>264</sup> Delvaux, B. (1956). Questions actuelles concernant la loi du 31 juillet 1929 sur le régime fiscal des sociétés de participations financières. *Pasicrisie luxembourgeoise*, 145-165, p 148.

were strongly increasing<sup>265</sup> together with all country's productivity and production output indicators<sup>266</sup>, while the population size was essentially similar to that of 1936 (see Figure 3.1).

**Figure 3.1. Total national revenues (million LUF, right column) and population size (left column) in Luxembourg between 1913 and 1951 (selected years)**



<sup>265</sup> Trausch G, (2017), *op. cit.*, p. 230.

<sup>266</sup> *Ibid.*, pp. 230 - 242. As almost provocatively remarked by Bernard Delvaux, the holding industry was contributing to the positive-signed economic growth of the Grand Duchy not only through the contribution to the state budget in terms of fiscal revenues, but also as a catalyst for an increasing number of varied interactions with Luxembourg's economic system. For example, tourism had benefited from it. Financiers and entrepreneurs came to Luxembourg due to their business related to the holding companies and then they found themselves at discovering and admiring the architectonic and naturalistic beauty of the old Grand Duchy. Luxembourg's hospitality facilities should expect multiple and continuous in time interactions of these guests as long as "[...] the hotelier must be able to give satisfaction to the customer, if he wants to retain him and determine him to come back; [moreover] without the tax incentive of our holding companies, he would not have had the opportunity to show his know-how" (Delvaux, B. (1956), *art. cit.*, p. 150).

In this context, prime minister Pierre Dupong, in continuity with the policies of the Interwar's governments gave indications for a re-statement of the liberal attitude of Luxembourg's financial state institutions towards extensive interpretations of H29. For example, in 1948, he supported the interpretation of the *Directeur* of the AED (that at that time was still the same Conrad Stumper that had managed the office also under the Nazi occupation) on a fiscal matter regarding the application of a withholding tax on the capital income of holding companies with domicile in Luxembourg:

“Mr. Director [...] you have submitted to my decision a question of interpretation caused by the application to indigenous holding companies [...] of a withholding tax on capital income. You are of the opinion that income distributed by Luxembourg holding companies to their capital providers with profit participations should not be subject to withholding tax. I have the honour to inform you that I share your view and that I authorise your administration to proceed according to your proposal”.<sup>267</sup>

The capacious umbrella of H29 was in effect still elastic enough to even allow the inclusion of further financial vehicles within the folds of its liberal-driven interpretation. In May 1957, there was a meeting at the Grand Hotel Brasseur in Luxembourg-city, on the corner between Avenue de l' Arsenal (now Avenue Émile Reuter) and Rue Aldringen, just a few steps away from Boulevard Royal, which at the time concentrated the majority of financial offices operating in the city. A group of Belgian and Luxembourgish financiers, probably between a *consommé au sherry* and courses of *dindonneau périgourdine* and *foie gras de Strasbourg en croute*,<sup>268</sup> was busy with a well-advertised talk<sup>269</sup> on new business opportunities in finance in Luxembourg. The host of the

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<sup>267</sup> Ibid., p. 185.

<sup>268</sup> Menu of hotel Brasseur in the 1950s, retrieved on 14, February 2023 from <https://industrie.lu/HotelBrasseurLuxemburg.html>

<sup>269</sup> The meeting with a conference led by Alfred Druard (or Druart) had been advertised in local newspapers in Luxembourg. (May 31, 1957). Investment Trust. *d' Lëtzebuenger Land*, 2. Original in German, translation of the author.

meeting was a Belgian financier and expert of financial law,<sup>270</sup> Alfred Druard, that had a clear idea on why his guests should have been interested in Luxembourg's finance regulations:

“[...] A Belgian financier, Mr. Alfred Druard, who has set himself the task of spreading the use of investment trusts on the English model, had invited a small circle of financial experts to the Hotel Brasseur to promote the idea of setting up an investment trust in Luxembourg. According to Mr Druard, three circumstances make Luxembourg particularly suitable as a domicile for investment trusts: its central location, the existence of strong capital reserves seeking investment and, above all, the exceptionally favourable tax legislation for holding companies”.<sup>271</sup>

The idea of Druard was therefore to establish an investment trust in Luxembourg under the aegis of the H29 legal regime, but of a type that he defined as “*Investment Trust nach englischem Muster*”, so an investment trust on the English model. This attribution should be intended in this context as a reference to a group of characteristics of this trust. First, the wide leeway of “discretionary” decisional power given to the fund's executive board in the management of the portfolio of financial assets. The academic literature of the time defines indeed this type of investment trusts, with lightly-constrained freedom of choice in the type of managed financial assets (typically, going beyond a portfolio composed of sole fixed-income securities so to include also equities<sup>272</sup>) as “*Investment Trusts discrétionnaires britanniques*” (British discretionary investment trust).<sup>273</sup> Second, the literature of the time attributes a further characteristic to the English model, namely a “contractual” structure – opposed to the “statutory” structure of early investment trusts – that originated in the experimental investment trusts issued in the British financial world, and known as “Trust agreement” and “Contractual trust”.<sup>274</sup> The innovative feature of this type of financial vehicle in comparison with the “corporate” or “American-type” investment trusts lied in its threefold structure: the founding company, a custodian bank, and a group of signatories, or in other words, the investors.<sup>275</sup> Essentially, the features of a modern open-

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<sup>270</sup> See his publication of 1929: Druard, A. (1929), *op. cit.*

<sup>271</sup> (May 31, 1957). Investment Trust. *d'Letzebuenger Land*, 2. Original in German, translation of the author.

<sup>272</sup> See also Sotiropoulos, D. P., & Rutterford, J. (2018), *art. cit.*; Sotiropoulos, D.P. et al. (2023), *art. cit.*

<sup>273</sup> See Fischer, E. (1935), *op. cit.*

<sup>274</sup> *Ibid.*, p. 105.

<sup>275</sup> *Ibid.*, p.116.

end fund, that for example already in Fischer’s analysis of 1935, are defined as “investment funds” and not anymore investment trusts.

The interest of Druard and of his meeting’s attendees in incorporating a “contractual” open-end investment fund in Luxembourg had been probably enhanced by the fact that debates around this subject were already ongoing in the Grand Duchy. One year and a half earlier, in October 1955, the AED had firstly showed some “positive attitude” towards potential listings in Luxembourg of *Fonds Communs de Placement* (FCPs) and to subject them to a generic “conformity to the spirit of the Holding Law of 1929, with the aim of avoiding double taxation issues”.<sup>276</sup> In 1956, an article of Bernard Delvaux on the Luxembourgish law studies review *Paisicrisie Luxembourgoise* gave further publicity to this initial favourable interpretation of the AED towards a potential equal fiscal treatment for open-end (FCPs) and closed-end funds (*Sociétés d’Investissement*) under H29 fiscal regime. The fact that merely “verbal decisions” (“*décisions verbales*”<sup>277</sup>) of the AED could have such wide consequences on the nascent international financial centre in Luxembourg has been recently commented with some surprise and even concern.<sup>278</sup> Yet, this *modus operandi* in the interpretational approach to H29 had been consistent since its promulgation. In particular, in the strict relationship between the advice of the *Directeur* of the AED and the juridical analyses provided by Bernard Delvaux. As all the other protagonists of this foundational phase of the *place financière* of Luxembourg as a central node in the international finance networks (from 1929 until the 1950s), Delvaux was also an “*avocat d’affaires*” (business lawyer) – a category that includes both the figure of “code master” as in the theorization of Katharina Pistor<sup>279</sup> and the meaning given to this expression by Gerard Trausch, namely a figure between a “pure jurist” and a “merchant of

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<sup>276</sup> See Delvaux, B. (1956), *art. cit.*, p. 166. Also, based on this interpretation, the initial capital tax known as “*droit d’apport*” was not levied on mutual funds: “The issue of shares in FCPs, [...] was not subject to capital duty. This rule was logical: as the fund was only an undivided mass of securities, the contribution did not involve a transfer to a company, which excluded the levying of capital duty” (Kremer, C., and Lebbe, I. (2014). *Organismes de Placement Collectif: Et Véhicules d’investissement Apparentés en Droit Luxembourgeois*. Larcier, Titre XII. Organismes De Placement Collectif Et Droit Européen.p. 1576)

<sup>277</sup> *Ibid.*

<sup>278</sup> Thomas, B. (August 5, 2016). Naissance d’un paradis fiscal. *d’Lëtzebuurger Land*

<sup>279</sup> Pistor, K. (2019), *op. cit.*

right”<sup>280</sup> – like Pierre Braun, Léon Metzler, Pierre Dupong, André and Paul Elvinger, but also the future prime ministers Pierre Werner, Gaston Thorn, and Jacques Santer. Often, as Santer would later recall, prior to become their political career, they would have multiple interactions due to their lawyer profession, often even working for long periods side by side in the same law firm, as it was the case for him, Thorn, and Werner in Tony Biever’s *cabinet d’avocats*.<sup>281</sup>

Bernard Delvaux, besides being a business lawyer, was also a notary, and a well-published jurist.<sup>282</sup> He had been during the 1930s, as seen, the main exegete of H29 together with Edmond Reiffers. Their treatise on the analyses of Luxembourg’s holding legal framework “*Les Sociétés « Holding » au Grand-Duché de Luxembourg: Etude théorique et pratique de la loi du 31 juillet 1929*” of 1933 – at the time, he was 27 – had been moreover recognized by the AED as the official interpretation<sup>283</sup> of the law. In 1956, Delvaux had therefore come back to the subject, by analysing a new series of issues that had been emerging in the years after the war. The article “*Questions actuelles concernant la loi du 31 juillet 1929 sur le régime fiscal des sociétés de participations financières*” was the first of his three publications between 1956 and 1963<sup>284</sup> on the *Pasicrisie*, the most important law journal in Luxembourg at the time. The article of 1956, besides essentially

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<sup>280</sup> see Trausch, G. (December, 2017). L’émergence de l’avocature d’affaire et des Big Four. *D’Lëtzebuurger Land*, 12–13.

<sup>281</sup> Jacques Santer. Interview with the author, October 1, 2021.

<sup>282</sup> André Elvinger will later define Delvaux a “pragmatic scholar” (Association luxembourgeoise des fonds d’investissement. (2008). *Alfi - 20th Anniversary Jubilee Report: 1988 - 2008*. Association of the Luxembourg Fund Industry. See also the theses of Benoît Majerus on the use by Luxembourgish lawyers of technical publications as a form of legal advertisement of their law firms, due to limitations to advertisement through other means (Majerus, B., “From Local Notables to Global Players: Law Companies in a Tax Haven (1960s to 2020s)”, mimeo)

<sup>283</sup>The book of Bernard Delvaux, *Les Sociétés « Holding » au Grand-Duché de Luxembourg: Etude théorique et pratique de la loi du 31 juillet 1929*, Luxembourg, Victor Bück, 1933, 129 p. has as subtitle « revu par la Direction de l’Administration de l’Enregistrement et des Domaines »

<sup>284</sup> The article of 1963 on the fiscal regime of investment funds in several European countries was in fact a report that Delvaux wrote for the Comité fiscal of the Fédération bancaire de la Communauté européenne and that the *Pasicrisie* republished (Delvaux, B. (1963). *Fédération bancaire de la Communauté européenne. Comité fiscal. Régime fiscal des sociétés d’investissement et des fonds communs de placement dans les pays de la C. E. E. Rapport général*’, in *Fédération bancaire de la Communauté européenne. Comité fiscal. Régime fiscal des sociétés d’investissement et des fonds communs de placement dans les pays de la C. E. E. Rapport général*.

advocating for further liberal stretching of the law, also in terms of a more modern interpretation applied to the regulation of the financial vehicles involved in the holding industry, was also arguing – only apparently paradoxically – for the persistence of the original essential and elastic juridical framework on holding companies. Delvaux’s words in this regard are rather explicit: “[...] The absence of special regulation [on open-end funds] seems to continue to be the best solution for the Grand Duchy”.<sup>285</sup>

The AED and the Ministry of Finances, in 1959, by allowing the listing of the first mutual fund in Luxembourg, acknowledged the theses of Delvaux on fiscal equivalence of holding companies, investment trusts, and open-end funds, with H29 as the main legal reference for a light and largely discretionary regulation framework for the fund industry in Luxembourg (based therefore on the interpretations and regulations of the Ministry of Finances and of the financial surveillance institutions in Luxembourg, first the AED and then the CCB, *Commissariat au Contrôle des Banques*), until harmonisation pressures from the European Economic Community institutions together with a wave of financial scandals having in the Grand Duchy an irradiation spot, forced Luxembourg’s policymakers to introduce a new body of regulation specifically addressed to investment funds. André Elvinger, the business lawyer and senior partner of the Luxembourgish fund-specialised law firm “Elvinger and Hoss” (that was later going to have an important advising role in the formulation of the regulation of 1972 and also in the laws of 1983 and 1988, see next chapters) recalled this period as a phase characterised by a large amount of self-control on the part of funds’ administrators and stakeholders as well as for all the financial intermediaries involved in the fund industry: from business lawyers and notaries, to the custodian banks – all parts of a process that eventually contributed to the magnification of a “tariffication”<sup>286</sup> phenomenon for the fund industry in Luxembourg. Self-control on the one hand, in terms of capability of having their interpretation of existing law regulating the fund industry quickly embodied in the *de facto* regulations of state financial institutions (by plastically complying to their role of “code masters”, as it has been described by Pistor<sup>287</sup>). On the other, by operating in a

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<sup>285</sup> Delvaux, B. (1956), *art. cit.*, p. 159.

<sup>286</sup> See Moyse, L. Meiers, C., and Maquil, M. (2014), *op. cit.* See also Philippe Duvieusart, Interview with Benoît Majerus of 16 March, 2017. Original in French, translation of the author.

<sup>287</sup> Pistor, K. (2019), *op. cit.*



regime of light surveillance from the main regulatory financial institutions of the country. As the same André Elvinger described in his own words:

“[...] as there were then in existence neither a specific legal framework nor a statutory basis for supervision, the pioneers of investment funds made use of a system of advanced ruling by the Ministry of Finance. This, on the tax side, protected the fund against potential applicability of income and assets tax on collectivities, while collecting a reduced rate of *taxe d’abonnement* by reference to the 1929 Act governing holding companies. At the same time, this type of ruling afforded some form of control of the promoter’s standard, together with providing for safeguard of the fund’s assets by the requirement of a major bank as custodian”.<sup>288</sup>

### 3.1. *The birth of the open-end fund industry in Luxembourg*

By the end of the 1950s, some European countries had already promulgated functional legislation for the local incorporation of closed-end and some of them for open-end funds. The main aim of these reformulations on the code of capital for pooled investment instruments at the European level has been described by contemporary commentators as a way on the one hand, to incentivize “modern forms” of investment. On the other, especially with regards to open-end funds, as a way to improve “the services that [investment funds] provide to economically weak investors/savers”.<sup>289</sup> At the same time, though, national legislation for the incorporation of open-end funds was either largely absent or somehow biased on the regulations and interpretations of existing juridical framework for the incorporation and fiscal treatment of closed-end funds. For example, in France, was created in 1948 the first investment trust, the Société Nationale d’Investissement. By the early 1960s, 48 *sociétés d’investissement* – as seen in chapter 1, this is how investment trusts and later “statutory” or closed-end funds are defined in French legal

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<sup>288</sup> Association luxembourgeoise des fonds d’investissement. (2008). *Alfi - 20th Anniversary Jubilee Report: 1988 - 2008*. Association of the Luxembourg Fund Industry, p.30.

<sup>289</sup> Delvaux, B. (1963), *art. cit.*, p. 5.

tradition – had at that point been created. As in Luxembourg’s legal environment after the promulgation of H29, also in France state regulations on the incorporation of national and foreign closed-end funds were mainly addressed to a fiscal scope and incorporated as limited liability companies (“*société anonyme*”). Limited areas of fiscal exemptions were granted by French financial surveillance authorities to those funds complying a group of conditions including “[...] among other things, their standing [ so their solvency], the way in which the securities in the portfolio are managed and the amount of the management fees”, with an overall legislation inspired by the US’ Investment Company Act of 1940 and the UK’s Prevention of Fraud Act of 1939. In 1957, a national decree allowed the incorporation of *sociétés d’investissement* with variable capital (SICAVs) and of open-end funds. Yet, French regulators showed a “non-favourable” attitude towards the listing of the latter, and introduced further regulations so to hinder the trading of shares issued by foreign funds.<sup>290</sup> In Switzerland, that as seen in the previous chapter had been in the forefront of the code of capital for holding companies between the end of the nineteenth century and the twentieth century, 50 closed-end funds had been effectively incorporated by 1963, yet only based on interpretation of previously existing regulations, while a federal project of law on investment funds (both for closed-end and open-end funds) had at the time only been theorized by local jurists.<sup>291</sup> In Italy, an investment trust with a capital stock portfolio of two billions of Italian liras had been incorporated in 1952. Yet, this stayed as an isolated experiment since the Italian financial law proved to be unadapt to the incorporation of both closed and open-end funds as well to the local trading of shares issued by foreign funds.<sup>292</sup> In West-Germany, a law on investment funds particularly favourable to open-end funds<sup>293</sup> had been promulgated in 1957. Based on the US’ Company Act of 1940, this law on the “*Kapitalanlagegesellschaften*” (Capital Investment Companies) introduced a series of tax exemptions to the investors, for example in terms of

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<sup>290</sup> Ibid. pp. 8-9.

<sup>291</sup> Ibid, p. 7.

<sup>292</sup> Ibid.

<sup>293</sup> Still in 1988, it was assessed that Germany “[does not] have the corporate type of investment fund, which would mean that the investor becomes a shareholder of the investment company which invests for its own account the contributions of the shareholders and consequently becomes the legal owner of all securities bought therewith” (Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, The Investment Fund Regulation in the Federal Republic of Germany, Jurgen Than, Dresdner Bank AG, Frankfurt/Main.

“community and accessory revenues”, or absent withholding tax on capital yields also for foreign investors. By the early 1960s, 20 open-end funds had been incorporated in Germany with an aggregate capital stock of around 6 billion DM.<sup>294</sup> In the Netherlands, based on existing legislation, closed-end funds had reached by the same period an aggregate capital stock of 2 billion Dutch guilders, while the open-end funds’ aggregate capital stock (listed as “Deposit Investments”) amounted to 125 million guilders. In the same way as for French and Luxembourgish closed-end funds, the pooled portfolio of financial assets under Dutch law was a juridical ownership of the mother company. Yet, differently from Luxembourgish law and fiscal regime (for holding companies), not all the funds under Dutch law were equally treated in fiscal terms. For example, only closed-end funds that distributed at least 60 per cent of the dividend of their portfolio to their investors could have access to some exemptions (that were on the contrary automatically granted to open-end funds whose shares were traded in the Stock Exchange market). Again, similarly as for Luxembourg’s juridical framework, open-end funds’ portfolios were considered as an “undivided co-ownership” and therefore completely exempted from taxation. Yet, on the contrary of Grand Duchy’s regime delineated with the listing of the first mutual funds from 1959 (see chapter 3.2), and similarly to Germany, the fund’s management company was considered as an ordinary company and therefore taxed as so.<sup>295</sup>

In Belgium – while a public<sup>296</sup> and state-level<sup>297</sup> debate on the “execrable practice” of “benefitting from fiscal evasion”<sup>298</sup> by investing Belgian capitals in Luxembourg-domiciled holding companies had gained some momentum in the first half of the 1950s – a law for the regulation of the market of Belgian-domiciled open-end funds had been introduced in 1957. In the same way as for the Dutch and Luxembourgish legislations, also in Belgium the portfolio of an open-end fund was recognized as an undivided ownership and without juridical personality (therefore tax-exempted).

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<sup>294</sup> Ibid.

<sup>295</sup> Ibid. pp. 5-12.

<sup>296</sup> ANL, box FIN-10661, Législation belge relative aux sociétés holding étrangères et problèmes avec les sociétés holding luxembourgeoises, (28 February, 1955) “Les holdings belges et le fisc, *Le Soir*.”

<sup>297</sup> ANL, box FIN-10661, Législation belge relative aux sociétés holding étrangères et problèmes avec les sociétés holding luxembourgeoises“, *Projet de loi belge affectant le régime fiscal des entreprises dépendant de sociétés holding*, dec. 1953.

<sup>298</sup> ANL, box FIN-10661, Législation belge relative aux sociétés holding étrangères et problèmes avec les sociétés holding luxembourgeoises, (28 February, 1955) “Les holdings belges et le fisc, *Le Soir*.”

Yet, as for Germany and Netherlands' ones, also Belgian funds' management companies were under the tax regime of ordinary commercial companies. By 1961, the number of open-end funds under Belgian law was of 6 units with an aggregate capital stock of 12 billion of Belgian Francs.

One of the first firms able to incorporate an open-end fund in Belgium was Brussels-based Banque Lambert. Banque Lambert had been founded as an agency of Rothschild Paris in 1831, to then receiving legal recognition as an independent legal entity in 1926 – while nonetheless maintaining strong connections with the French-British banking group.<sup>299</sup> Probably due to its inherent divided identity between the British, francophone, and Flemish banking worlds, moreover being based in colonial Belgium which had been a “pioneer of industrial credit” in the first half of the twentieth century<sup>300</sup>, Banque Lambert showed consistently from its very early days until the post-war period an “adventurous”<sup>301</sup> attitude towards inter-banking cooperation and geographical diversification of financial investment. In 1951, for example, together with the Rothschild group, it led the creation of a holding company, the Compagnie d’Afrique pour l’industrie et la finance, headquartered in Kinshasa (at the time still under Belgian colonial occupation) and assigned to the management of the bank’s manifold commercial and financial interests (from commercial to real estate operations) in sub-Saharan Africa.<sup>302</sup> In 1953, it founded a subsidiary, the Compagnie européenne pour l’industrie et la finance, having as business purpose the management of a series of financial operations including the purchase of equity stock of Petrofina and its Canadian branch Canadian Petrofina. Petrofina was at the time a Belgian oil company, and according to Smets, a leveraging operation of Petrofina bonds of 1957, entirely managed by Banque Lambert was the first actual financial operation definable as a Eurobond, since in the first place, the leveraging process was based on different currencies – American dollars, Belgian francs, Swiss francs, Dutch guilders – and, second since the bonds transactions were not registered at the American SEC.<sup>303</sup> While there is an academic debate on what should be identified as the first Eurobond,<sup>304</sup> it is

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<sup>299</sup> Smets, P. (2012). *Une aventure bancaire et financière, Lambert*. Racine Eds.

<sup>300</sup> *Ibid.*, p. 15.

<sup>301</sup> *Ibid.*

<sup>302</sup> ARB, Banque Lambert, box 4379, Les Conventions Fondamentales avec des autres Sociétés, 1961-1967

<sup>303</sup> Smets, P. (2012), *op. cit.*, p. 363.

<sup>304</sup> Therefore 5 years before the first issuing of a Eurobond for the Italian company Autostrade per l’Italia (see e.g., Ogle, V. (2017), *art. cit.*).

nevertheless possible to trace back already to the late 1940s-early 1950s an increased activity of Banque Lambert around operations of inter-currency arbitrage together with growing concerns on the “regularity” of this operations, that often led to “whimsical declarations” to national financial surveillance authorities.<sup>305</sup> However, throughout the 1960s, the group Lambert became involved in several Eurobond issuances, for private companies – e.g., the Japanese *Canon Camera* – and public entities – e.g., a failed operation for the Italian *IRI* and the bonds in dollar for the public sector in Belgium.<sup>306</sup>

With regards to inter-banking cooperation policies of Banque Lambert in the first half of the 1960s, it can be mentioned for example, the partnership with Bank of America for the incorporation of the World Banking Corporation Ltd, headquartered in Nassau, Bahamas, and the intermediation work for the creation of the Credit Internationale à moyen terme through a consortium of American and Swiss banks. Banque Lambert was among the founding partners of the holding Société Financière pour les pays d’Outremer (registered in Geneva, Switzerland, and with capital stock of 40 million SF), together with Bank of America, Banca d’America e d’Italia, Banque National de Paris, and Commerzbank. The purpose of the holding was to manage the banking interests of this group of banks in African countries.<sup>307</sup> In 1968, Banque Lambert was among the stakeholders of the Rothschild Intercontinental Bank Limited – created in London two years before by N.M. Rothschild & Sons and the National Provincial Bank. In 1970, together with Banque Lambert and the group Rothschild, the US-based stakeholders of the Intercontinental Bank included also the First National City Bank, the National City Bank of Cleveland, and the Houston & Seattle First National Bank.<sup>308</sup>

In August 1955, with one of its “pioneering initiatives in wealth management practices”<sup>309</sup> Banque Lambert created Soges S.A. (Société de Gestion de Fonds de Placement), an agency based in Brussels whose main tasks were the direct management of open-end funds incorporated in

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<sup>305</sup> ARB, Banque Lambert, box 11988, letter of Max-Léo Gérard to the presidency of Banque Lambert, November 1952. Original in French, translation of the author.

<sup>306</sup> Smets, P. (2012). *Une aventure bancaire et financière, Lambert*. Racine Eds., pp. , 371-372.

<sup>307</sup> CRISP (Centre de Recherche et d’Information Socio-Politique), *L’Internationalisation du système bancaire belge*, Report, 1972.

<sup>308</sup> *Ibid.*, p.19.

<sup>309</sup> Smets, P. (2012), *op. cit.*, p. 242.

Belgium by Banque Lambert, the management of the shares that the bank had in other funds (so in its assets portfolio), and general research and advice on the market of investment funds in Europe – for example, in 1960, Soges operated as a consulting firm for the leveraging activities of the Australian fund Delfin Australian Incorporated.<sup>310</sup> The business purpose of Soges was described as so by its management: "Our company pursues a dual activity of managing open-end funds and issuing certificates representing bearer foreign registered shares. It groups together the fiduciary activities of the Lambert Group. In the field of mutual funds, it has endeavoured to improve the operation of the funds for which it is directly or indirectly responsible and to orient its activities on an increasingly international level".<sup>311</sup> This in a context where "[...] investment funds contribute to the indirect financing of the economy [...] by allowing financial institutions that promote new industries to free up their resources, which become available for new initiatives. It is obvious that as long as the activity of investment banking is not more developed in Europe, investment funds will not be able to fully play this role".<sup>312</sup>

One of the first acts of Soges in 1955 was the incorporation of an open-end fund under Belgian law, the Fonds International de Placement (FIP). With this fund, Banque Lambert put in place on the one hand, diversification of risk policies based on multiplying the countries of origin of the assets ("as wide as possible").<sup>313</sup> In Figure 3.2, it is reported the geographical origin of FIP's shares divided per continent.

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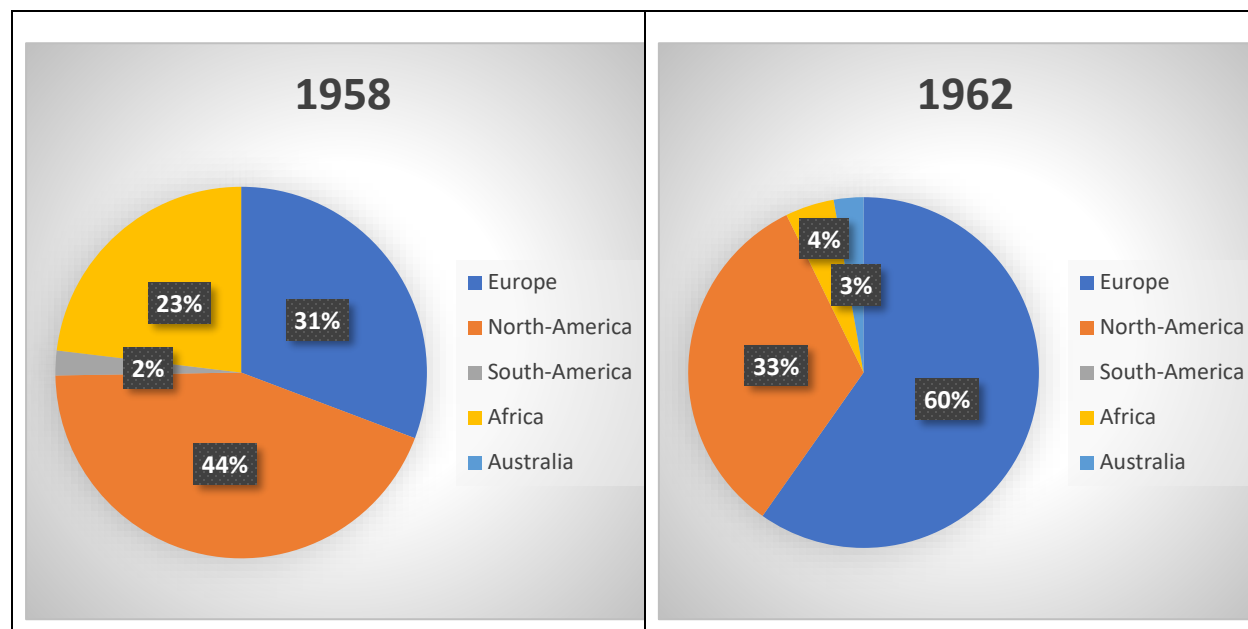
<sup>310</sup> ARB, Banque Lambert, box 39531, Sogés, Exercice 1960-1961, Rapport du Conseil d'administration, p. 4. Original in French, translation of the author.

<sup>311</sup> ARB, Banque Lambert, box 1221, Fonds Internationale de Placement, Exercice 1960-1961, Exercice Pamphlet, p.3. Original in French, translation of the author.

<sup>312</sup> ARB, Banque Lambert, box 39531, Sogés, Exercice 1960-1961, Rapport du Conseil d'administration, p. 7. Original in French, translation of the author.

<sup>313</sup> ARB, Banque Lambert, box 1221, Fonds Internationale de Placement, Exercice 1960-1961, pp. 2-3. Original in French, translation of the author.

**Figure 3.2. Geographical distribution (%) of FIP’s portfolio assets, by continent, 1958 vs. 1962**



*Note:* Source: ARB, Banque Lambert, box 1221, Fonds Internationale de Placement, Exercice 1960-1961, p. 8

On the other, FIP’s portfolio included shares from a wide array of firms, from the oil, chemical, mining sectors, construction, steel, and other industries as well as commodity companies<sup>314</sup> - Soges, in its reports, described that of FIP as a “complete portfolio”.<sup>315</sup> Among the oil companies, it is interesting to note that Soges advised and promoted in multiple occasions<sup>316</sup> the purchase of

<sup>314</sup> Ibid. p. 9.

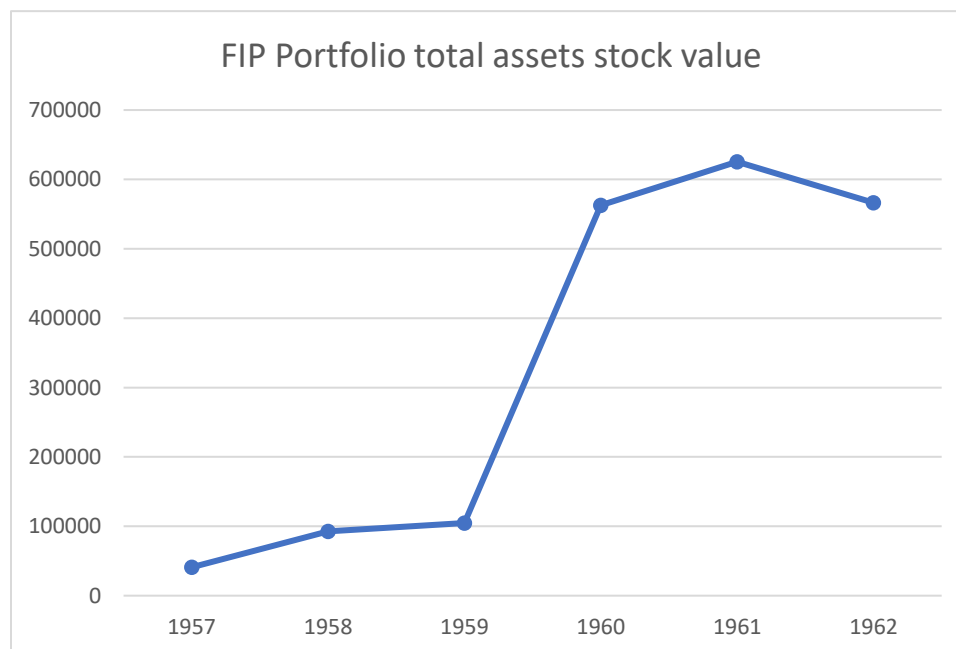
<sup>315</sup> ARB, Banque Lambert, box 39531, Sogés, Exercice 1960-1961, Rapport du Conseil d’administration, p. 14. Original in French, translation of the author.

<sup>316</sup> See e.g., ARB, Banque Lambert, box 39530, Sogés, Procès-Verbaux des séances du conseil d’administration (17.2.59-23.2.60), Procès-Verbal de la réunion du Conseil d’Administration, 17 March 1959 ; 16 June 1959 ; 23 June 1959 ; 15 September 1959 ; January 5, 1960.

equities of Petrofina, the same Belgian (with branches in Canada and the US) firm that Banque Lambert had started to leverage in the early 1950s through the Euromarkets.<sup>317</sup>

While FIP's performance under Belgium's juridical framework for open-end fund was deemed "all in all satisfying" by Soges' analysts, with at the same time a consistent growth of the total capital stock of the fund between 1957 and 1962 (see Figure 3.3) as well as of the redistributed revenues (see Figure 3.4), yet, the minimization of fiscal costs from the side of the firm was deemed as eventually non-efficient "[...] there is an obstacle against which attempts to create [in Belgium], within this legal framework, mutual funds of 'European nature', so whose shares would be distributed in several countries, have come up against [...]: taxation".<sup>318</sup>

**Figure 3.3 FIP portfolio's total assets stock (thousands of Belgian Francs), 1957-1962**



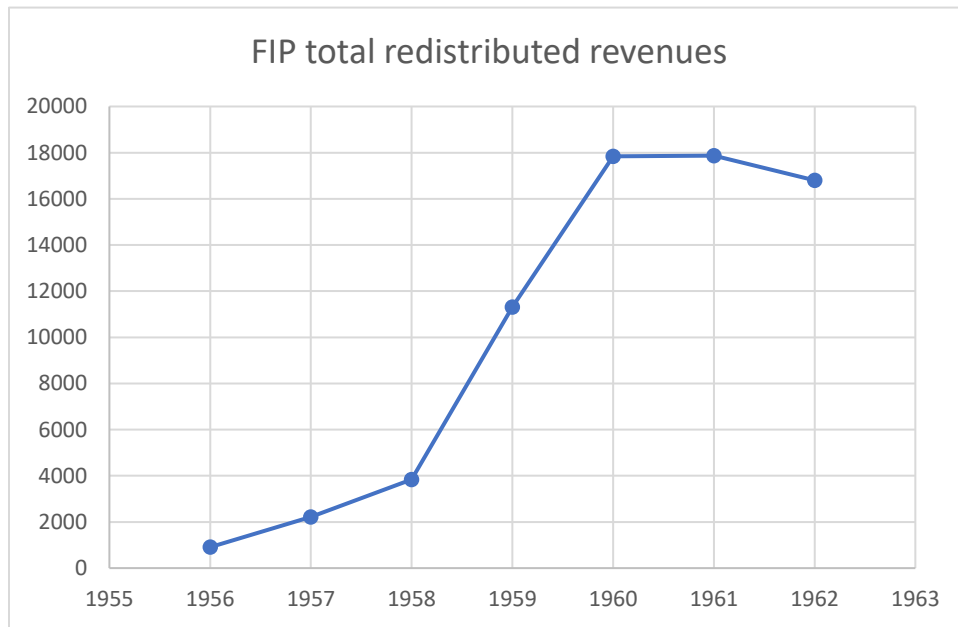
<sup>317</sup> Shares of Petrofina were also in Luxembourg-domiciled Lambert's funds, Eurunion, Finance-Union, and Patrimonial (see e.g., CSSF, box 13935 Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L, Prospectus d'émission 1968-1975).

<sup>318</sup> ARB, Banque Lambert box 39531, Sogés, Exercice 1960-1961, Rapport du Conseil d'administration, Fiscalité des fonds de placement, p. 7. Original in French, translation of the author.



Note: Source: ARB, Banque Lambert, box 1221, Fonds Internationale de Placement, Exercice 1960-1961, p.6

**Figure 3.4. FIP's total redistributed revenues (thousands of Belgian Francs), 1956-1962**



Note: Source: ARB, Banque Lambert, box 1221, Fonds Internationale de Placement, Exercice 1960-1961, p.7

### *3.2. Luxembourg as the most competitive hub in Europe for the incorporation of open-end funds in the early 1960s*

As seen above, from the second half of the 1950s, financiers and jurists from both Luxembourg and Belgium had been prospecting, initially just from a theoretical basis, the acknowledgement of legal continuity between the fiscal framework for holding companies, investment trusts, and open-end funds.

Bernard Delvaux, who as seen above, had been the most listened authority on the interpretation of the H29 code of capital, in the article “*Questions actuelles concernant la loi du 31 juillet 1929 sur le régime fiscal des sociétés de participations financières*” of 1956 proposed that fiscal authorities, including the Ministry of Finances and AED, should have established three important benchmarks for the launching of an open-end fund industry in Luxembourg. The first, as seen, would be to acknowledge legal continuity among the three legal entities: holding companies, investment trusts, and open-end funds.<sup>319</sup> The second would be to declare the need for a different method for assessing the annual tax on the capital stock (*taxe d’abonnement*) of an open-end fund – while, as for any “pure” holding company in Luxembourg, all interest and dividend (revenues) taxes had been set to 0.<sup>320</sup> Since the fund portfolio’s total asset value<sup>321</sup> was expected to fluctuate throughout the year, Delvaux suggested a lump-sum tax of 0.06 per cent, when the annual capital stock tax for holding companies in Luxembourg had originally been set at 0.16 per cent in H29. Third, the possibility of listing the management companies of open-end funds as holding companies themselves<sup>322</sup> (or being *de facto* recognized as so, as in the case of Sogim, the management company of the Eurunion fund – see below). For this reason, while following in principle the same juridical path as Germany, Belgium, and the Netherlands, with regards to the fiscal regime applicable to the management companies of open-end funds, yet the same fiscal approach in Luxembourg resulted as “technically different”,<sup>323</sup> due to the adherence to the fiscal framework of H29, which separated “ordinary” commercial companies from holding companies.

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<sup>319</sup> Delvaux, B. (1956), *art. cit.*, pp. 151-160.

<sup>320</sup> See also Delvaux, B. (1961). *Les sociétés d’investissement du type ouvert au Grand-Duché de Luxembourg*. Pasicrisie luxembourgeoise, p. 61-73.

<sup>321</sup> The fund’s portfolio itself did not fall under any Luxembourgish law regulating the incorporation of commercial or financial companies and did not have, by definition, legal personality. Under Luxembourgish juridical framework of the time, no taxes were therefore levied on this type of “undivided co-ownership”. Yet, the portfolio should be considered as an “economic complement” of the management company. For this reason, the capital stock registration and yearly taxes of the management company should be calculated based on the market value of the fund’s total assets (Delvaux, B. 1961, *art. cit.*).

<sup>322</sup> In this regard, see also the debate with banque Lambert’s emissaries for the incorporation in Luxembourg of the fund Patrimonial (ARB, Banque Lambert, box 4918, Note pour Monsieur Thierry, fond Patrimonia, « Visite a la Caisse d’Epargne du Luxembourg le 14 mars 1960. Original in French, translation of the author).

<sup>323</sup> Delvaux, B. (1963), *art. cit.* p.12.

Bernard Delvaux's role in the incorporation of the first open-end funds in Luxembourg appears to exceed that of impartial theoretician and jurist. By the end of the 1950s, he was firstly involved in the organization of "excellently hosted meetings" promoting the incorporation of mutual funds of "European nature" in Luxembourg with emissaries of Banque Lambert interested in gauging the potentiality of the Luxembourgish market for open-end funds.<sup>324</sup> Delvaux, during these meetings, discussed also the possibility that a law confirming the three legal benchmarks described above on fiscal equivalence of holding companies, investment trusts and open-end funds would have been promulgated "soon or later" at the Chamber of Luxembourg. While he was rather "skeptical" that the promulgation of a law on these matters was imminent – even though a "project of law was under examination"<sup>325</sup> – he was nevertheless sure that a formal approval of the Parliament was "of no practical importance" for the determination of a holding-alike fiscal regime for Luxembourg-domiciled mutual funds.<sup>326</sup>

It is of no surprise that Delvaux became therefore the legal representative of Banque Lambert in Luxembourg when the bank decided for the incorporation of Eurunion, a mutual fund that was going to be the first open-end fund listed in the Grand Duchy. The business lawyer and jurist was among the four legal representatives of the initial stakeholders investing in the fund and was present at the meetings in front of the Luxembourgish notary Robert Elter for the listing of Eurunion in Luxembourg's Business Register between February and December 1959.<sup>327</sup>

The interest in the incorporation of open-end funds in Luxembourg of Banque Lambert's analysts followed a detailed work of assessment on the impact that fiscal costs had on open-end funds' yields. As seen above, Banque Lambert's Soges had first individuated in "Belgian taxation" on open-end funds an "obstacle"<sup>328</sup> for a fully optimized performance of the Belgian-domiciled

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<sup>324</sup> ARB, Banque Lambert, box 4918, Note pour Monsieur Thierry, fond Patrimonia, Question fiscale. 15 March 1960. Original in French, translation of the author.

<sup>325</sup> Ibid.

<sup>326</sup> ARB, Banque Lambert, box 4918, Note pour Monsieur Thierry, fond Patrimonia, Question fiscale. 15 March 1960. Original in French, translation of the author.

<sup>327</sup> CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc. L., Extrait du Memorial (Recueil Special) – Luxembourg national business register – N. 17, du 19 mars 1959 ; N. 84, du 22 decembre 1959

<sup>328</sup> ARB, Banque Lambert box 39531, Sogés, Exercice 1960-1961, Rapport du Conseil d'administration, Fiscalité des fonds de placement, p. 7. Original in French, translation of the author.

mutual funds, such as FIP. Not only on the side of the management but also on that of the investors, due to the presence of a series of taxes potentially hindering the investment of non-Belgian residents in Belgian open-end funds. For example, the registration tax of 1.6 per cent on portfolio's assets whose residence was not in Belgium; or Belgian property tax of 12 per cent levied on foreign income - “[...] a German taxpayer, who would own shares of a Belgian-domiciled open-end fund with German assets in its portfolio, would pay 12 per cent of property tax to Belgian tax authorities in addition to 25 per cent already paid to German ones”.<sup>329</sup>

Furthermore – as it can be seen from a series of confidential notes between Lambert's wealth managers – Banque Lambert, between 1959 and 1960, had become aware of “[...] the existence of a relatively substantial interest among the Belgian public in conservative investments offering a higher return than that currently offered by the average industrial securities or by existing investment funds. This objective could be achieved by an income fund investing to a large extent in bonds [...] In view of this fact, Banque Lambert would be interested in organising an investment fund with this type of investment objective which, in the longer term, could be used in the management of portfolios as a 'defensive' complement. [...] For fiscal reasons, Banque Lambert believes that it is appropriate to establish this fund in the Grand Duchy of Luxembourg as Eurunion”.<sup>330</sup> Consistently with this analysis of Banque Lambert's financial analysts – the report is signed by R. L. Larcier and addressed to Marcel Décleve, who was going to become in the next years the main director of several bodies managing the investment fund's industry for the group Lambert, including Soges and EIRB (see below) – the Belgian business lawyer and banker Philippe Duvieusart has pointed out that the period between the end of the 1950s and the beginning of the 1960s marked a watershed in the investment attitude of Belgian retail investors - the so called “Belgian dentist”. Behind the increasing flow of capital circulating from Belgian bourgeoisie towards Luxembourg in these years – managed through Belgian banks acting as financial intermediaries (such as Kredietbank, that had incorporated a subsidiary in the Grand Duchy already in 1949, the KBL<sup>331</sup>) – there was in the first place, the research of legal means able to

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<sup>329</sup> ARB, Banque Lambert box 39531, Sogés, Exercice 1960-1961, Rapport du Conseil d'administration, Original in French, translation of the author.

<sup>330</sup> ARB, Banque Lambert, box 4918, Note pour le conseil de la Sogim of R. L. Larcier (addressed to Marcel Decleve), 1 February 1960. Original in French, translation of the author.

<sup>331</sup> See FINLUX database.

ensure avoidance tools in particular against the inheritance taxes levied in Belgium.<sup>332</sup> Second, the increasing widespread knowledge among Belgian retail investors of the existence of H29 regime in the Grand Duchy – see also the public debate developed in Belgium in the first half of the 1950s on the “war” to the Luxembourgish holding companies, mentioned in chapter 3.1 – that ensured almost negligible taxation on financial entities regulated under its framework.<sup>333</sup>

Banque Lambert was going therefore to incorporate three mutual funds in Luxembourg between 1959 and 1961. In 1965, Soges liquidated the Belgian-domiciled FIP fund, and invited its investors to exchange their FIP’s shares with shares of Luxembourg-domiciled Finance-Union fund.<sup>334</sup> The fact that the rationale behind the incorporation of three new mutual funds in Luxembourg and the liquidation of FIP in Belgium was purely linked to fiscal reasons rather than to the performance of the single funds, besides the above-mentioned interpretation of Duvieusart<sup>335</sup>, is confirmed also by subsequent reports of independent analysts. For example, in 1967, Belgium National Bank, in its research study on Luxembourg’s open-end fund market, concluded that “[...] the comparison of the assets [of Luxembourg-domiciled open-end funds] with certain Luxembourg macroeconomic variables would be meaningless. In effect, Luxembourg has been chosen by funds’ promoters primarily to allow foreign investors to benefit from a privileged fiscal regime”.<sup>336</sup>

In the same way, the Belgian-based “Journal des Tribunaux”, a specialized legal study review, in an article of October 1991 authored by the two Belgian financial law jurists J. Peeters and L. Cornelis, estimated that “[...] after the beginning of the 1970s, the total stock value of Belgian-

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<sup>332</sup> Philippe Duvieusart, Interview with Benoît Majerus of March 16, 2017. Original in French, translation of the author.

<sup>333</sup> Ibid.

<sup>334</sup> ARB, Banque Lambert, box 39532, Sogés, Procès-Verbaux des séances du conseil d’administration. Session of 22 June 1965, Dissolution du Fonds International de Placement (FIP). Original in French, translation of the author.

<sup>335</sup> Philippe Duvieusart, Interview with Benoît Majerus of March 16, 2017.

<sup>336</sup> Banque Nationale de Belgique, 1529/9, Département des Etudes, Service d’information. Les Fonds de placement au Grand-Duché de Luxembourg, 3 avril 1967. Original in French, translation of the author.

domiciled open-end funds, had strongly decreased, due to the transfer of an important part of Belgian savings towards open-end funds domiciled in Luxembourg”.<sup>337</sup>

### *3.3. Open-end fund industry in Luxembourg between 1959 and 1972*

The incorporation in Luxembourg of the mutual funds Eurunion, Finance-Union, Patrimonial, and later Italunion, was not managed by Banque Lambert alone. The Belgian bank had coalesced from July 1958, with a network of European banks, the Eurosyndicat (*Syndicat Européen d'Études et de Financement*), with its actors being all interested in implementing forms of mutual cooperation in the incorporation of investment funds in Europe and the achievement of best performance practices in their management. The banks that initially joined Eurosyndicat in 1958 were Banque Lambert and the Compagnie d'Outremer pour l'Industrie et la Finance in Belgium; the Rothschild brothers' Crédit Commercial de France (Paris) and the Compagnie Financière in France; Berliner Handelsgesellschaft (Frankfurt on Main) in Germany; Pierson, Heldring & Pierson (Amsterdam) in the Netherlands; and Banca Commerciale Italiana (Milan) through its branch Banca di Credito Finanziario “Mediobanca” in Italy.<sup>338</sup> More banks would have then joined the Eurosyndicat in the 1960s: Banque Européenne in Luxembourg; the banks N.M. Rothschild & Sons (London) and Hill, Samuel & Co. Ltd. (London) in the UK; Banque Privée (Geneva) in Switzerland; Bayerische Staatsbank (Munich) in Germany; and Banca Provinciale Lombarda (Bergamo), which replaced Mediobanca as the Italian representative in the early 1970s.<sup>339</sup>

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<sup>337</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques. J. Peeters, and L. Cornelis (12 October 1991). La réforme financière de 1990. Les organismes de placement collectif, *Journal des Tribunaux*, p. 1. Original in French, translation of the author.

<sup>338</sup> Together with the Société Financière et Mobilière of Paris, these banks were the first stakeholders of the Eurunion fund in 1959 (CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc., Extrait du Memorial (Recueil Special), N. 17, du 19 mars 1959).

<sup>339</sup> CSSF, box 13935 Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L, Prospectus d'émission 1968-1975.

Many of these banks had already strong ties with Banque Lambert. It was a stakeholder in Compagnie d'Outremer pour l'Industrie et la Finance, Credit Commercial de France, and Berliner Handelsgesellschaft.<sup>340</sup> The Banque Lambert-Luxembourg (until 1967, Banque Européenne<sup>341</sup>) had been established in Luxembourg in 1961 as a branch of the Belgian-based bank.<sup>342</sup> Ties with the Rothschild banks in Paris and London were rooted in their common history, as Banque Lambert, as seen, had been founded as an agency of the Rothschild banks in the nineteenth century.

The business purpose of the Eurosyndicat can be summarized in the following three benchmark points. First, sharing knowledge and information on the mutual fund markets among the participant banks. The latter indeed “[...] bring to the management [of Eurosyndicat’s] funds the references of their authoritativeness and the basis of their experience in wealth management practices”.<sup>343</sup> In the administration boards of Eurosyndicat’s funds in Luxembourg – Eurunion, Finance-Union, Patrimonial, and from 1969, Italunion a fund addressed to the market of Italian retail investors - sat therefore the “main specialists of the investment in equity markets of the banks of the group”.<sup>344</sup> Marcel Declève, was the director designed by Banque Lambert.<sup>345</sup> Other directors were John Alexandar, from Hill, Samuel & Co., Luigi Ciocca from Banca Provinciale Lombarda, Luc Ernoult from Banque Privée, Nicolas Goergen from Banque Lambert-Luxembourg, Gunther Mecklenburg from Berliner Handel, Claude Paulin from Crédit Commercial de France, and M.J.J. van Goozen

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<sup>340</sup> Smets, P. F. (2012), *op. cit.*

<sup>341</sup> Banque Nationale de Belgique, box Y054/18, Banque Lambert-Luxembourg, Letter to Institut belgo-Luxembourgeois du change, Nouvelle dénomination Banque Lambert-Luxembourg, November 1967. Original in French, translation of the author.

<sup>342</sup> Le gouvernement luxembourgeois - Bulletin de documentation n° 6/1961 (S. 21). Service information et presse (1961), [https://sip.gouvernement.lu/dam-assets/publications/bulletin/1961/BID\\_1961\\_6/BID\\_1961\\_6.pdf](https://sip.gouvernement.lu/dam-assets/publications/bulletin/1961/BID_1961_6/BID_1961_6.pdf) Consulted on February 2, 2023.

<sup>343</sup> ARB, Banque Lambert, box 1225, Eurosyndicat (1975-1976), p. 6. Original in French, translation of the author.

<sup>344</sup> ARB, Banque Lambert, box 1225, Eurosyndicat (1975-1976), p. 6. Original in French, translation of the author.

<sup>345</sup> Marcel Declève and Roger de Vuyst of Banque Lambert were at the same time also assigned to manage a further advising entity, the EIRB (Eurosyndicat Investment Research Bureau), with the task of advising Eurosyndicat’s fund in Luxembourg, and cooperate with Lambert’s Soges for the management of all other funds connected to the Belgian bank.

from Pierson, Heldring, & Pierson.<sup>346</sup> This expertise later converged in a further advisory bureau led by Marcel Declève and Roger de Vuyst (also from Banque Lambert), somehow pairing Soges, yet only charged of advising Eurosyndicat's financial investments in the European Common Market. Named EIRB (Eurosyndicat Investment Research Bureau), the bureau was founded in 1960, based at Banque Lambert headquarters at 24 Avenue Marnix in Brussels.<sup>347</sup> Among the first tasks assigned to the EIRB was analysis of the investment fund market in the countries of the European Single Market, including Luxembourg.<sup>348</sup>

Second task of Eurosyndicat was then to pursue innovative policies of sectorial and geographical diversification of mutual funds' portfolios, even considering that some experimental practices could bring for example "[...] in the short and medium run to inferior results, once compared to those obtained through concentration of the investments in a single economic sector".<sup>349</sup> The case of the portfolio of Eurunion is indicative in this regard. The first mutual fund in Luxembourg, had been structured from its conception with a bonding clause aimed at restricting the area of origin of the assets to the sole Europe of the six.<sup>350</sup> This clause was deemed as constraining and not efficient, once the performance of Eurunion's assets was compared to the performances of the other two funds of Eurunion in the early 1960s, Finance-Union and Patrimonial<sup>351</sup> – that had huge sections of their portfolios with extra-European assets (see Figure 3.5 a, b, and c). Yet, this clause was largely maintained for Eurunion until the second half of the

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<sup>346</sup> ARB, Banque Lambert, box 1225, Eurosyndicat (1975-1976), p. 6. Original in French, translation of the author.

<sup>347</sup> CRISP (Centre de Recherche et d'Information Socio-Politique), L'Internationalisation du système bancaire belge, Report, 1972, p. 19. Just before Italiunion was established, in 1968, EIRB headquarters was transferred to Luxembourg, only to return to Brussels in 1976 (CSSF Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d'émission mars 1971 and Prospectus d'émission mars 1977).

<sup>348</sup> CSSF Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L.

<sup>349</sup> Ibid., p. 7,

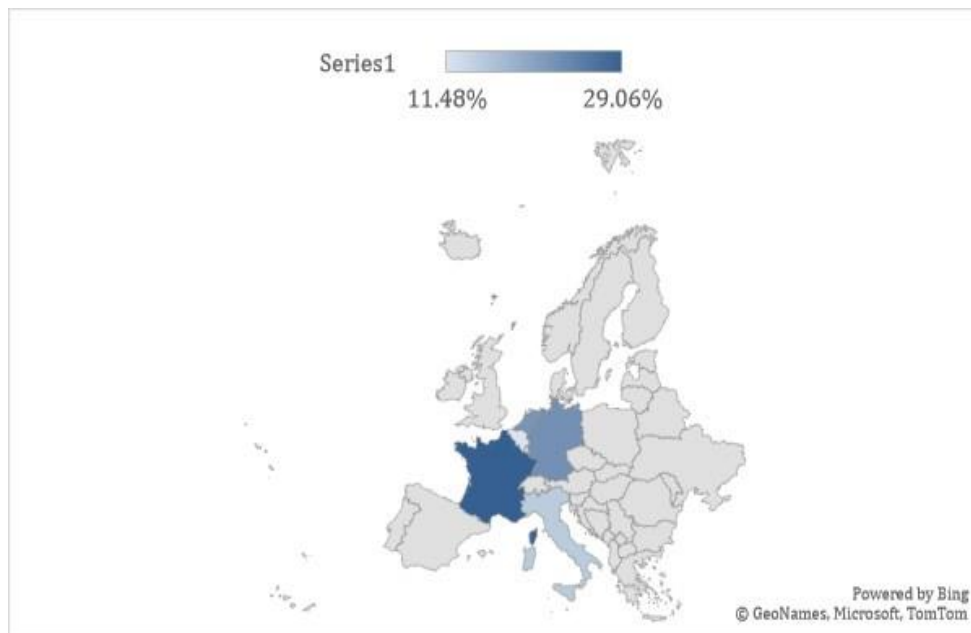
<sup>350</sup> CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc., Extrait du Memorial (Recueil Special) – N. 17, du 19 mars 1959).

<sup>351</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d'émission 1964-1977.



1970s (despite some releasing, with inclusion of assets from e.g., the UK, Scandinavian countries, and later in 1977-1978, also Australia).<sup>352</sup>

**Figure 3.5a. Geographical distribution of portfolio assets (%) of Eurosyndicat's Eurunion, 1960**

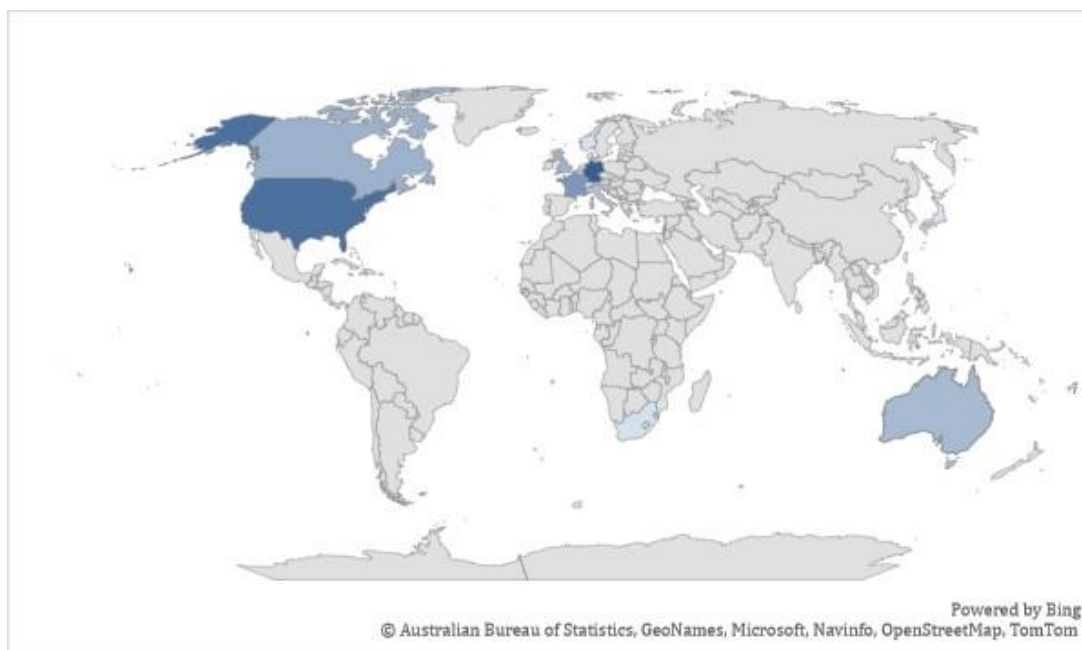


Source: Source: ARB, Banque Lambert box 8399, Eurunion, Portefeuille Au 30 Juin 1960

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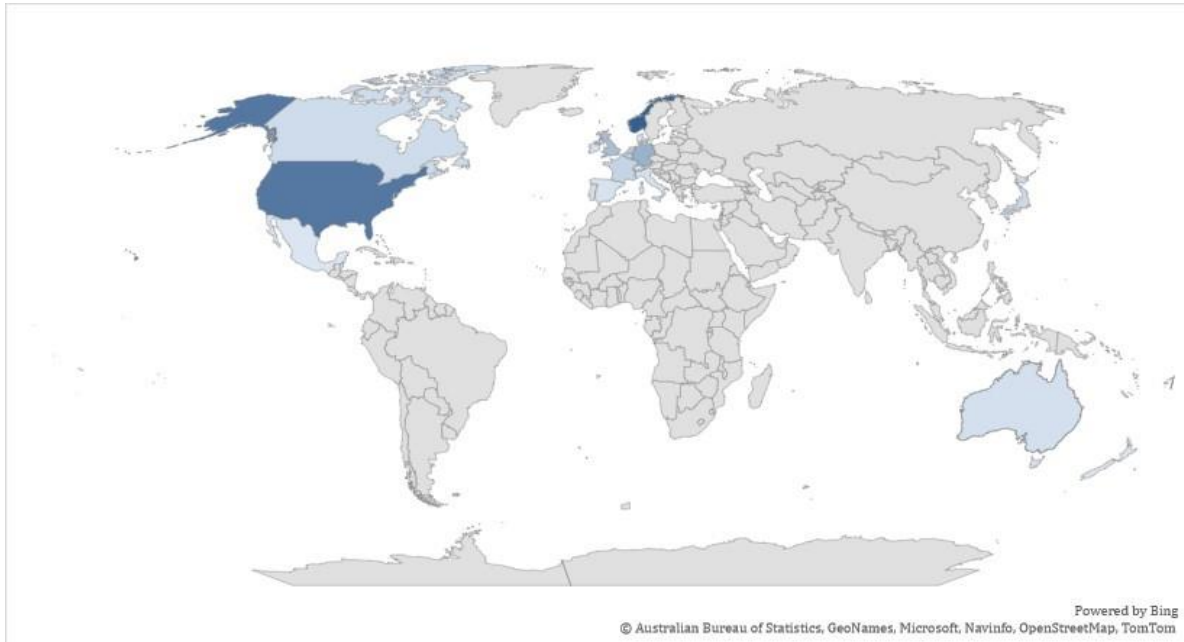
<sup>352</sup> Ibid.

**Figure 3.5b. Geographical distribution of portfolio assets (%) of Eurosyndicat's Patrimonial fund, 1961**



Source :ARB, Banque Lambert, box 4927, Fonds commun de placement, Patrimonial Exercice 1960-1961, p.9.

**Figure 3.5c. Geographical distribution of portfolio assets (%) of Finance-Union fund, 1964**



Source: ARB, Banque Lambert box 4929, Finance-Union Rapport Annuel 1963-1964, p.12

Finally, the third organizational tool behind Eurosyndicat's business project was the simplification of the procedures of exchange of shares between its Luxembourg-domiciled funds for their investors. Besides accepting the passage of the investors from one fund to another – so between Eurunion, Finance-Union, Patrimonial, and later Italunion – without charging any commission fee, Eurosyndicat provided also commission-free re-investment modalities for coupon's yields in new shares of Eurosyndicat's funds.<sup>353</sup>

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<sup>353</sup> ARB, Banque Lambert, box 1225, Eurosyndicat (1975-1976), p. 8. Original in French, translation of the author.

In February 1959, the Eurunion fund had been the first testing ground for the application of Delvaux's theoretical framework analysed above. The Ministry of Finances (with a decision on February 13, 1959) and the AED (when it first collected the quarterly registration tax on September 14, 1959) essentially gave *de facto* approval to Delvaux's proposal. Eurosyndicat incorporated the Patrimonial fund in March 1960, and in May 1962 the Finance-Union fund.<sup>354</sup> While the management companies of Patrimonial and Finance-Union were listed in the National Business Register – the *Memorial (Recueil Spécial)* – as holding companies<sup>355</sup>, Eurunion's management company, the Société de Gestion pour l'Investissement dans le Marché commun a Luxembourg (Sogim) was registered on March 19, 1959<sup>356</sup> as a joint stock company (in the form of limited liability company). Yet, the AED, due to the fact that Sogim's business purpose was limited to the control of one open-end fund, *de facto* granted – by accepting, at the moment of the listing of Eurunion, the payment of registration taxes in the amount due for a holding company<sup>357</sup> – equal fiscal treatment between a pure holding company and Sogim as well as for any other open-end fund's management company.

Sogim's initial capital was set at 5 million Luxembourgish Francs, divided into five thousand shares. Amongst the first eight shareholders – Banque Lambert, Mediobanca, Berliner Handelsgesellschaft, Pierson, Heldring & Pierson, Compagnie Financière, Compagnie d'Outremer, Crédit Commerciale de France, and Société Financière et Mobilière – Banque Lambert owned the most shares (800).<sup>358</sup> Some of the preeminent figures of the European financial landscape of the time sat on the management company's board of administrators: the Baron Edmond de Rothschild,

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<sup>354</sup> See CSSF, CSSF, CEE (Caisse d'Epargne d'Etat) Circulaire N. 6/1964, Les fonds communs de placement

<sup>355</sup> *Annuaire des Sociétés Anonymes du Grand-Duché de Luxembourg*, Banque Internationale a Luxembourg, 1962, p.356). See for Euronsyndicat's fund Patrimonial, Archives du Royaume, Banque Lambert, box 4918, Note pour Monsieur Thierry, fond Patrimonia, « Visite a la Caisse d'Epargne du Luxembourg le 14 mars 1960. Original in French, translation of the author.

<sup>356</sup> CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc. L., Extrait du Memorial (Recueil Spécial) – Luxembourg national business register – N. 17, du 19 mars 1959.

<sup>357</sup> See Delvaux, B. (1961). *Les sociétés d'investissement du type ouvert au Grand-Duché de Luxembourg*. Pasicrisie luxembourgeoise, p. 62.

<sup>358</sup> CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc. L., Extrait du Memorial (Recueil Spécial) – N. 17, du 19 mars 1959.

the Baron Léon Lambert, Enrico Cuccia (chief executive of the Italian Mediobanca) and Henry D. Pierson of Pierson, Heldring & Pierson. The board presidency rotated among its administrators.<sup>359</sup>

The statute of Eurunion, which was published in the *Memorial* business registry, defined the rights of potential investors interested in the newly issued shares – in the same way as for the statutes of Patrimonial and Finance-Union.<sup>360</sup> The management company<sup>361</sup> determined the value of an investor's shares by calculating the value of all assets, subtracting liabilities and management fees, and dividing that by the number of shares in circulation (NAV, net asset value of a fund's share). Certificates of ownership could be bought either at the fund's custodian bank (Caisse d'Epargne de l'Etat (CEE) in Luxembourg for Eurunion and Patrimonial, and Banque Européenne du Luxembourg for Finance-Union<sup>362</sup>) or at the main or branch offices of the banks that were members of Eurosyndicat (or at other agencies indicated in legal statements throughout the years<sup>363</sup>).

Between 1959 and 1964, the three Eurosyndicat funds elicited growing interest among investors as it can be seen in Figure 3.6 a, b, and c. Yet, in the following phase after 1964, their performance in terms of growth of total net financial assets diverged. Eurunion began an irreversible decline – that would bring the fund to its liquidation in 1978, and merging of its assets with Finance-Union<sup>364</sup> – while Patrimonial and Finance-Union, although affected by a negative conjuncture at the international level, at the end of the 1960s (see below), were however either

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<sup>359</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d'émission 1964

<sup>360</sup> ARB, box 5962, Modifications des règlements de gestion des fonds de placement Eurunion, Finance-Union, Patrimonial, 30, April, 1970

<sup>361</sup> The management company, in the case of Eurunion's Sogim, by statute, received a monthly commission of 0.625% of the total assets of Eurunion (CSSF, box 13935 Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L, Prospectus d'émission 1977)

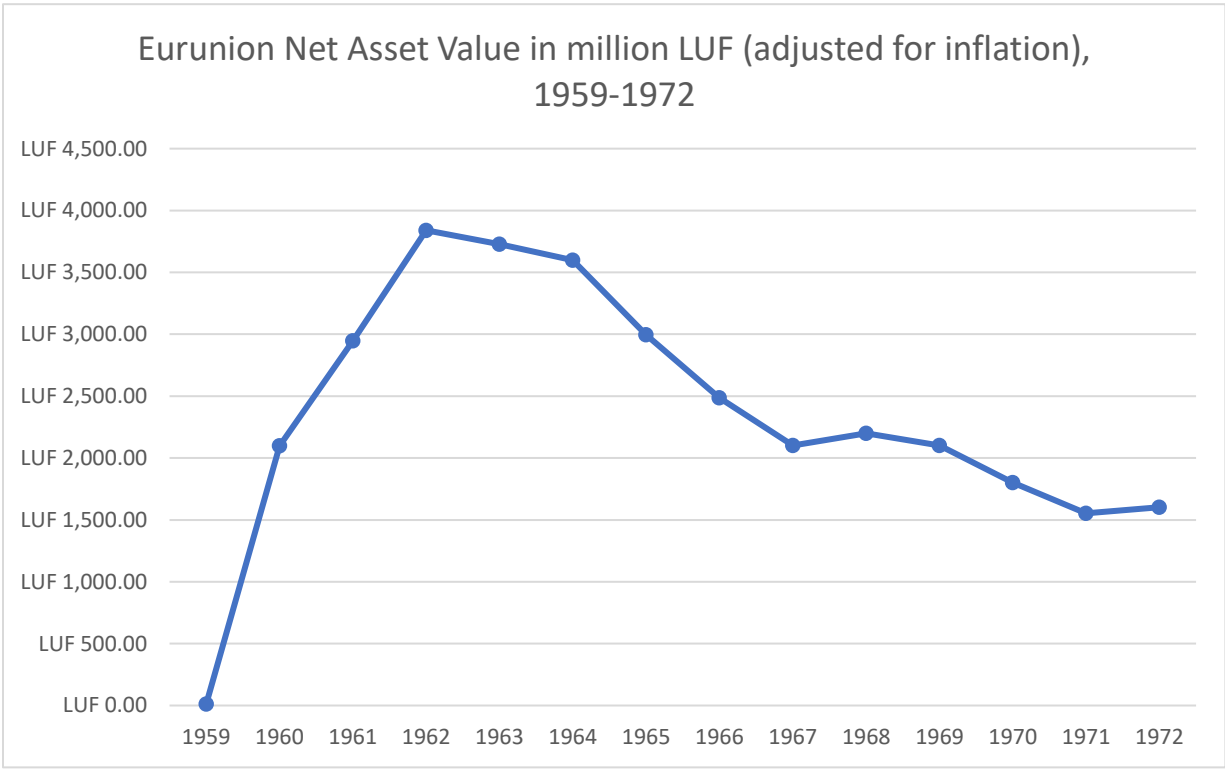
<sup>362</sup> CSSF, CEE (Caisse d'Epargne d'Etat) Circulaire N. 6/1964, Les fonds communs de placement

<sup>363</sup> ARB, Banque Lambert, box 1202, Eurunion, Rapport Annuel au 30 September 1971.

<sup>364</sup> CSSF, box 13935 Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L. See also CSSF, CCB Bulletin trimestral, 1978.

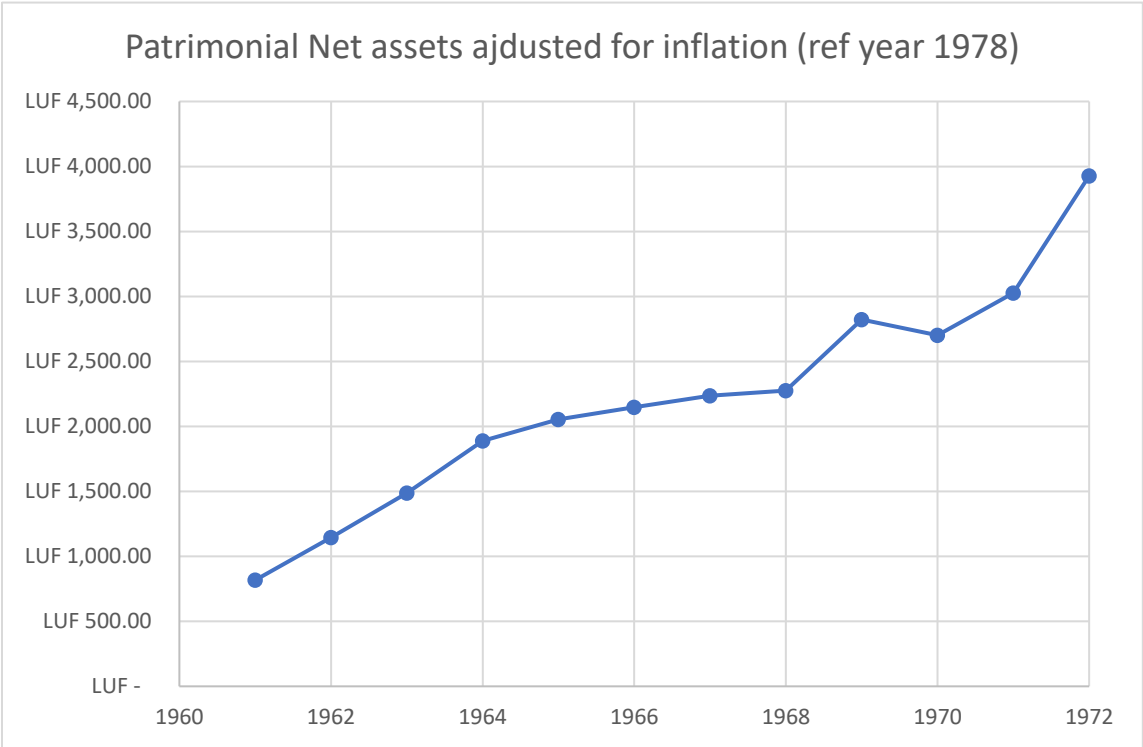
able to maintain somehow stable their assets' size (as in the case of Finance-Union) or even grow (as for Patrimonial).

**Figure 3.6a. Eurunion's total assets, in million LUF adjusted for inflation (reference year 1978), 1959-1972.**



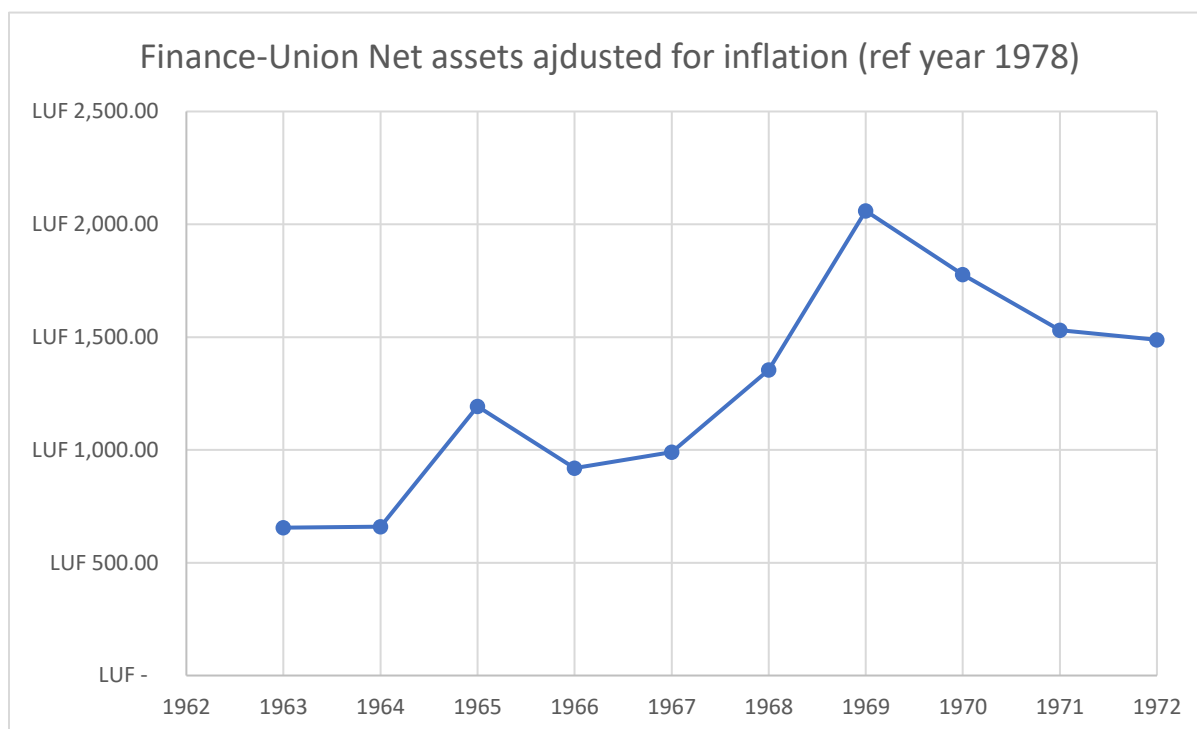
*Note:* Source: CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1972 III Anc.L. and CSSF, box 13935 Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1972 II Anc. L. Calculations of the author

**Figure 3.6b. Patrimonial’s total assets, in million LUF adjusted for inflation (reference year 1978), 1959-1972**



*Note:* Source: ARB, boxes 4923 to 4927 and 1228 to 1231 Banque Lambert, Rapport de gestion and rapport trimestriel du fond Patrimonial (1960-1972). Calculations of the author

**Figure 3.6c. Finance-Union’s total assets, in million LUF adjusted for inflation (reference year 1978), 1959-1972**



*Note:* Source: ARB, boxes 4929, 4930, 4931, 1217, 1215, Banque Lambert, Rapport trimestriel de Finance-Union 1962-1973. Calculations of the author

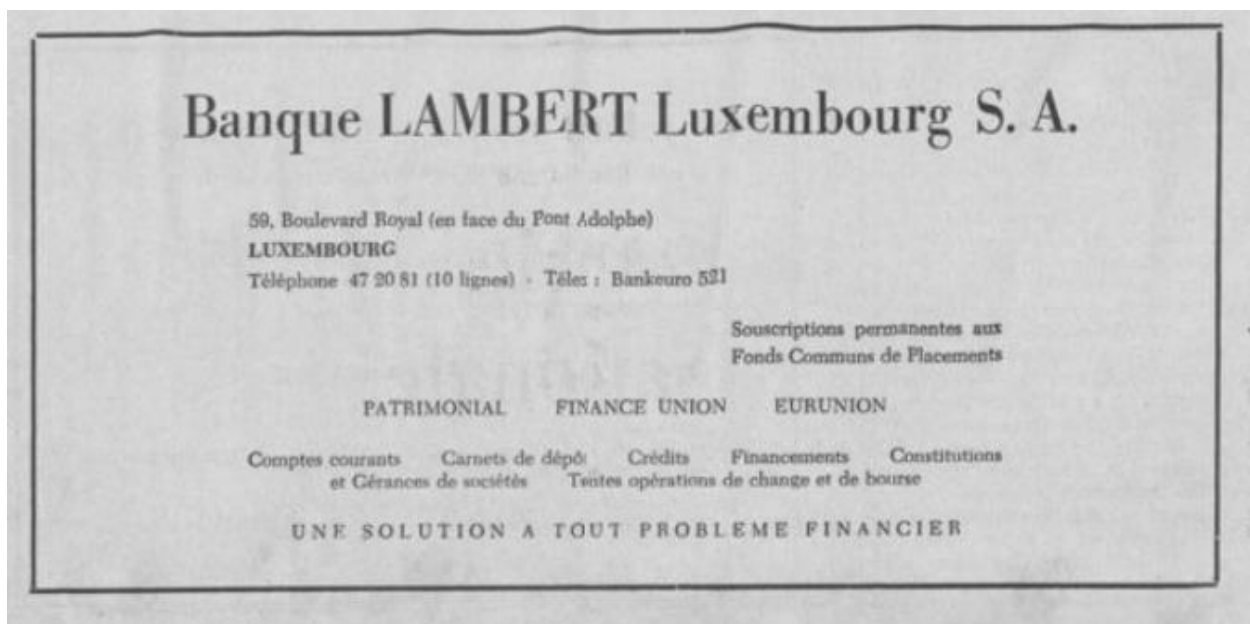
The initial success of the three Eurosyndicat’s funds was due to a variety of contextual factors. Firstly, as EIRB analysts boasted themselves, the simultaneous opening of the European single market to increasing movements of capital (a consequence of the 1957 CEE agreements) played a primary role.<sup>365</sup> Secondly, an effective advertising campaign through pamphlets, distributed in the subsidiaries of the banks adhering to Eurosyndicat and in local newspapers, proved to be enticing

<sup>365</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d’émission 1964.



to retail investors.<sup>366</sup> In Luxembourg, for example, investing in the three Eurosyndact's funds was prospected in Banque Lambert's advertising campaign in the press as a "solution to all financial problems" (see Picture 3.1).

**Picture 3.1. Advertisement of Banque Lambert Luxembourg of its open-end funds Patrimonial Finance Union and Eurunion in d'Lezteburger Land**



*Note: advertisement appeared in d'Lëtzebuurger Land, 27, December, 1968*

Third, the favorable fiscal regime that Luxembourg's authorities had *de facto* granted to all Luxembourg-domiciled open-end funds with the listing of Eurunion, had made, as seen, the Grand Duchy the most competitive hub, from a fiscal point of view, for mutual funds in Europe by the early 1960s.

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<sup>366</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d'émission 1968.

Patrimonial more than doubled its total net assets between 1961 (the year it was established) and 1964, and Finance-Union almost doubled between 1963 and 1965 (see Figure 3.6 b, and c). The performance of the three funds during this phase is in line with the overall growth of the Luxembourgish investment fund sector, described by contemporary observers as “prodigious” and generally consistent for all investment funds incorporated in Luxembourg in this period.<sup>367</sup>

However, in early 1964, financial analysts such as Ernest Muhlen began to raise concerns that the whole Luxembourgish fund sector had reached a plateau (“the progression of the volume of their portfolios has run into some obstacles”<sup>368</sup>) and might even be entering a phase of stasis or decline. Moreover, a “feverish activity” led by speculators (“some dirty organizations”) was boosting the performance of “American” investment funds based in Luxembourg.<sup>369</sup> The reference was to the fund International Investment Trust (IIT), listed in Luxembourg in February 1961<sup>370</sup> by Investors Overseas Services (IOS), a company incorporated in Panama but created and managed from the US by flamboyant manager<sup>371</sup> Bernard Cornfeld.<sup>372</sup> And indeed, shortly thereafter, in the early 1970s, IOS would make international headlines with revelations of the pyramid and Ponzi investment schemes that typified its activity throughout the 1960s.<sup>373</sup> In 1964, though, IOS funds were just beginning an astonishing ascent. In 1960, the total net assets of all IOS investment funds worldwide amounted to 500,000 dollars; in 1964, \$339,004,000; in 1968, \$1,509,167,000, ultimately peaking at the extraordinary sum of 2 billion dollars in 1970.<sup>374</sup> The Luxembourg-based

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<sup>367</sup> "The Eurunion fund has been chosen so to cover the most extensive cycle [since it is the first one listed]. The other funds have essentially followed an analogous curve" (Muhlen, E. (24 January, 1964), "Les fonds de placement au Luxembourg", *d'Lëtzebuenger Land*, 7. Original in French, translation of the author)

<sup>368</sup> Muhlen, E. (January 31, 1964). Les fonds de placement au Luxembourg. *d'Lëtzebuenger Land*, 7. Original in French, translation of the author.

<sup>369</sup> Muhlen, E. (January 17, 1964). Les fonds de placement au Luxembourg. *d'Lëtzebuenger Land*, 3. Original in French, translation of the author.

<sup>370</sup> CSSF, CEE (Caisse d'Epargne d'Etat) Circulaire N. 6/1964, Les fonds communs de placement

<sup>371</sup> <https://www.nytimes.com/1995/03/02/obituaries/bernard-cornfeld-67-dies-led-flamboyant-mutual-fund.html>

<https://www.latimes.com/archives/la-xpm-1995-03-01-mn-37394-story.html>

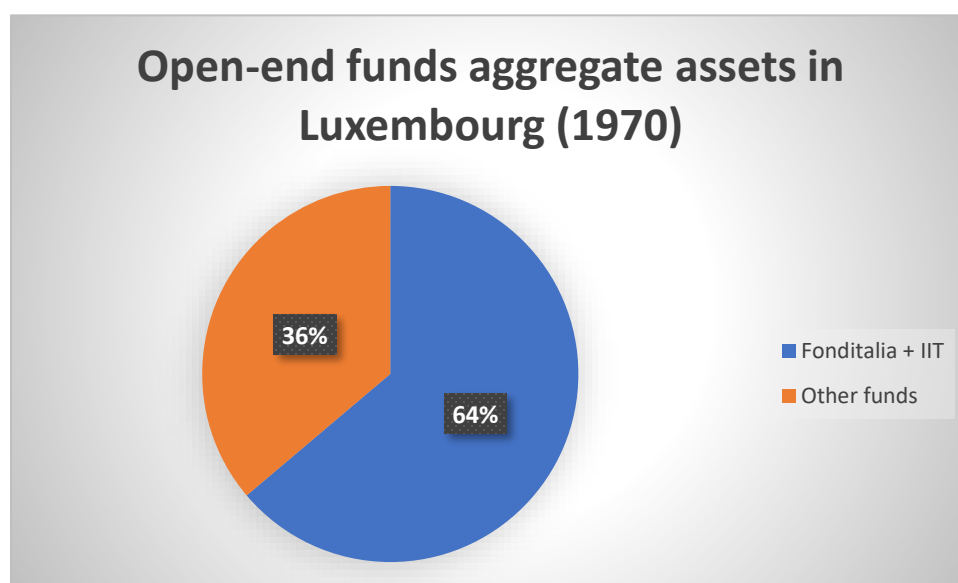
<sup>372</sup> See also Majerus, B. (2020), *art. cit.*

<sup>373</sup> *Ibid.*

<sup>374</sup> Birkholz, M., and Saller, W. (1970). *IOS, Senkrechtstart und Absturz einer Erfolgsidee: die Inside-Story einer Investmentgesellschaft*, Düsseldorf-Vienna, Econ-Verlag, p. 55.

IIT mutual fund was IOS's largest fund<sup>375</sup>, amounting to 700 million dollars in 1970.<sup>376</sup> By then, IIT and Fonditalia (another IOS' fund incorporated in Luxembourg in 1967<sup>377</sup>) accounted for the biggest share of the overall open-end fund market in Luxembourg, as can be seen in Figure 3.7.

**Figure 3.7. Open-end funds aggregate capital assets for Fonditalia, I.I.T. and all the other funds in 1970.**



*Note:* source: Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications, December 1970. Calculations of the author

Between 1964 and 1967, in the context of an “irregular evolution” of the open-end fund industry, the fund IIT had being able to determine a positive signed growth of the aggregate capital stock of

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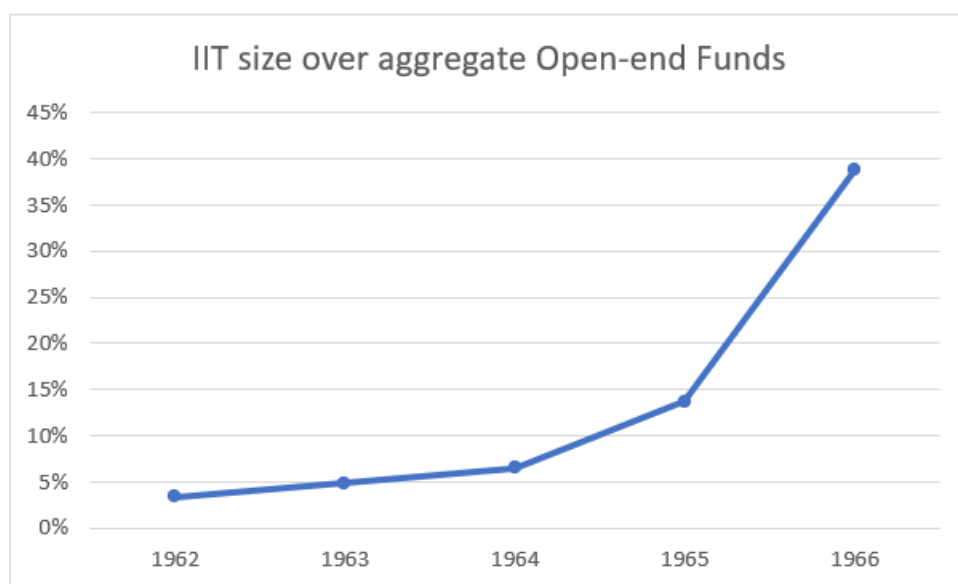
<sup>375</sup> See Raw, C., Hogson, G., and Page, B. (1971). *Do You Sincerely Want to Be Rich? Bernard Cornfeld and IOS: an International Swindle*, London, Andre Deutsch; Majerus, B. (2020), *art. cit.*

<sup>376</sup> Raw, C., Hogson, G., and Page, B. (1971), *op. cit.*, p. 85.

<sup>377</sup> Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications, December 1967.

Luxembourg-domiciled open-end funds with its “stunning increment”, “partially counter-balanced by the regression of most of the other previously incorporated open-end funds”<sup>378</sup> – see also Figure 3.8 and Table 3.1.

**Figure 3.8. I.I.T.’s capital stock compared to aggregate total assets of Luxembourg-domiciled open-end funds (1962-1966)**



*Note:* source: Banque Nationale de Belgique, 1529/9, Departement des Etudes, Service d’information. Les Fonds de placement au grand duche de Luxembourg, 3 april 1967. Calculations of the author

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<sup>378</sup> Banque Nationale de Belgique, 1529/9, Departement des Etudes, Service d’information. Les Fonds de placement au grand duche de Luxembourg, 3 april 1967. Original in French, translation of the author.

**Table 3.1. Progression (%) of Luxembourg-domiciled open-end funds (1963-1966): Number of shares (a); total assets' value per fund (b).**

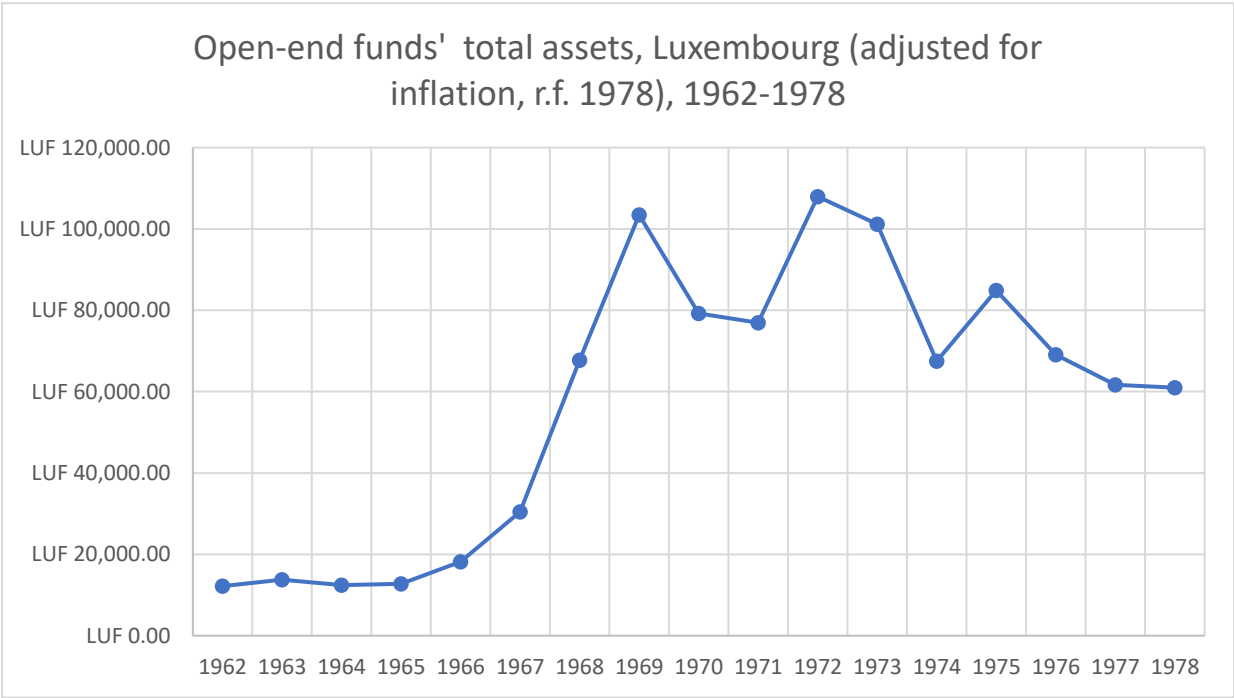
	1963		1964		1965		1966	
	a	b	a	b	a	b	a	b
Americ			+27.1	+43.0	+12.2	+12.7	+68.4	+49.9
Eurinvest	+3	+6.2	+ 0.8	-2.2	-6.7	-11	-1	-12.9
Eurunion	-2.7	-0.5	-10.5	-14.0	-6.7	-14.9	- 4.9	-13.6
Finance-Union	+30.0	+41.8	+ 4.3	- 2.5	+107.7	+97.7	-14.6	-20.5
IIT	+48.2	+64.2	+14.9	+24.9	+58.1	+124.4	+301.1	+313.4
Interitalia	+150.2	+110.3	- 1.3	-30.3	-0.8	+15.5	-2.9	-0.5
Intertec	+46.4	+88.0	- 1.1	-1.6	-0.9	+10.2	+14.6	+9.4
Israel			+19.1	+14.2	+39.4	+29.4	-10.2	-17.2
Patrimonial	+36.9	+41.0	+15.2	+14.0	+8.9	+6.7	+6.8	+3.6
Sogelux	-1.2	+2.7	-17.2	-20.1	-20.4	-12.9	-10.3	-17.5
Valeurop	-1.5	+4.2	-9.4	-10.3	-6.1	-15.3	-3.3	-15.8
Total	+20.6	+16.1	-0.6	-7.0	+17.4	+6.2	+90.3	+46.8

*Note:* source: Banque Nationale de Belgique, 1529/9, Departement des Etudes, Service d'information. Les Fonds de placement au Grand Duché de Luxembourg, 3 April, 1967.

The incorporation of Fonditalia in 1967 and the further expansion of the two IOS funds throughout the late 1960s largely contributed therefore to the overall rapid growth of the open-end fund industry in Luxembourg – see also Figure 3.9. However, in a phase characterised at the

international level by a marked inflationary environment – fears related to monetary uncertainties were always present throughout the 1970s<sup>379</sup> for in Luxembourg, for example, the inflation rate ranged from 4.6 per cent in 1970, to 10.7 per cent in 1975, to 8.1 per cent in 1981<sup>380</sup> – and in a climate where Luxembourg’s fund sector had already been revealed as rather exposed to contagion dynamics originating in US and European<sup>381</sup> financial markets, efficient restructuring of portfolio composition proved to be an important tool so to optimize Luxembourg’s open-end funds performances.

**Figure 3.9. Aggregate capital stock of Luxembourg’s open-end funds (million of LUF), 1962-1978, adjusted for inflation (reference year 1978)**



<sup>379</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d’émission 1964-1977.

<sup>380</sup> <https://statistiques.public.lu/stat>

<sup>381</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d’émission 1964-1977.

*Note:* source: Banque Nationale de Belgique, 1529/9, Departement des Etudes, Service d'information. Les Fonds de placement au grand duche de Luxembourg, 3 april 1967 ; Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications 1967-1978; CSSF Bulletins trimestriels 1977-1978

One of the tools used by fund managers was in the first place, the restructuring of the asset portfolio by means of different geographical diversification strategies. From 1964 onward, for example, Eurunion managers were attributing the bad performance of the fund's portfolio to conjunctural losses in the stock exchanges of European Common Market countries (especially in Italy).<sup>382</sup> Indeed, the securities constituting Eurunion's portfolio were initially only issued – as a bounding statute's clause<sup>383</sup> – by firms located within the nascent European Union. Analysis of the geographical distribution of the assets in Eurunion's portfolio gives a clear picture of this qualitative wealth management choice.<sup>384</sup> As Figure 10 shows, the geographical distribution of portfolio assets varied throughout the life of the fund. After an early phase of strict adherence to the statutory restriction of investment solely to the first six countries of the emerging European Union (Belgium, The Netherlands, Luxembourg, Italy, Germany, and France), joined by Great Britain and Switzerland in the 1970s, the portfolio then expanded into more countries (including Sweden and Finland), in its final years even containing a small number of securities from firms in countries outside the European single market, including Australia. The gradual abandon of the initial geographical bounding clause was explicitly described in fund pamphlets as an attempt to increase the profitability of its shares.<sup>385</sup> The better performances of Finance-Union and

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<sup>382</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d'émission 1964-1977.

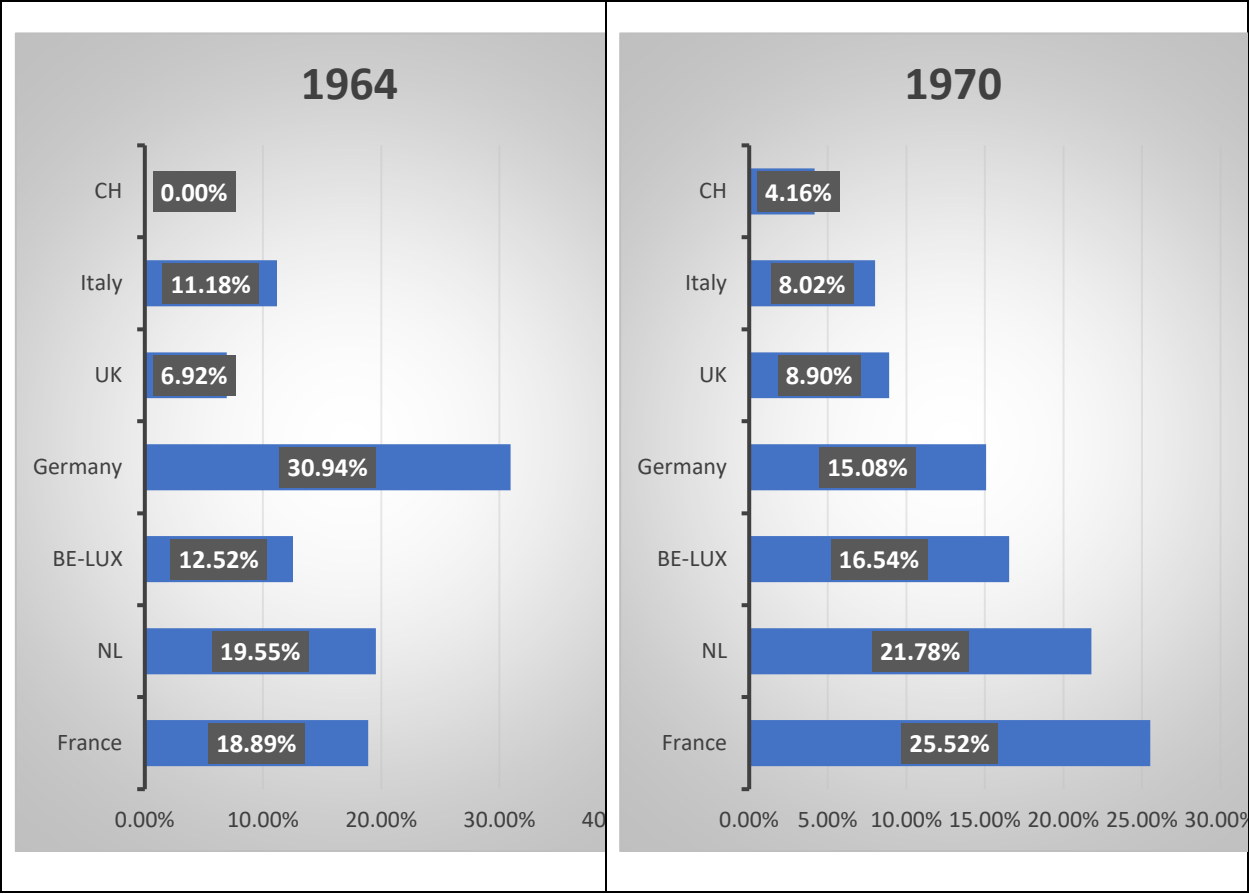
<sup>383</sup> CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc. L., Extrait du Memorial (Recueil Special) – Luxembourg national business register – N. 17, du 19 mars 1959.

<sup>384</sup> A choice expressing “confidence in the future of Europe” ( December 23, 1960). *Chronique de la Bourse et des Changes. Luxemburger Wort*, 11. Original in French, translation of the author.

<sup>385</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., Prospectus d'émission 1964-1977.

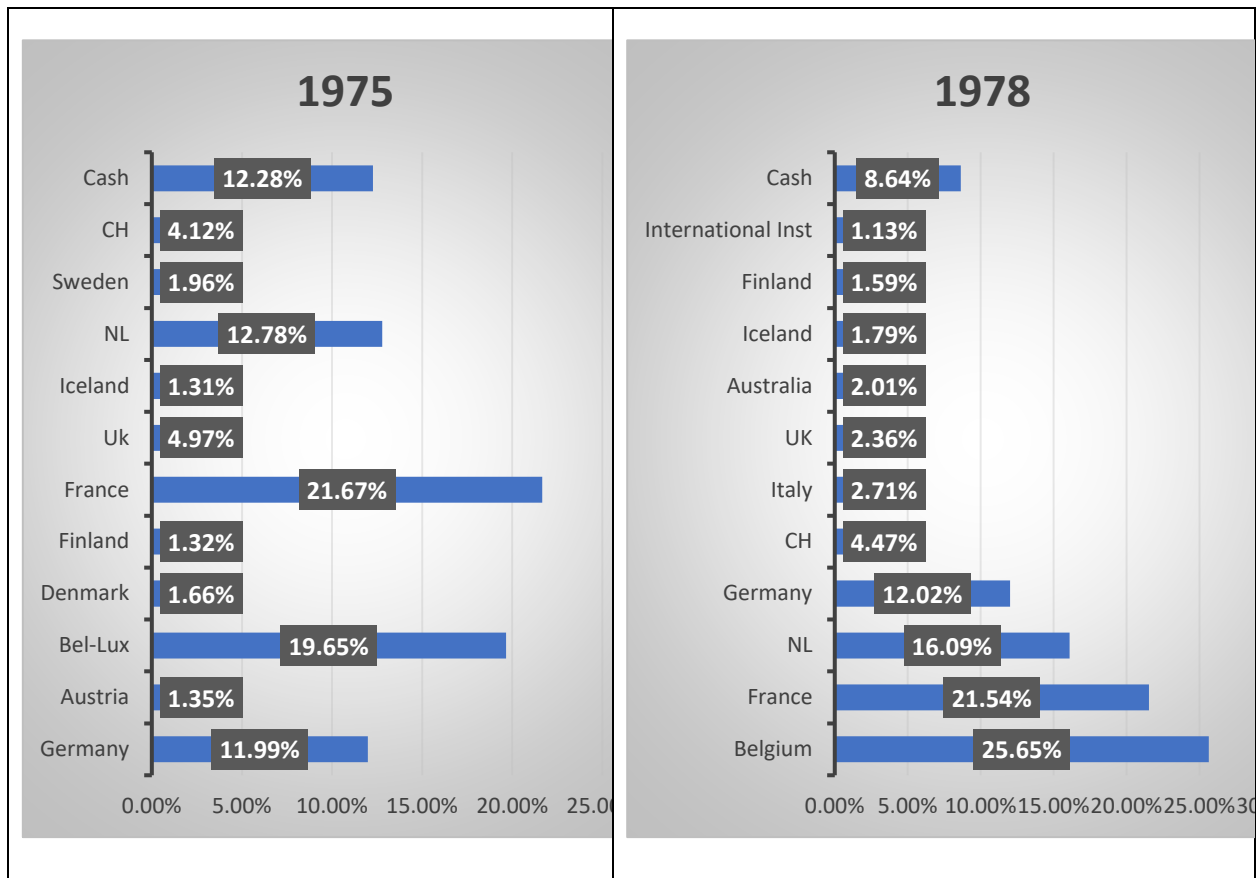
Patrimonial appear indeed to have been ensured by a more geographically diversified portfolio. In 1972, 49 per cent of Finance-Union’s assets were from North America and 37 per cent from Europe, whereas only half of Patrimonial’s portfolio at the time consisted of assets from Europe, the other half from other parts of the world.<sup>386</sup> Figure 3.10 reports the distribution of assets for four reference years: 1964, 1970, 1975, 1978.

**Figure 3.10. Geographical distribution of portfolio assets for the fund Eurunion in 1964 (Jan.), 1970 (Jan.), 1974 (Jan.), and 1978 (Jan.).**



<sup>386</sup> CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc. L., Eurosyndicat reports to CCB, 1974.

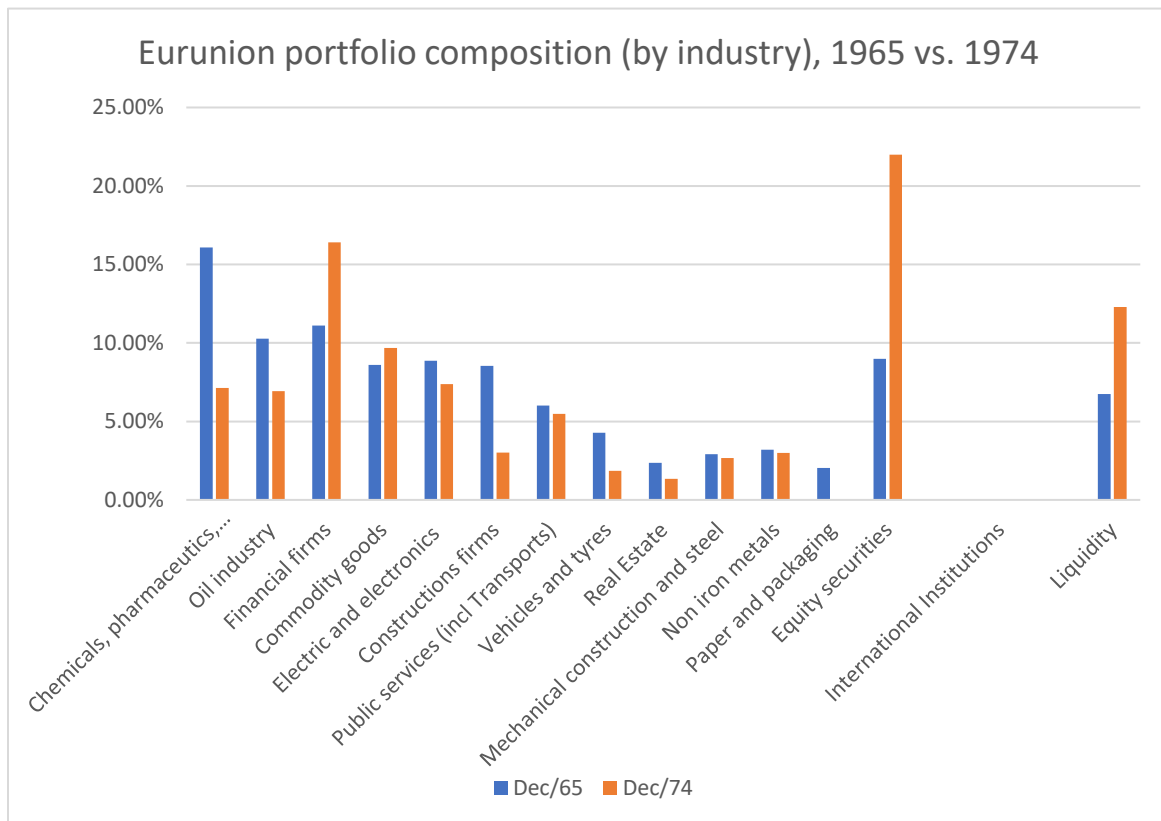




*Note:* Source: CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., *Eurunion Prospectus d'Emission* (December 31, 1963 and December 31, 1969); Eurunion Quarterly Reports – to obtain the Visa of CCB – (Dec. 1974 and Dec. 1977). Calculations of the author.

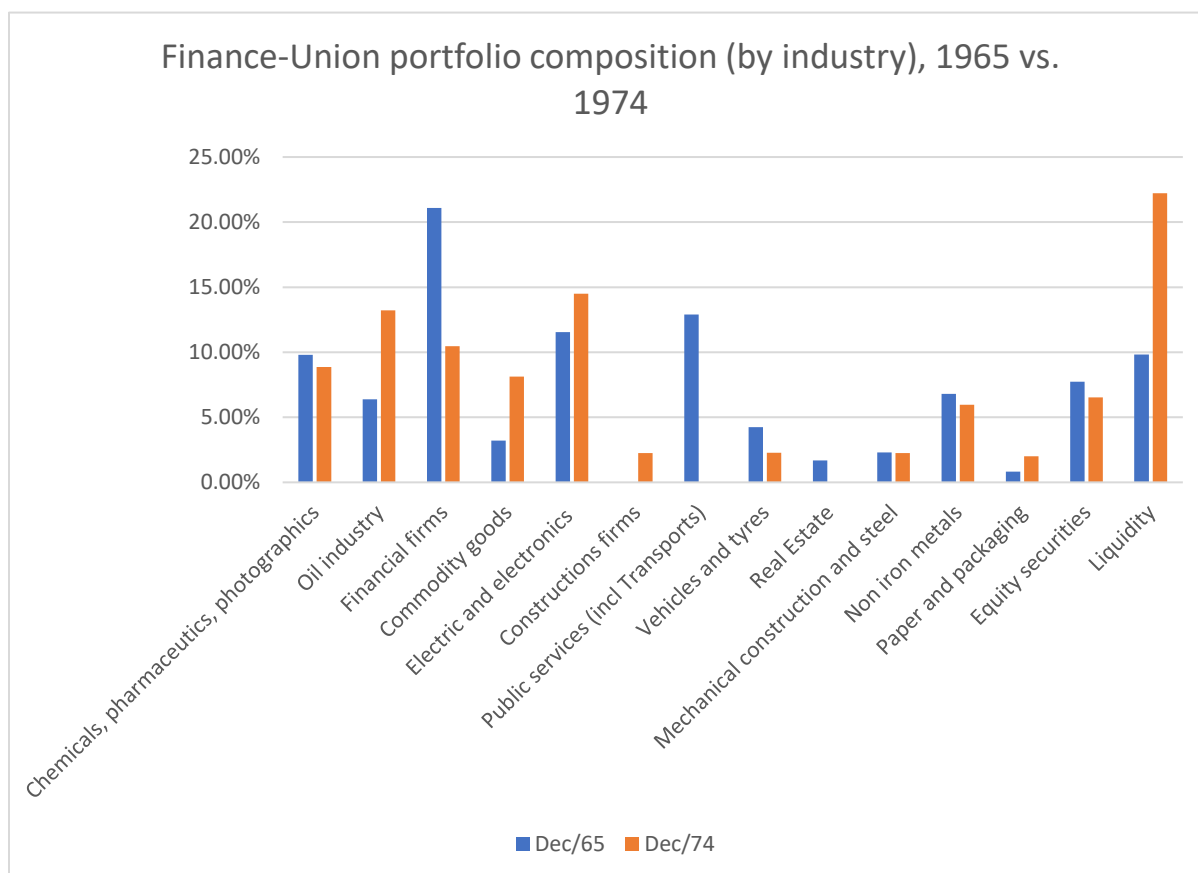
Other strategies used by Eurosyndicat's managers (advised by the EIRB) included sales and purchases of securities based on performance forecasts for the industrial sector involved, also through an evaluation of local implications of policies adopted in the country of residence of the securities.

**Figure 3.11. Composition of portfolio assets for Eurunion by industry in 1965 (Dec.) and 1974 (Dec.)**



*Note:* Source: CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L., *Eurunion Prospectus d'Emission* (December 31, 1963 and December 31, 1969); Eurunion Quarterly Reports – to obtain the Visa of CCB – (Dec. 1974 and Dec. 1977).

**Figure 3.12. Composition of portfolio assets for Finance-Union by industry in 1965 (Dec.) and 1975 (Dec.)**



*Note:* Source: ARB, box 4931, Banque Lambert, Rapport annuel de gestion aux porteurs de parts, Finance-Union, December 1965 ; ARB, box 1213, Banque Lambert, Rapport annuel de gestion aux porteurs de parts, Finance-Union, December 1974

As it can be seen from Figure 3.11 and Figure 3.12, depicting the composition of the portfolios of Eurunion and Finance-Union between 1965 and 1974 by industry, the two funds followed different compositional strategies throughout this period. This is consistent with the above discussed global strategy of Eurosyndicat aimed at pursuing different and sometimes antithetical compositional

strategies for its funds' portfolios, so to increase the overall level of diversification of the financial investment of Eurosyndicat's participants. Once considered that a Luxembourg-domiciled open-end fund – according to an interpretational practice established throughout the years by AED first and then CCB<sup>387</sup> – could not hold more than 5 per cent of shares of a single company or capital stock or shares of another mutual fund,<sup>388</sup> it can be seen, for example, that the investment in the oil industry dropped for Eurunion from ca 10 per cent of 1965 to ca 6 per cent of 1974, concurrently with havoc following the Kippur crisis of 1973. Finance-Union, instead, increased its shares in the oil industry from around 6 per cent of 1965 to more than 13 per cent in 1974. In the same way, in a context where increasing foreign investment in European securities (particularly fixed-income) also had a role in magnifying an inflation-driven climate of financial uncertainty starting in the early 1960s – in a Eurunion prospectus from 1963, EIRB analysts attributed a loss of profitability in the fund's German securities to the Bundesbank's recent introduction of a 25 per cent tax on the interest of fixed-income securities for non-residents<sup>389</sup> – also the investment in financial firms' assets was antithetical between the two funds. While Eurunion increased its share in this industry from ca 10 per cent to more than 15 per cent – together with a sharp increase in the amount of equity securities, whose portfolio's share went from ca 9 per cent to more than 20 per cent –, Finance-Union reduced it from more than 20 per cent to ca 10 per cent.

#### *3.4. Closed-end funds with a buyout company and state of the industry at the beginning of the 1970s*

Closed-end funds in Luxembourg, meanwhile, were following a different path of development. As seen above, investment trusts had been incorporated in the Grand Duchy already from the 1930s. Also due on the one hand, to the above mentioned post-WWII crisis of holding companies – despite the recrudescence of investment in the holding sector in 1950s, with Luxembourg-domiciled holding companies still able to attract investors for example from neighboring Belgium – and on

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<sup>387</sup> Israel, E. (1970), *art. cit.*, p. 195.

<sup>388</sup> *Ibid.*

<sup>389</sup> CSSF, box 13934, Fonds Liquidé Eurunion, 1966-1978 III Anc. L., Prspectrum d'émission 1963.

the other, to the presence of a growing closed-end fund sector in countries such as Switzerland and France<sup>390</sup> (as seen in chapter 3.1), the number of investment funds with the characteristics of a closed-end fund (*société d'investissement*) listed in Luxembourg's Business Register as of 1964<sup>391</sup> was of 4 units: Fonds Deltec pour l'Amérique Latine, with Banque Generale du Luxembourg (BGL) as custodian bank, incorporated in 1961 with an initial capital of 1.5 million dollars and listed as a holding company<sup>392</sup>; COMMET (Commonwealth and European Investment Trust), Selected Risk Investment, and Investment Trust for Israel, incorporated in Luxembourg respectively in 1961, 1962, and in 1963, and all having BIL as custodian bank.

In the following years, until 1967, while Luxembourg-domiciled open-end funds became able to attract capital flows from foreign (non-resident in Luxembourg) fund managers and investors interested in Grand Duchy's competitive fiscal environment – so, as seen, to pursue tax neutrality-oriented strategies for the minimization of fiscal costs –, the closed-end sector stayed instead rather static compared to the open-end one (probably due to the specific needs of the investors in this first phase<sup>393</sup>). By 1967, the number of closed-end funds listed in Luxembourg had reached 9 units, with an aggregate capital stock of 6.5 billion LUF. The number of listed open-end funds, in the same year, was instead of 16, with an aggregate capital stock of 16.2 billion LUF,<sup>394</sup> despite being the outcome of a more recent innovation of the interpretative framework of H29 under Luxembourgish laws and regulations.

However, while the open-end fund industry was exponentially growing, largely driven by the two IOS mutual funds IIT and Fonditalia (see Figure 9), in 1968, Luxembourg's financial surveillance authorities started to accept also the listing of closed-end funds connected to a buyout firm (also known as repurchasing companies, or, in French, "*société de rachat*").<sup>395</sup> According to interpretations of existing Luxembourg law at the time (so within a juridical framework going back

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<sup>390</sup> Even though, as in the analysis of André Elvinger to Moyses et al., this country was not "traditionally an exporter of this product" (Moyes et al. (2014), *op. cit.*, p. 115). In other words, France closed-end funds were traditionally mainly addressed to its own domestic market.

<sup>391</sup> See CSSF, CEE (Caisse d'Epargne d'Etat) Circulaire N. 6/1964, Les fonds communs de placement.

<sup>392</sup> BGL Archive, Rapport de Gestion, December 1961.

<sup>393</sup> Claude Kremer, Interview with the author, January 11, 2023.

<sup>394</sup> CSSF, Bulletin Trimestriel 77/1, p.17.

<sup>395</sup> CCB, circulaire n. VM/15 du 28 janvier 1969.

to the law on “commercial companies” of 1915), the mother investment company could in principle re-purchase its own shares through a “free reserve account”, whose stock had to be created with net earnings or premiums, and not through its liability-side capital or legal reserves. Yet, this practice would potentially create “confusion” between the securities of the company’s portfolio (so the fund’s portfolio) and the repurchased shares of the investment company itself, when this was connected to a closed-end fund.<sup>396</sup> This can be seen as the main rationale behind the transferring of this task to a repurchasing company, sometimes paired with a further subsidiary, the “advisory company”, that together with the investment company and the buyout company was then considered as a “collective investment entity” (however, as for open-end funds, not managing more than one fund with its connected portfolio), and benefiting from the conditions granted to holding companies under the H29 regime.<sup>397</sup> It can be eventually argued that closed-end funds connected with a buyout company were *de facto* essentially operating as open-end funds.<sup>398</sup> On the contrary of open-end funds, though, the tax regime of Luxembourg-domiciled closed-end funds was still fully coincident with that of a “pure” holding company. Therefore, besides the two *una tantum* registration and “stamp duty” capital stock taxes,<sup>399</sup> those investment companies were also subject to the full annual tax (the *taxe d’abonnement*) of 0.16 per cent, rather than the lump-sum tax of 0.06 per cent granted to open-end funds (in accordance with the above analysed interpretational framework of H29 initially proposed by Bernard Delvaux and then, with the

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<sup>396</sup> Israel, E. (1970), *art. cit.*, p. 196.

<sup>397</sup> *Ibid.* 197.

<sup>398</sup> See e.g., Biel, A. & Stuyck, C. (1978). *Les fonds d’investissement en droit luxembourgeois*. Luxembourg: Institut universitaire international ; Trausch, G. & Vreese, M. de (1997), *op. cit.*, pp. 56-57 ; Bechet, Y. (1971), *op. cit.*, pp. 117-119. See also in this regard, the description of the current situation of the fund typologies in Luxembourg that can be found in the “Projet d’arrêté grand-ducal of 1972”: “Luxembourg legislation has made it possible to establish two types of investment funds, namely the undivided co-ownership fund, which is qualified as a FCP, and the corporate type fund, known as société d’investissement. In each of these types, the funds may be open or closed depending on whether or not their operation involves the issue of their shares on a continuous basis or in short instalments, generally without the exercise of a preferential right, and/or the possibility for unit-holders to redeem the units held, at the expense - directly or indirectly - of the fund assets. Thus, an investment company operating as an economic unit with a redemption company is to be regarded as an open-ended fund.” *Journal Officiel du Grand-Duché du Luxembourg, Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissement, N.1652, 18.12.72*. Original in French, translation of the author.

<sup>399</sup> *Ibid.*

approval of the listing of Eurunion, applied to all open-end funds listed in Luxembourg). However, it should be also considered that the management company of an open-end fund was precluded first, from taking up any type of loans; second, could not buy equities on margin and therefore having its capital being used as collateral; third, was not entitled to issue bonds or debentures but only registered shares to new investors.<sup>400</sup> This series of limitations was instead not in place for investment companies (that had juridical personality, on the contrary of the undivided portfolio of an open-end fund) managing the portfolio of a closed-end fund.

A closed-end fund with a buyout firm, therefore, could somehow sum up some of the advantages of the two different leveraging procedures of open-end and closed-end funds.

The first financial intermediary in Luxembourg to foresee the market potential of this hybrid construct was the law firm “Elvinger, Elvinger, and Hoss”.<sup>401</sup> There is large consensus among secondary sources<sup>402</sup> and personal accounts<sup>403</sup> of financial operators of the *place financière* in acknowledging the role of the business lawyer André Elvinger as the main architect of this further interpretational extension of the H29 fiscal regime. After having gained “some international experience”<sup>404</sup> with the first Japanese open-end funds incorporated in Luxembourg<sup>405</sup> (“[...]

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<sup>400</sup> See Israel, E. (1970), *art. cit.*, p. 194.

<sup>401</sup> The firm was in this phase managed by André Elvinger and Jean Hoss, but the firm had been founded by Paul Elvinger that at the moment had started a political career but whose name was still in the denomination of the law firm (see e.g., CSSF, box 9816, letter of Elvinger, Elvinger, and Hoss firm to Commissariat au Contrôle des Banques c/o Monsieur Schaus, 20 December, 1974)

<sup>402</sup> See e.g., Moysse et al. (2014), *op. cit.*; see also Sorlut, P. (May 6, 2022). L’adieu du patriarcat. *d’Lëtzebuurger Land*. Retrieved online on February 17, 2023, from <https://www.land.lu/page/article/200/339200/DEU/index.html>

<sup>403</sup> See Jeanne Chèvremont, Interview with the author, November 23, 2022; Claude Kremer, Interview with the author, January 11, 2023.

<sup>404</sup> Moysse et al. (2014), *op. cit.*, p. 114. The law firm Elvinger, Elvinger, and Hoss, was for example involved in the incorporation in Luxembourg of the Japanese funds Gefinor Daiwa Japan Fund, and Japan Pacific Fund (see CSSF, box 9816, letter of Elvinger, Elvinger, and Hoss firm to Commissariat au Contrôle des Banques to Monsieur Schaus, December 20, 1974)

<sup>405</sup> “[...] What mattered to them was that, for tax reasons, this instrument was without legal personality, which was the case of mutual funds. I remember meeting Japanese lawyers who had travelled a long way and I had to tell them what Bernard Delvaux had written about the perpetuity of hedges and dividing walls; a story that was not very easy to explain. I wrote a long report to convince the Japanese that this type of institution had a real legal basis [in Luxembourg]” (Ibid., Interview to André Elvinger).

connected to the big financial institution Nomura, Daiwa, Nikko”<sup>406</sup>), André Elvinger applied his fiscal engineering intuitions in the context of the incorporation in Luxembourg of the USTIF, United States Trans-Investment Fund. In 1966, the “prestigious firm” United States Trust Company of New York contacted Elvinger and Hoss law firm with “[...] their lawyer who visited me one day and said that our mutual funds were not what he wanted – also so to avoid being somehow compared to the [in]famous Bernie Cornfeld's mutual funds. The company wanted to invest mainly in American securities, but they were afraid that the American tax authorities would tax these assets. To avoid this difficulty, the fund had to be set up [in Luxembourg] as a legal entity, i.e. as a company. My American colleague therefore proposed to create a fund in the form of a company for his client. There was still one major difficulty: the prohibition on repurchasing their own shares. [...] We thought that we could solve this problem by creating a company with little capital but whose contributions were made in the form of a share premium: we created a company with a capital per share of 1 and a share premium of 9 or even 99. In fact, under the legislation in force, the free reserves were always distributable, and therefore redeemable, unlike the capital and the legal reserve which could not be touched. The question was whether such a structure between capital and reserves could not be considered as an abuse of rights. The shares of this fund should of course be listed on the stock exchange. We submitted then this idea to the then bank supervisor Albert Dondelinger, who approved it”<sup>407</sup>.

Once in 1968 the then Head Commissioner of CCB Albert Dondelinger gave therefore the *nihil obstat* to the incorporation of this type of funds, their rate of growth increased rapidly. In Figure 3.13 and Figure 3.14, I report respectively the comparative progression of the number and total assets for closed-end and open-end funds between 1967 and 1974. The quick acceleration of both indicators for closed-end funds is in particular evident between 1967 and 1969, when they largely became the most present category of investment funds in Luxembourg. However, throughout the whole time period, the aggregate assets of open-end funds were always larger than those of closed-end funds (even after the de-listing of IOS' I.I.T.).

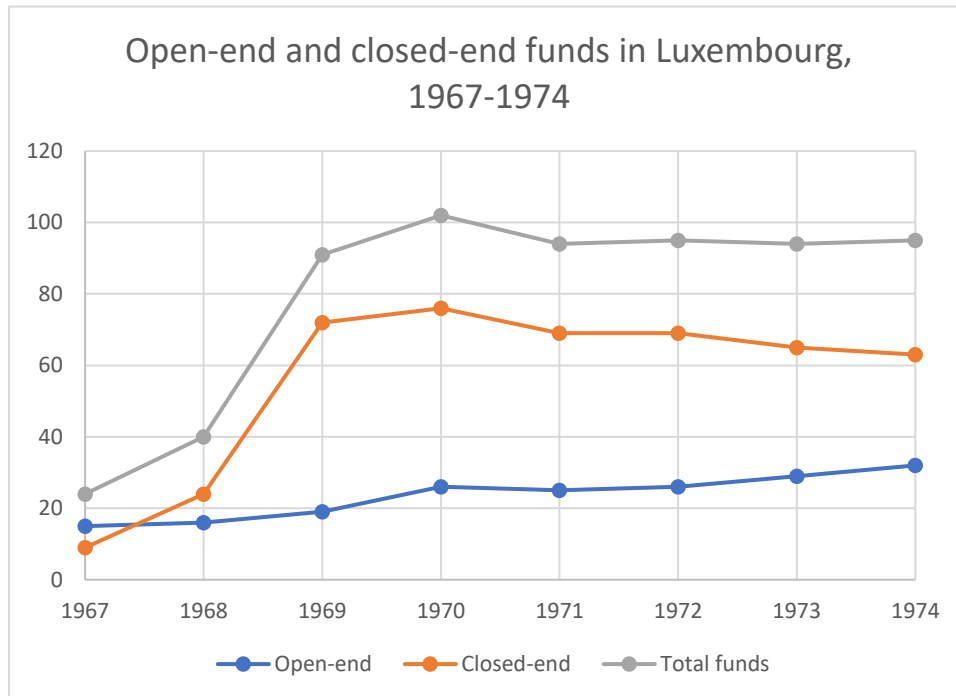
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<sup>406</sup> Ibid., p. 115.

<sup>407</sup> Ibid., p. 116.

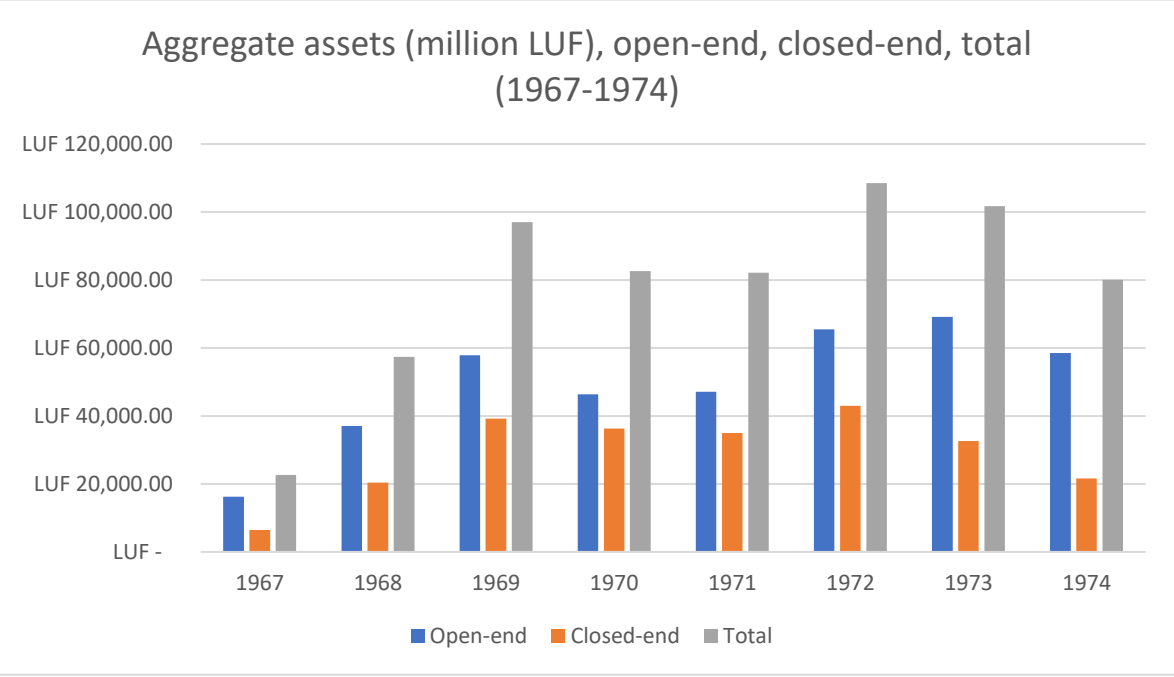


**Figure 3.13. Number of open-end funds and closed-end funds incorporated in Luxembourg, 1967-1974.**



*Note:* source: Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications 1967-1974, CSSF, Bulletin Trimestriel, 1977/1, p. 17

**Figure 3.14. Total net aggregate asset for investment funds (million LUF), open-end funds, closed-end funds, total investment funds (1967-1974)**



*Note:* source: Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications 1967-1974, CSSF, Bulletin Trimestriel, 1977/1, p. 17

## 4. Luxembourg's fund industry in the 1970s: IOS financial scandal and regulations to “change nothing”

*“At last, a muzzle will be put on the rapacity of the Mutual Funds and our modest savers will be protected against crunchers of an unusual and insolent boldness. Finally, this capitalism, which claims to be fallaciously popular when it has the skin of a pachyderm and the face of a shark, will find in our country clear-sighted forces determined to block its path”.*<sup>408</sup>

From an anonymous letter to Luxembourg's Ministry of Finances (15 January 1970)

Between 1971 to 1973, the combined effect of the end of Bretton Woods' monetary agreements together with the outbreak of the post-Kippur-war oil crisis, produced an “earthquake”<sup>409</sup> that shook the very foundations of the financial capitalism of the time. In these years, the “Golden Age” of capitalism<sup>410</sup> started in the aftermath of World War II with the reconstruction, enhanced by the high rates of employment in Western countries – that were also due to the pursuing at the government level of Keynesian economic policies in the twenty years after the war<sup>411</sup> – and characterised by a rapid process of internationalization of financial markets<sup>412</sup> (see also chapter 1), came to an end. Moreover, from 1973, Western commercial banks, while facing a “gloomy” recession with high inflation rates in their home countries, were at the same time “flooded” with oil-related capitals from the OPEC countries. In this context, these banks

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<sup>408</sup> CSSF, box 9816, anonymous letter to the Ministry of Finance, 15 January, 1970. Original in French, translation of the author.

<sup>409</sup> Altamura, C. E. (2015). A New Dawn for European Banking: The Euromarket, the Oil Crisis and the Rise of International Banking. *Zeitschrift für Unternehmensgeschichte*, 60 (1), 29–51.

<sup>410</sup> Marglin, S. A. and Schor, J. B. (1992), *op. cit.*

<sup>411</sup> *Ibid.*

<sup>412</sup> See e.g., Cassis, Y, (2006), *op. cit.*; Eichengreen, B. (2019). *Globalizing Capital: A History of the International Monetary System - Third Edition* /. [Online]. Princeton, NJ: Princeton University Press.

– also after pressure of international organizations such as the IMF<sup>413</sup> – increased their interactions with the Euromarkets, so to address OPEC’s capital flows to deficit countries (in particular, low-income countries in South America).<sup>414</sup>

The last phase of the Golden Age of capitalism, just before the outbreak of the oil crisis of 1973 and the economic depression of 1973-1975, is largely coincident with the phase of the fund industry in Luxembourg, lasting from 1959 to 1972, which I above defined “age of self-control”. Investment funds (both open-end and closed-end) had been growing exponentially in the Grand Duchy in terms of overall number of funds and aggregate fund’s capital stock from 1959, with the first listing in the National Business Register of a mutual fund (Eurosyndicat’s Eurunion) that set the standard for subsequent incorporations of open-end funds in Luxembourg. Afterwards, the growth was mainly related to the wave of incorporations of closed-end funds with a buyout firm from 1966, the listing of Fonditalia in 1967, and the bubble expansion of IOS’ I.I.T. fund. As seen, declining returns had been characterizing the performance of many open-end funds incorporated in Luxembourg, already from the second half of the 1960s – in particular concurrently with a negative financial cycle starting with the “collapse” of commodity prices in New York’s Stock Exchange between 1969 and 1970.<sup>415</sup> In the early 1970s, Luxembourg’s fund industry – that had been characterised as seen by a high degree of *laissez faire* from the part of funds’ managers as well as in the formulation of the regulatory practices to which funds were subject – found eventually itself as rather vulnerable to investors’ “animal spirits”. Luxembourg-domiciled funds’ investors (in particular retail investors) were highly exposed to opaque administration practices of funds’ managers. In this regard, the 1972 crack of Bernard Cornfeld’s IOS with the de-listing of the IIT mutual fund would have become the archetype of the financial scandal involving the mismanagement of investment funds in Luxembourg. Some of these small investors who had been investing in the supposedly “people’s capitalism”<sup>416</sup> personified by Bernard Cornfeld and his organization became suddenly aware of the high degree of risk of this type of investment. The

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<sup>413</sup> See Altamura, C. E. (2015), *art. cit.* p. 30.

<sup>414</sup> *Ibid.*

<sup>415</sup> “The industry of investment funds faced, in particular between the years 1969 and 1970, a deep crisis triggered by the collapse of commodity prices on Wall Street” (N° 1652 Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissements. Original in French, translation from the author.)

<sup>416</sup> See Raw C., Hogson, G., Page, B. (1971), *op. cit.*; Majerus, B. (2020), *art. cit.* p. 75.

sentiment of distrust and despair – the drafters of the regulation on funds of 1972 were going to describe it as “disbelief”<sup>417</sup> – for these small investors is well depicted in an anonymous letter that was sent to Luxembourg’s Ministry of Finances in January 1970. While to that date the IOS’ scandal had yet to heavily burst in the Grand Duchy, the unknown author of the letter stands as a spokesman for the small retail investors<sup>418</sup> that were going to be soon scammed (in his/her forecast) by those fund managers thriving in the light-surveillance environment characterizing the fund industry in Luxembourg in these years:

“[...] It is all the same aberrant that workers, employees, small traders and others, who one evening had the weakness of believing in 'miraculous' shares which were to double and quadruple in 5 and 10 years, see their savings severely undermined after having invested them for 3-4 and 5 years and sometimes even more, whereas these same savings had contributed to creating macro-shareholders in the immediate future. Often, all their lives, these people have had to toil painfully to amass a nest egg that was supposed to ease their old age or serve other legitimate and honourable purposes, but now some unknown adventurer has come along, taken this money, carved out the lion's share for himself, while with the rest they play a thousand speculative games. It is horrible!”<sup>419</sup>

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<sup>417</sup> “It may also suffice in practical terms, as long as the savings community remembers the bitter experiences of the recent past. But it will always be difficult to protect the public against the temptation of high expectations. It is astonishing to see the natural distrust of the saver turn into credulity as soon as he is promised substantial profits, which are not always easy to obtain. It is astonishing to see the natural mistrust of the saver turn into credulity as soon as he is promised substantial profits, even if these are ultimately based on the simplistic trick of the "snowball" trick. And even then, most of the sales actually made in the country were done door-to-door” (N° 1652 Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissements. Original in French, translation from the author).

<sup>418</sup> As mentioned in the proposal of 1976 of the directive of the European Council on the harmonisation of the European market of investment funds, “[...] it should also be noted that the nature of these financial entities and the technique they use to market their shares – sales by way of public offerings, often aimed at small and inexperienced savers - implies that special attention should be paid to the protection of these investors” (European Council Archives, R-1095/76, Proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, Exposé des motifs, p. 1. Original in French, translation of the author).

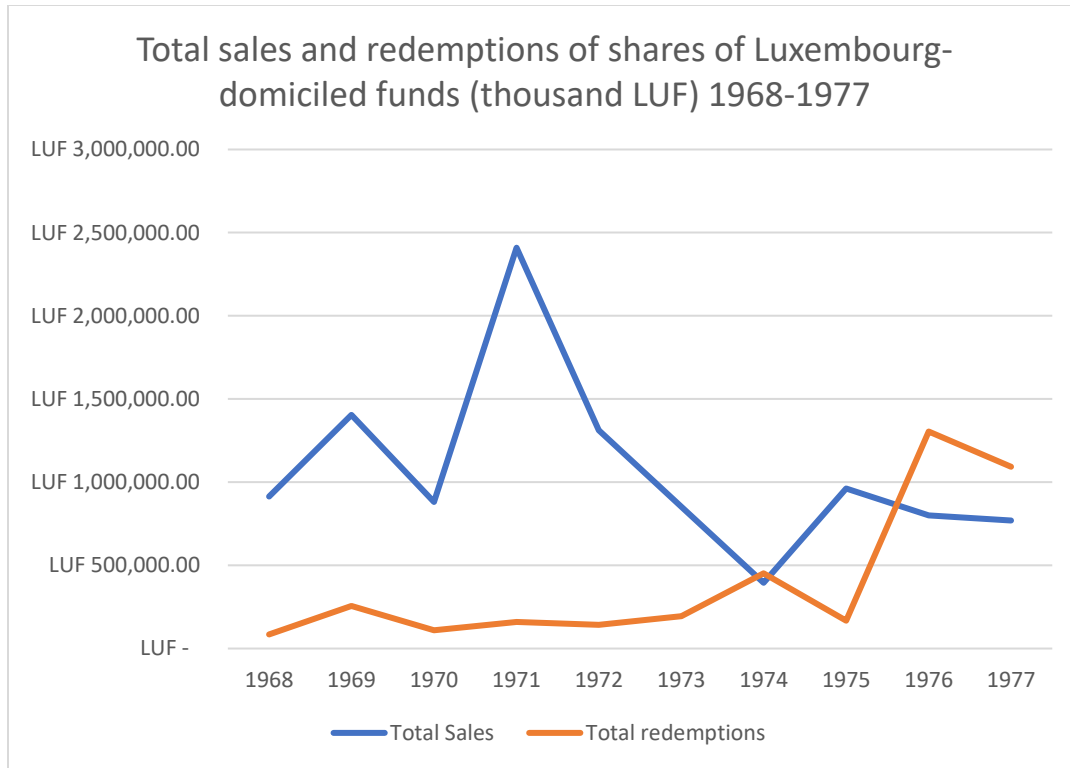
<sup>419</sup> CSSF, box 9816, anonymous letter to the Ministry of Finance, 15 January, 1970. Original in French, translation of the author.

Moreover, the IOS scandal played a role in further undermining a non-yet-consolidated reputation of solidity of the legislative framework (the code of capital) on investment funds – both for open-ended and closed-end with a buyout firm. The outbreak of the IOS scandal had indeed fuelled concerns in the general public<sup>420</sup> that, as it is visible in Figure 4.1, resulted first, in a rapid decreasing of the sales (so the buys of new shares by the fund’s investors) of shares of Luxembourg-domiciled funds from 1971 on, to reach then their lowest peak in this phase in 1974. Second, in a progressive increment of redemptions (so the request of refund from the shares’ owners), that overcome sales first in 1974 and then in 1976-1977.

**Figure 4.1. Total sales and redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of aggregate investors (resident and non-residents in Luxembourg), 1968-1977**

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<sup>420</sup> The lower interest among local and foreign investors in Luxembourg-based funds at the time was attributable to “the fact that an actual legal status was still missing and to the lack of trust of the general public in this type of financial product after the IOS affair” (Picard, J.J. (June 4, 1999). *Securité et sérieux, les OPC luxembourgeois se sont développés avec le renforcement de la protection de l’épargnant. d’Lëtzebuenger Land*, p. 26. Original in French, translation of the author).



*Note:* Source: CSSF, box 9816, Ventes et rachats de fonds luxembourgeois. Sales and redemptions of shares of Luxembourg-domiciled funds operated by financial intermediators resident in Luxembourg. Calculations of the author.

Figure 4.2 and 4.3 – that are based on CCB’s statistics<sup>421</sup> on sales and redemptions of shares of Luxembourg-domiciled funds handled by Luxembourg-resident financial intermediaries of any type<sup>422</sup> (for example the funds’ custodian banks) – show some similarities for the trends of sales

<sup>421</sup> See CSSF, box 9816, Instruction concernant l’établissement et la presentation des renseignements statistiques relatifs aux résultats des ventes et des rachats de titres de fonds communs d’investissement et des sociétés d’investissement au Grand-Duché de Luxembourg. For a description of this source and of its limits see chapter 1.

<sup>422</sup> See next chapter on the analysis of the capital flows for sales and redemptions of fund’s shares operating through Luxembourg’s based financial intermediaries.

and redemptions of shares of Luxembourg's funds from the two macro-categories of investors, resident and non-resident in Luxembourg. For example, the lowest point in terms of sales of new shares to both investors resident and non-resident in Luxembourg was in 1974 (the year after the court's order for the initiation of the liquidation of the I.I.T. fund<sup>423</sup>). Afterwards, between 1974 and 1977, both types of investors contributed on average, from the side of the funds' management companies to greater capital out-flows – so the refunds from the fund's management companies (through the financial intermediaries operating in Luxembourg) to investors – rather than capital in-flows, obtained from the sales of new shares of their funds.

At the same time, Figures 4.2 and 4.3 show some differences in the investment behavior of the two groups. In particular, for resident investors it is possible to see in Figure 4.2 a peak of sales of new fund's shares around 1969, followed by a sudden drop in 1970. For non-resident investors, instead, the peak year was in 1971, so two years after that of resident investors – and one year before the public warning of London Stock Exchange that, seen the opaqueness of IOS schemes in Luxembourg “[...] would certainly feel compelled to prohibit Members of this Exchange from dealing in the units of I.I.T.”<sup>424</sup> While detailed interpretations of these figures are hindered by the lack of individual data on fund's investors or on their aggregate characteristics (see chapter 1), this “delay” in the downturn for non-resident figures could be interpreted as an outperformance of local investors over foreign ones, in terms of ability to forecast the soon to come mutual funds' bubble burst – after all, as seen above, the anonymous author of the letter who warned the Ministry of Finances against the speculations of mutual funds' managers in Luxembourg wrote in January 1970 – in line with the findings in the literature on the presence of forms of asymmetrical information among the two groups of investors (local vs. foreign) in the short run as argued among the others by Shukla and van Inwegen for the US mutual fund's market (on the side of the funds'

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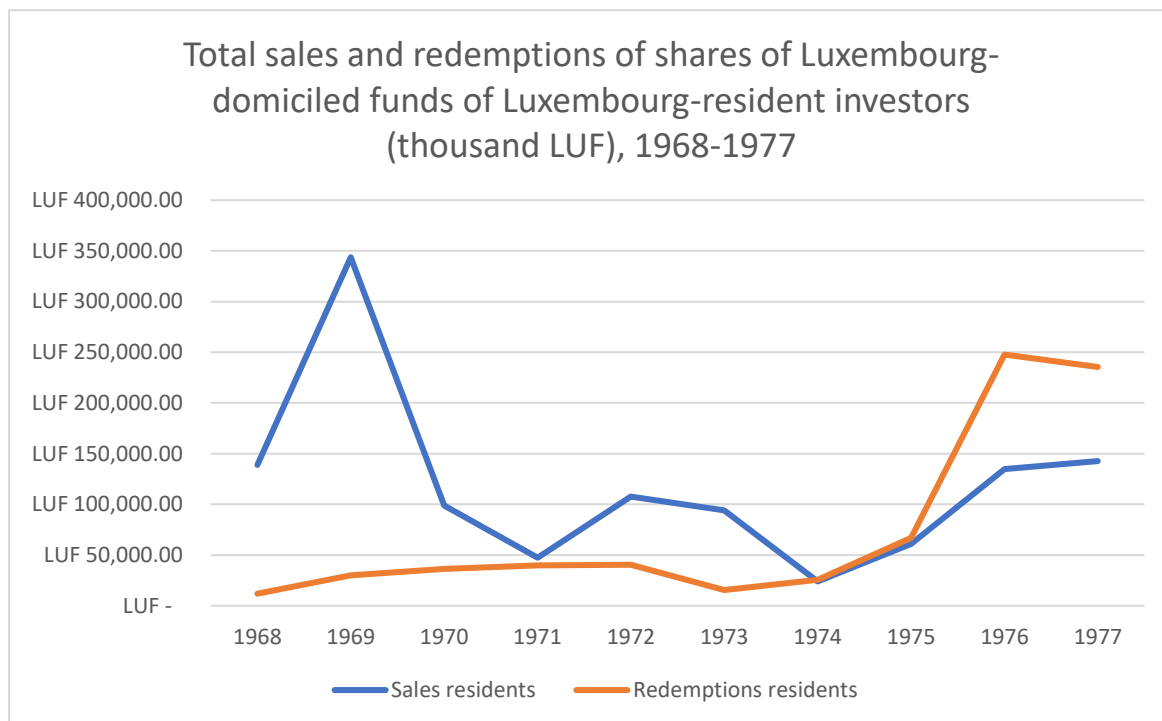
<sup>423</sup> The CCB rejected the listing of the IIT fund on the 19 of June 1973, based on criteria for the formulation of the list of Luxembourg-domiciled funds as established by the *arrêté grand-ducal* of the 22 December 1972 (CSSF, box 16656, Liquidation du fonds IIT, Requête, p.3).

<sup>424</sup> CSSF, box 16656, Liquidation du fonds IIT, Letter of Elvinger, Hoss, and Prussen law firm to the IML, 14 January 1986, p. 4.



managers)<sup>425</sup>, Kalev et al. for investors in the Finnish Stock Exchange market<sup>426</sup>, and Bae et al. with regards to the informational advantage of local analysts compared to foreign ones.<sup>427</sup>

**Figure 4.2. Total sales and redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of Luxembourg-resident investors, 1968-1977**



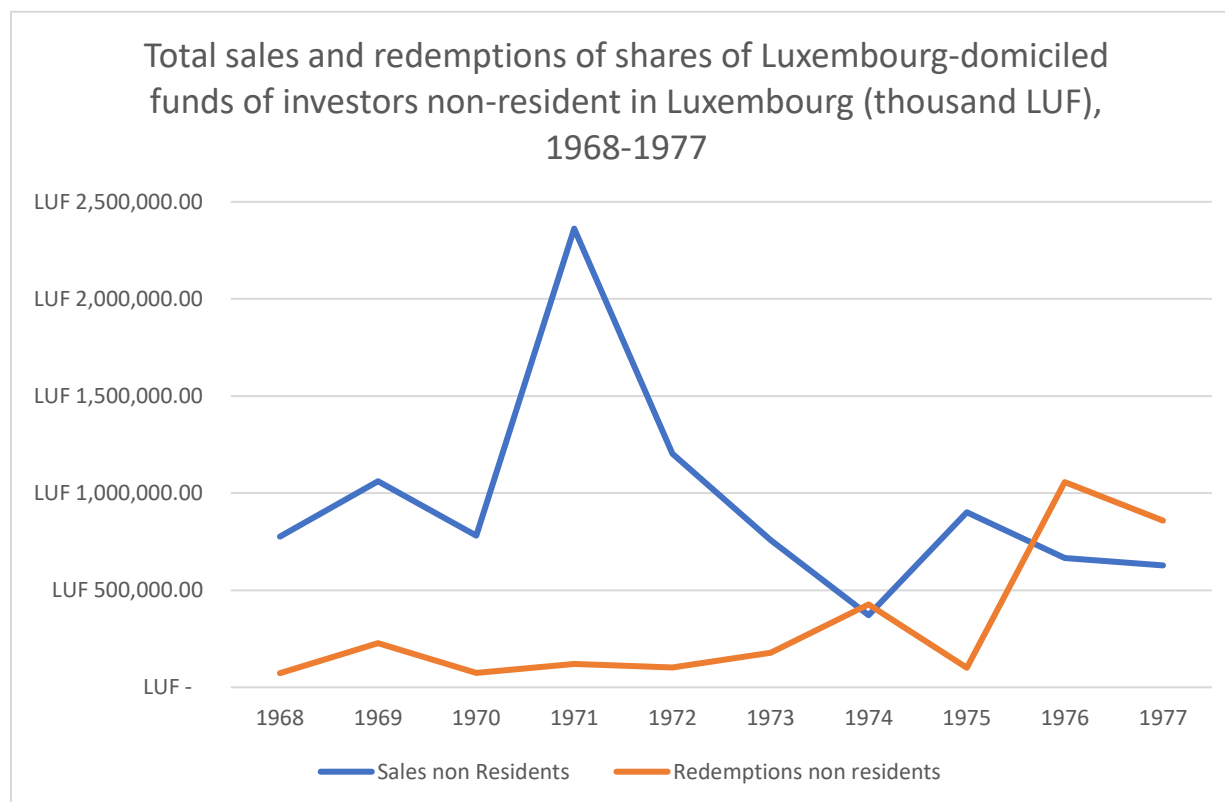
*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

<sup>425</sup> Shukla, R., and van Inwegen, G. (1995). Do locals perform better than foreigners? An analysis of U.K. and U.S. mutual fund managers. *Journal of Economics and Business* 47, 241-254.

<sup>426</sup> Kalev, P. S., Nguyen, A. H., and Oh, N. Y. (2008). Foreign versus local investors: Who knows more? Who makes more? *Journal of Banking & Finance*, 32(11), 2376-2389.

<sup>427</sup> Bae, K.-H., R. Stulz, and H. Tan. (2008). Do local analysts know more? A cross-country study of the performance of local analysts and foreign analysts. *Journal of Financial Economics*, 88, 581-606.

**Figure 4.3. Total sales and redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of Luxembourg-non-resident investors, 1968-1977**

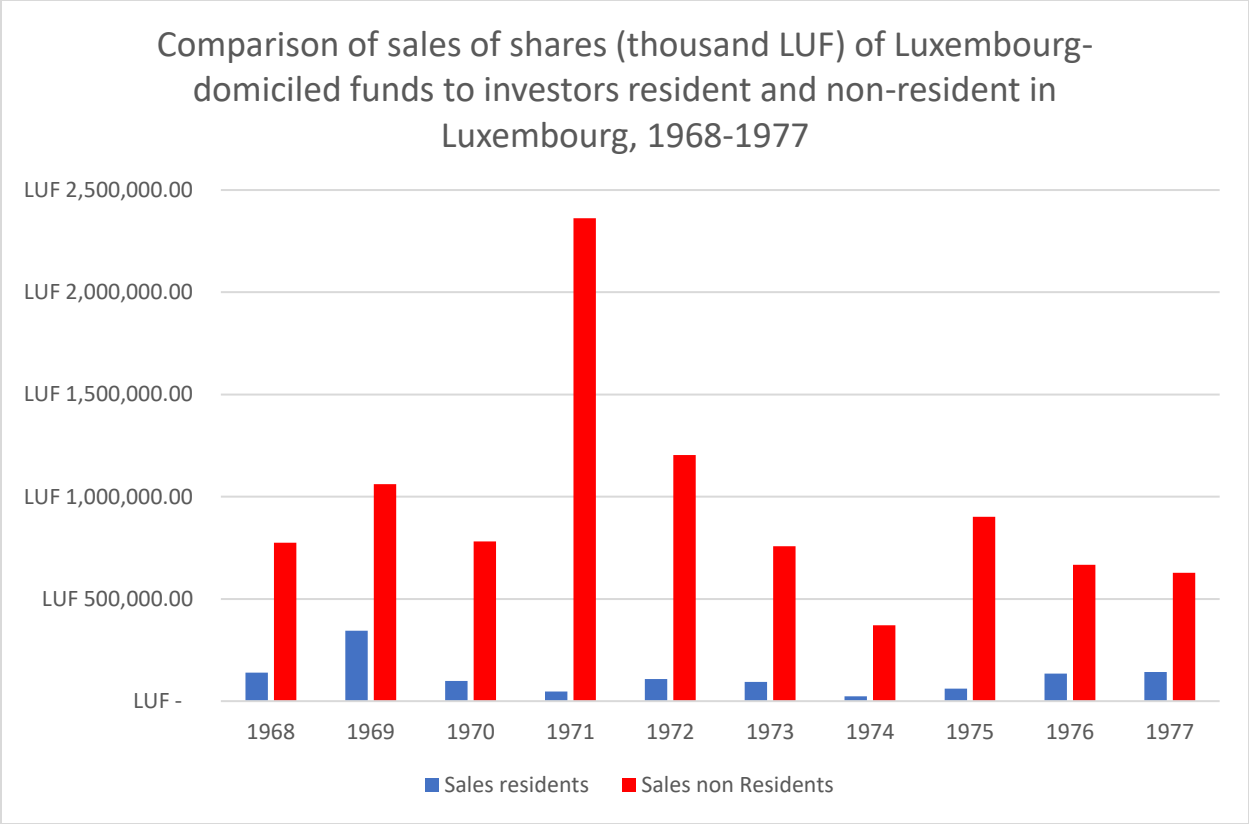


*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

These data on sales and redemptions operated by Luxembourgish financial intermediaries, once again in a context of limited presence of collected information on the characteristics and country of origin of the investors (see chapter 1), offer however a valuable glimpse into the comparative

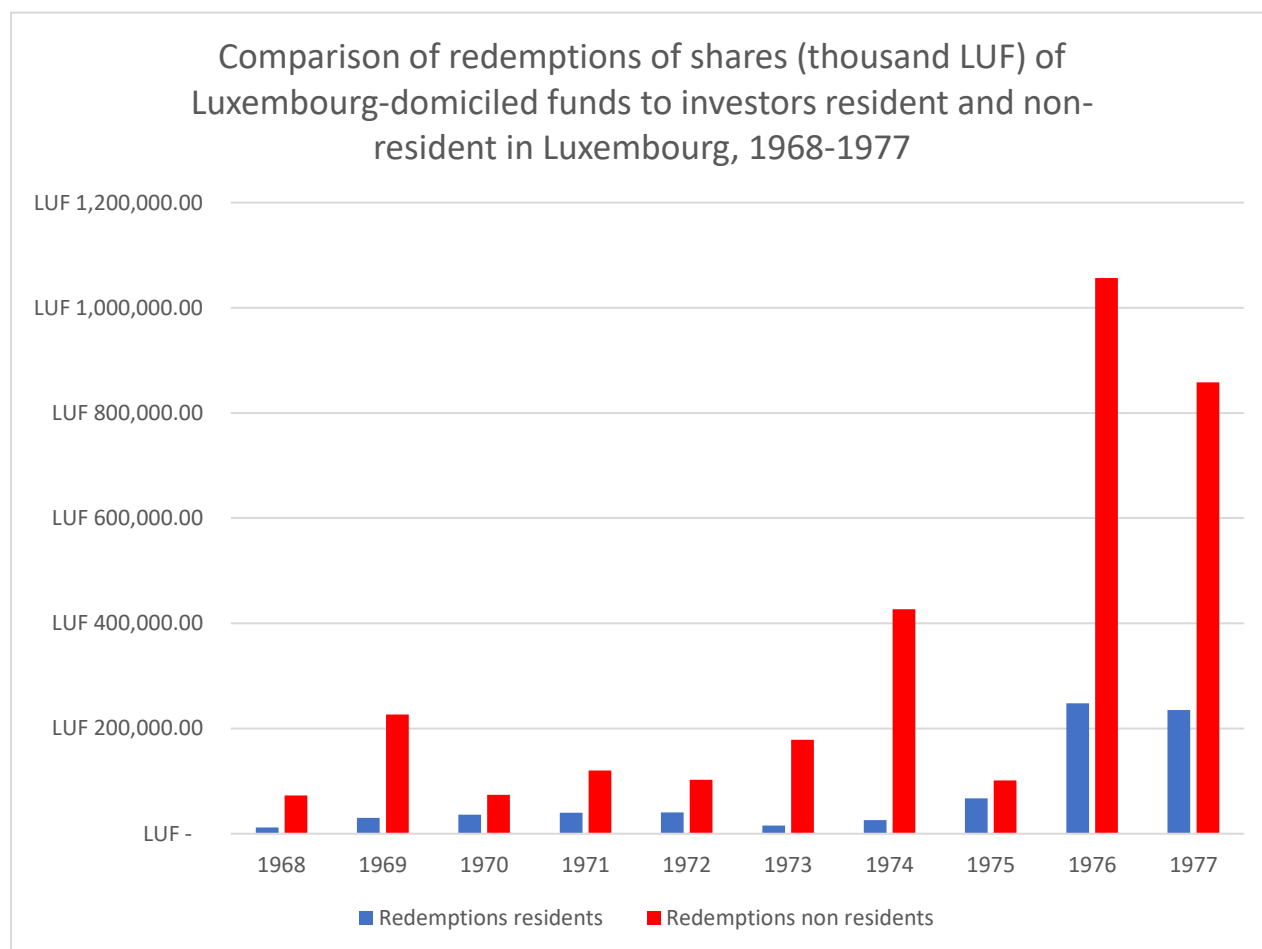
weight of the two macro-groups of investors, local and foreign. As it is visible in Figure 4.4 and Figure 4.5, the size of sales from non-resident investors is on average, throughout the period 1968-1977, 12.5 times greater than that of resident investors (with a peak of 49 times bigger in the year 1971). The size of redemptions of non-resident investors is instead on average ca 6 times greater than that of resident investors (with a peak of 16 times greater in 1974 and just around 2 times in 1970). While based on partial data and so not assessed in comparison with the compounded sales and redemptions (since only related to the capital flows operated by Luxembourg-resident financial operators), the amplitude of the difference between the capital investment in funds from resident and non-resident investors ultimately indicates the presence of a much smaller domestic market for this type of financial instruments in Luxembourg. This feature was going to be then carefully assessed (and deemed as one of the structural strengths of Luxembourg's fund market – see chapter 5) by the drafters of the laws on investment funds in Luxembourg in the 1980s.

**Figure 4.4. Sales of shares of Luxembourg-domiciled investment funds (thousand LUF) to Luxembourg-resident and non-resident investors, 1968-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d’investissement au Grand-Duché de Luxembourg. Calculations of the author.

**Figure 4.5. Redemptions of shares of Luxembourg-domiciled investment funds (thousand LUF) of Luxembourg-resident and non-resident investors, 1968-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d’investissement au Grand-Duché de Luxembourg. Calculations of the author.

The investors’ fears on the higher market volatility of Luxembourg-domiciled funds during this period – triggered on the one hand, by IOS crack and on the other, by a context of increasing monetary uncertainty aggravated by the oil-crisis-related economic depression at the international

level – resulted in an inevitable growing pressure on the surveillance and regulatory financial institutions, both at the national and at the international level. First, on the *Commissariat au Contrôle des Banques* (CCB), that had been progressively integrating, for the investment fund industry in Luxembourg, the functions previously assigned to the AED in terms of control and surveillance – while the collection of the yearly capital tax was still under the control of the AED. The CCB had been created under the government Dupong on October 17, 1945, and its main task initially established in the surveillance on the “[...] application of laws, orders and regulations relating to financial institutions and their operations [... as well as the control] [...] of banks, private savings companies, mortgage companies and all other companies that usually receive sight or short-term deposits in order to use them for their own account for credit or investment transactions”.<sup>428</sup> In 1965, a further *arrêté grand-ducal* (June 19) attributed to the CCB and its head commissioner the functions that before were assigned to the AED and its director, including some forms of basic surveillance on investment funds, both open and closed-ended, basically with the purpose of harmonizing the procedures of public offer and advertising of the funds’ shares to investors and for the listing in Luxembourg Stock Exchange, in case of a request of listing from the fund management company.<sup>429</sup> While this procedure was basically a formality, the discretionary power of CCB head commissioner limited to recommendations,<sup>430</sup> and subjected to a final decision of the Minister of Finances<sup>431</sup> (see also chapter 4.2), the issuing of a “*visa*”, so the *placet* for starting the advertising campaign and listing of the fund by the *Commissariat* was sometimes regarded as an interference by fund managers and legal representatives. For example, again André Elvinger (which will play also a fundamental role in the drafting of the fund industry’s regulation of 1972, see chapter 4.2), in March 1970, was soliciting the commissioner of CBB Albert Dondelinger for the *nihil obstat* for the listing of a group of investment funds legally

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<sup>428</sup> Arrêté grand-ducal du 17 octobre 1945 relatif au Contrôle bancaire. Original in French, translation of the author.

<sup>429</sup> Arrêté grand-ducal du 19 juin 1965, Art. 14.

<sup>430</sup> Ibid, Art. 16.

<sup>431</sup> “In the absence of an amicable agreement, the Minister of the Treasury may, on the proposal of the commissioner and by reasoned decision prohibit the exhibition, the offer and the public sale for a period which shall not exceed three months. This period shall run from the day of notification of the decision by registered letter addressed to the person who gave the notice provided for in Article 14. The Minister of the Treasury may make his decision public” (Ibid. Original in French, translation of the author).

represented by his law firm. Despite the respectful tone of his words, it is definitely possible to read between the lines the hassle for a regulation that was probably seen as a nuisance in a regime that he considered, as seen above, working at its best under a self-government of the involved actors in the *place financière*:

“I am writing to you on a general level and in a personal and confidential capacity [...] Unfortunately - and Mr. Stuyck's illness only aggravates the situation<sup>432</sup> - we have arrived at quite considerable delays - of the order of 3 or 4 months - in obtaining your nihil obstat with regard to the prospectus of the investment funds we submitted to you. [...] Your competence and your work, as well as those of your co-workers are not at issue and we expressed on many occasions our appreciation for it. [...] In these circumstances, [...] I hope that you would be exempted from examining the details of the prospectuses [...] This system, which is obviously only made possible since your regulations are now established in writing in your circulars, should guarantee a good quality of the prospectus but at the same time a rapid disposal of the files”.<sup>433</sup>

The second actor gaining further space in the debate around the needs for further regulation of the fund industry at the international level, is the European Community, through its still “young” institutions. The Luxembourgish fiscal engineering practices, based on the subsequent liberal-wise stretching of H29, had raised increasing concern at the European-level. Already in 1941, during his exile in London, the Luxembourgish socialist congressman Pierre Krier – who had been among the opponents of H29 at the Chamber in July 1929 (see chapter 2) – would have felt not at ease in defending the “honour” and the “reputation” of Luxembourg with its “non entirely irreproachable attitude” around the financial benefits granted to international holdings.<sup>434</sup> In the aftermath of the

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<sup>432</sup> Charles Stuyck was an officer at the CCB (see Majerus, B. (2020), *art. cit.*, p.85).

<sup>433</sup> CSSF, fonds d'investissement, boîte 9816, lettre d'André Elvinger au Commissaire au Contrôle des Banques (5 mars 1970).

<sup>434</sup> “Of course, there was also talk of pre-war conditions, of financial and fiscal issues, of industrial and banking companies, and I sometimes heard very unpleasant remarks about Luxembourg, as the centre of holding companies. My friends tried not to offend me, of course, but they could not deny that Luxembourg's attitude in this matter was not entirely irreproachable. Let's be honest: that it was not

war, more dissenting voices began to be raised in the newborn common European institutions. Delvaux, with little sarcasm, reports for example the opposition in a meeting of the Council of Europe in Strasbourg in 1954 of a member of the parliament, the Belgian socialist MP Henri Rolin, to Luxembourg's fiscal policies around the holding system: "[...] The Belgian senator who urged the Grand Duchy's delegates to abandon its holding policy, spoke in a somewhat a bit rushed oratory".<sup>435</sup>

In July 1970, again a socialist member of the Parliament, the Dutch engineer and environmentalist<sup>436</sup>, Adriaan Pieter Oele, addressed the Assembly around the "absence of control on the activities of the investment funds" and on the "necessity of introducing a system of common surveillance for this type of investment companies at the European-level", so to avoid that "[...] the European Community becomes [...] a franc-port and conquered land of international investment companies".<sup>437</sup>

The Commission's answer to the question of Mr. Oele reveals, already at this stage, the presence of challenging relationships between the European institutions and its member states, with those being rather inclined to defend their right to an independent formulation of their national regulatory framework<sup>438</sup> and often experiencing difficulties in the transposition of European directives.<sup>439</sup> It

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entirely compatible with national honour. It is difficult to excuse this state of affairs to us, and even if Luxembourg enjoyed financial benefits from the creation and operation of the holdings, its prestige and reputation suffered as a result throughout the world. [...] It seems to me necessary that we should try to avoid carefully in the future anything that could cause us similar damage. In the new Europe, especially as a small democratic country, we will have to watch over our honour and our reputation". From Krier-Becker, L. (1957). *Pierre Krier, ein Lebensbild*, [Hrsg. vom Letzeburger Arbechter-Verband. Original in German, translation of the author].

<sup>435</sup>Delvaux, B. (1956), *art. cit.*, p 148.

<sup>436</sup> See Meyer, J. H. (2017). Who should pay for pollution? The OECD, the European Communities and the emergence of environmental policy in the early 1970s. *European Review of History: Revue européenne d'histoire*.

<sup>437</sup> European Parliament Archive, Question Ecrite a la Commission des Communautés européennes, n. 173/70, M. Oele. Original in French, translation of the author.

<sup>438</sup> Börzel, T. A., Hofmann, T., Panke, D., and Sprungk, C. (2010). Obstinate and inefficient: why member states do not comply with European law. *Comparative Political Studies*, 43(11), 1363–1390.

<sup>439</sup> Steunenbergh, B., and Rhinard, M. (2010). The transposition of European law in EU member states: Between process and politics. *European Political Science Review*, 2(3), 495-520.



needs also to be considered first, the objective difficulty on organizing an effective contrast to those speculative financial entities described by Oele in his question, due to the lack of reliable and comprehensive data. On the one hand, these difficulties derived from inefficient collection practices from national surveillance institutions. On the other, from the sometimes-insurmountable task of collecting and merging – in a context of absence of any automatised procedure for data analysis – a huge amount of information spread on different channels, moreover often originating from involved actors interested in hiding or altering to their own advantage the flow of data coming from these financial entities. The Commission could not but declare that it “[...] does not have the data to draw up a list of all the institutions dealing with collective investments that operate in the Community. Information on this subject is published in the specialised press and in the reports of professional associations and supervisory authorities”.<sup>440</sup>

Second, it should be considered for the European Community and its member states, the presence of a conflictual interest between i) maintaining the returns in terms of state revenues from financial investment vehicles (from holding companies to funds); ii) protecting the interests of resident investors; iii) ensuring a fair level of competitiveness without allowing fiscal profit shifting practices on its territory: “[...] Generally speaking, the regulations aimed at informing and protecting security holders are stricter in the United States in many respects than the regulations of other states, including those of the European Community. This is particularly true of the conditions to which investment companies and mutual funds must conform in order to be authorised to address the American public. However, even in the United States there are plans to reform these regulations”.<sup>441</sup>

In March of 1968, some harmonisation ideals for the code of capital at the European level had already been expressed in the text of the directive 68/15 of the Council, which would have set up the interpretative stand, later re-expressed in the answer to the above-mentioned question of Adriaan Oele to the European Community Commission in July 1970:

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<sup>440</sup> European Parliament Archive, Reponse a la Question Ecrute, n. 173/70. Original in French, translation of the author.

<sup>441</sup> Ibid.

"[...] The freedom of establishment achieved in law would thus not be achieved in fact if certain national laws which are less rigorous than others had the effect of determining companies to establish themselves on the territory of these countries, in consideration of the legal advantages offered to them and not in consideration of the traditional elements of the economy. [...] Thus, in order to guarantee the freedom of establishment in company law in law and in fact, it is essential to harmonise different national laws".<sup>442</sup>

The forms of the transposition in Luxembourg's juridical framework of this directive were discussed at the Chamber in Luxembourg in October 1972,<sup>443</sup> two months before the drafting and then promulgation of the *arrêté grand-ducal* of December 1972, on the "control of the investment funds". The *arrêté* of 1972 was therefore a government regulation, that in order to address the pressures of investors and international institutions, granted somehow more discretionary power to the CCB and its commissioner in terms of surveillance on the yearly listing of Luxembourg-domiciled investment funds.<sup>444</sup> The government also raised the further possibility of more stringent regulations.<sup>445</sup> Despite this increase in oversight, however, this new regulation represented at the same time a first legal codification of Delvaux's theses from the 1950s to extend the holding companies' fiscal regime to open-end funds. The *arrêté* of 1972 was in this sense, as recently argued in the literature, a way of "regulating to change nothing".<sup>446</sup> Furthermore, delays and uncertainties in the application of the regulation<sup>447</sup> and havoc following the collapse of IOS – the overall process of liquidation of the IIT fund was going to take more than fifteen years and it has been calculated that employed a total of 33 365 hours of work of the liquidators just between December 1973 and December 1983<sup>448</sup> – once again in an international context of high inflation

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<sup>442</sup> Directive No 68/15] du Conseil des Communautés européennes du 9 mars 1968.

<sup>443</sup> Chambre des Deputé, Compte rendu 6me séance Chambre des deputes, 24, 10, 1972.

<sup>444</sup> Arrêté grand-ducal du 22 décembre 1972 ayant pour objet le Contrôle des fonds d'Investissement n. 80/29.

<sup>445</sup> "It is however evident that in case this method should reveal itself as ineffective, it will become necessary to lay down more imperative rules together with penal sanctions" (translation from French by the author) (N° 1652 Projet d'arrêté grand-ducal ayant pour objet le Contrôle des fonds d'investissements. Original in French, translation from the author).

<sup>446</sup> Majerus, B. (2020), *art. cit.*, p.83.

<sup>447</sup> *Ibid.*, p. 85.

<sup>448</sup> CSSF, box 16656, Liquidation du fonds IIT, Les redditions de comptes intérimaires de la liquidation IIT, p. 5, 16 March 1993.

rates and general economic depression, contributed to a downsizing of the fund sector in Luxembourg, with a decline in the aggregate net assets of around 30 per cent between 1972 and 1974. Funds such as Eurosyndicat's Eurunion shrank even more in the same period (between 1972 and 1973 by around 50 per cent<sup>449</sup>). The EIRB in Brussels at that point decided to merge Eurunion with Finance-Union, the second-best performing (after Patrimonial) among Eurosyndicat's initial funds, in March, 1978.<sup>450</sup> Yet, while the number of funds listed in Luxembourg reached in 1978 the lowest number of units since 1968 (71 units) – also due to mergings such as Eurunion's one – and the aggregate assets of closed and open-end funds accounted in 1978 for 95 billion LUF<sup>451</sup> (lower than the value of 1968) – see Figure 4.6 and Figure 4.7 – Luxembourg's fund market showed however signs of renovated vitality already in the period between 1976-1977. In particular, due to increasing capital flows coming from both resident and non-resident investors buying a higher number of shares of funds that were non-domiciled in Luxembourg (but whose sales were handled through the LuxSE by Luxembourg-resident financial operators) that contributed to make on average less negative the credit balance between sales and redemptions of the shares for the overall funds (listed in Luxembourg or not) – see chapter 4.3.

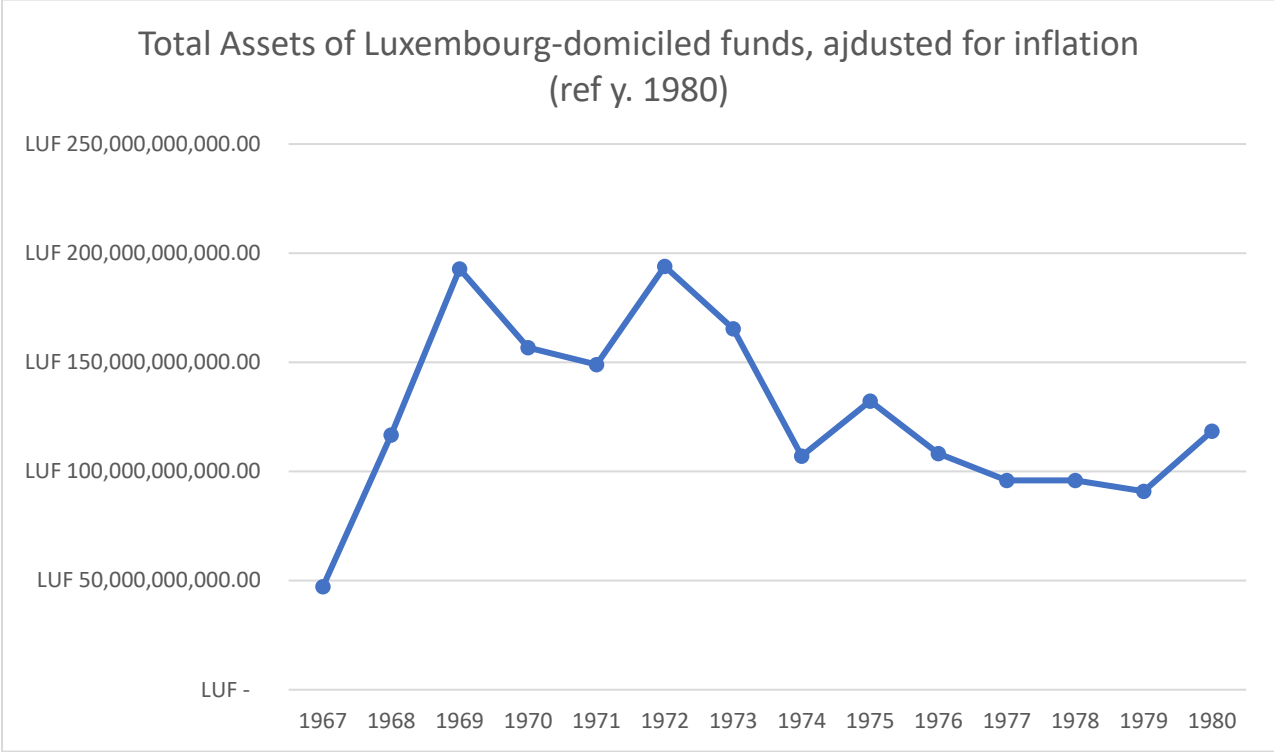
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<sup>449</sup> CSSF, box 13935, Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L

<sup>450</sup> Ibid., [Last] Communication of Sogim to CCB, 13 March of 1978 (last report to the management is for 28 February 1978)

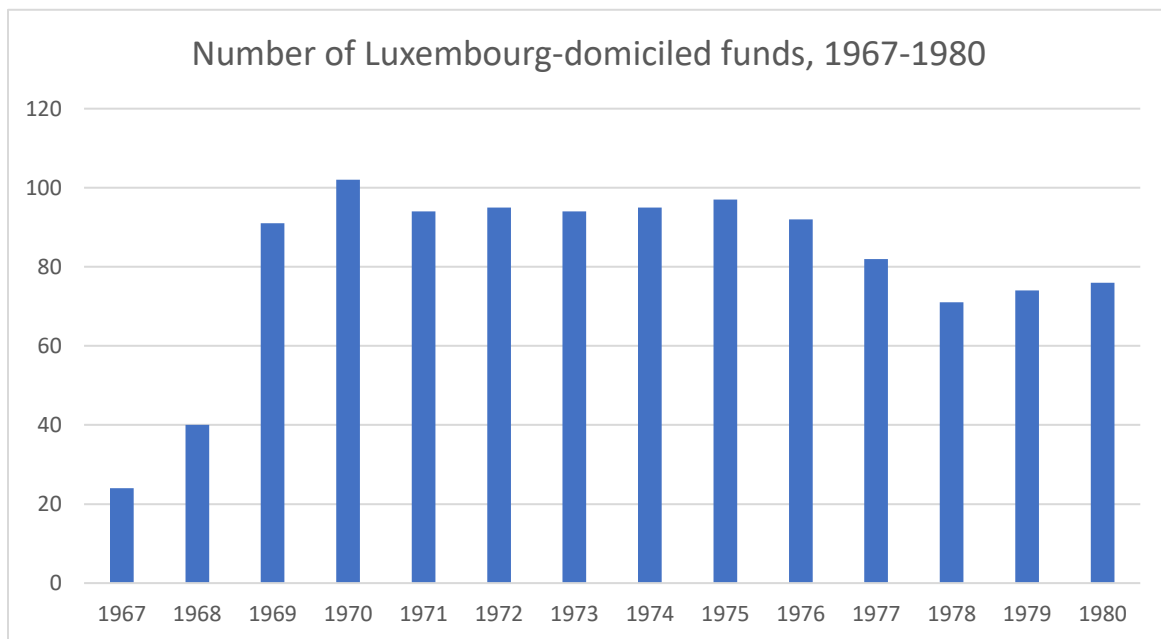
<sup>451</sup> Adjusted for inflation, reference year 1980.

**Figure 4.6. Aggregate capital stock of Luxembourg-domiciled investment funds (LUF), open-end and closed-end, adjusted for inflation (ref. y. 1980), 1967-1980.**



*Note:* source: CSSF, Bulletin Trimestriel, 1985/4. Calculations of the author

**Figure 4.7. Total number of Luxembourg-domiciled investment funds (closed and open-end), 1967-1980.**



*Note:* source: CSSF, Bulletin Trimestriel, 1985/4.

#### *4.1. “Do you sincerely want to be rich?” IOS scandal in Luxembourg*

On December 5, 1960, the I.O.S. corporation, residing in Panama<sup>452</sup> and led by its two principal executives, financiers Bernard Cornfeld and Edward Cowett, established the management company Société de Gestion I.I.T. in Luxembourg. This entity was entrusted with the management

<sup>452</sup> See *IIT v. Cornfeld*, 462 F. Supp. 209 (S.D.N.Y. 1978) (<https://casetext.com/case/iit-v-cornfeld>).

of the International Investment Trust (I.I.T.) mutual fund.<sup>453</sup> The two hunters of offshore opportunities<sup>454</sup> were extraordinarily quick at spotting the interpretational evolutions of Luxembourg's code of capital, which *de facto* became eventually able to provide the most competitive taxation environment for mutual funds in Europe (see chapter 3.2). Just one year earlier, the creation of the *Eurunion* fund had represented as seen, the litmus test to evaluate the community of purpose between funds' managers, financial intermediaries (also those outside the borders of the Grand Duchy), and Luxembourg's institutions in terms of liberal interpretation of H29. Among those actors, there was in particular the Ministry of Finance, led in these years by Pierre Werner – *ad interim*, after that in March 1959 he had become Prime Minister of a CSV-democrats coalition government.<sup>455</sup> But also, at the same time, the network of Luxembourgish and European banks – led by Belgian Banque Lambert – involved in the first phases of the creation of the open-end fund industry in the Grand Duchy, either as initial stakeholders or custodian banks. Not by chance, therefore, the first bank that IOS contacted for the role of custodian bank of the I.I.T. fund was once again Banque Lambert, whose initiative had been crucial for the foundation of the open-end fund industry in Luxembourg (see previous chapter). Yet, probably having first-hand knowledge of the reckless financial operations of Cornfeld, or simply since non convinced by the unorthodox modalities through which IOS approached them,<sup>456</sup> Banque Lambert refused. IOS opted then for the implementation of a banking “skeletal” structure “not easily apparent to the customers”.<sup>457</sup> Besides the management company incorporated in the Grand Duchy, I.I.T. organizational structure rested upon the “assistance” of three banks.<sup>458</sup> In order to “[...] inspire trust

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<sup>453</sup> CSSF, box 16656, Liquidation du fonds IIT, Letter of Georges Baden and Jacques Delvaux to Jacques Santer, 29 June 1988, p. 2.

<sup>454</sup> See chapter 5 of Raw, C., Hogson, G., and Page, B. (1971) *op. cit.*

<sup>455</sup> Thewes, G. (2006), *op. cit.*, pp. 152-153.

<sup>456</sup> “This caused amazement at the Banque Lambert's head- quarters. No-one there had heard of IIT or IOS. Neither did they seem anxious to repair the omission. (Later, it emerged that someone from IOS had vaguely mentioned the idea to Banque Lambert's New York office.) Politely and firmly, Herbert was told that Banque Lambert declined the honour, and this created an awkward gap in the organization. In fact, the sales force had been unleashed and money was actually pouring into IIT before a proper Custodian of Securities was found” (Raw, C., Hogson, G., and Page, B. (1971) *op. cit.*, p.85).

<sup>457</sup> *Ibid.*, p. 88.

<sup>458</sup> CSSF, box 16656, Liquidation du fonds IIT, Letter of Georges Baden and Jacques Delvaux to Jacques Santer, 29 June 1988, p. 3.

and being appealing for the investors”, IOS used the services of “banks of unquestionable reputation”.<sup>459</sup> Crédit Suisse of Zurich became then the custodian bank.<sup>460</sup> The liquidity of the fund’s portfolio (used to purchase new securities in view of restructuring of the portfolio or further diversification of risk) was placed on account with the bank H. Albert de Bary in Amsterdam.<sup>461</sup> The third bank, used as transfer agent and registrar, was Luxembourg’s largest bank of the time, Banque Internationale à Luxembourg, BIL.<sup>462</sup> Founded in 1856, and together with the Caisse d’Épargne de l’Etat one of the two oldest Luxembourgish banks,<sup>463</sup> BIL had been, as seen in chapter 2, one the most active actors (together with Banque Levy and Banque Commerciale) in the early Luxembourg’s holding system already from the end of the 1920s and during the interwar years. Analysis of the FINLUX archive – with data on all the holding companies registered in Luxembourg between 1929 and 1939 (see chapter 2) – reveals that BIL was involved in either the creation, the management, or as an investor in 563 Luxembourg-domiciled holding companies between 1929 and 1939,<sup>464</sup> including the Union International de Placement investment trust (whose case has been discussed in chapter 2). BIL, after the listing of Eurunion (whose custodian bank was Caisse d’Épargne de l’Etat), extended its presence as a custodian bank also in the nascent market of open-end funds. As seen in chapter 3, BIL had become the custodian bank for a group of closed-end funds in the early 1960s. By 1970, it became the custodian also of 6 open-end funds, including “Fonditalia”, the other large capital stock fund incorporated by IOS in Luxembourg in 1967, and Eurosyndicat’s Finance-Union (that was going to merge in 1978 with Eurunion).<sup>465</sup> BIL,

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<sup>459</sup> Ibid, p. 4.

<sup>460</sup> Ibid. The depository agreement would have eventually defined though only on the 23th November 1969 (until the “termination agreement” of 29 March 1972, when the custodian bank became the Overseas Development Bank Luxembourg SA (ODB) – which was a bank entirely controlled by the IOS organization (Ibid., p. 5).

<sup>461</sup> See Raw, C., Hogson, G., and Page, B. (1971) *op. cit.*, p.88. The three authors of this work mention also a fourth bank involved in the I.I.T.’s network, namely the Bruno A. Hugi Banque Privée of Zürich, tasked with decisions on investment policy of the fund. “Few people realized that none of the eminent international concerns whose names appeared on the sales literature bore any responsibility to check up on the securities bought by I.I.T., and that the Bruno A. Hugi Banque Privée was Dr Hugi operating out of his suburban house in Zürich” (Ibid.)

<sup>462</sup> Ibid; see also Majerus, B. (2020), *art. cit.*, p. 77.

<sup>463</sup> Trausch, G. (2017), *op. cit.*, p. 102.

<sup>464</sup> See FINLUX database.

<sup>465</sup> CSSF, box 13934, Eurosyndicat rapports, September 30, 1974.

at this point was the custodian bank for 7 closed-end investment funds<sup>466</sup>, including Japanese Tokyo Valor fund.

It has been argued in the literature<sup>467</sup> that BIL, between 1961 until the liquidation of I.I.T. in 1973, paid always special attention to this IOS fund, since it provided a “constant source of income” with its commissions, as it emerges from a series of communications of I.I.T. management and Luxembourg’s CCB.<sup>468</sup> Although the profit and loss accounts of BIL throughout this period (in particular the budget item “Interests and Fees”) do not show the detail of the origin of the aggregate income yearly flow, it is nevertheless possible to detect a general growth trend of the overall budget item between 1962 and 1978 – which can be paired with archival evidence on the growth of BIL as the biggest financial intermediary in Luxembourg for sale-redemption transactions of funds’ shares to investors between mid-1970s to 1989 (see introduction to chapter 5). Yet, in the period 1970-1972, it is visible a decline (see Figure 4.8), concurrently with the initiation of the process of liquidation of I.I.T. and the change of custodian bank of Fonditalia – in April of 1970, Banque Rothschild became the new custodian of Fonditalia<sup>469</sup>, whereas in 1977 it then became BGL.<sup>470</sup> Although a process of further cross-checking of different sources is necessary for reaching more conclusive interpretations of this figure, it can be though considered as preliminary evidence of a potential detectable impact of the commissions flow of the two IOS funds in the trend of this aggregate budget item for BIL.

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<sup>466</sup>See also Bechet, Y. (1971), *op. cit.*

<sup>467</sup> Majerus, B. (2020), *art. cit.*, p. 77

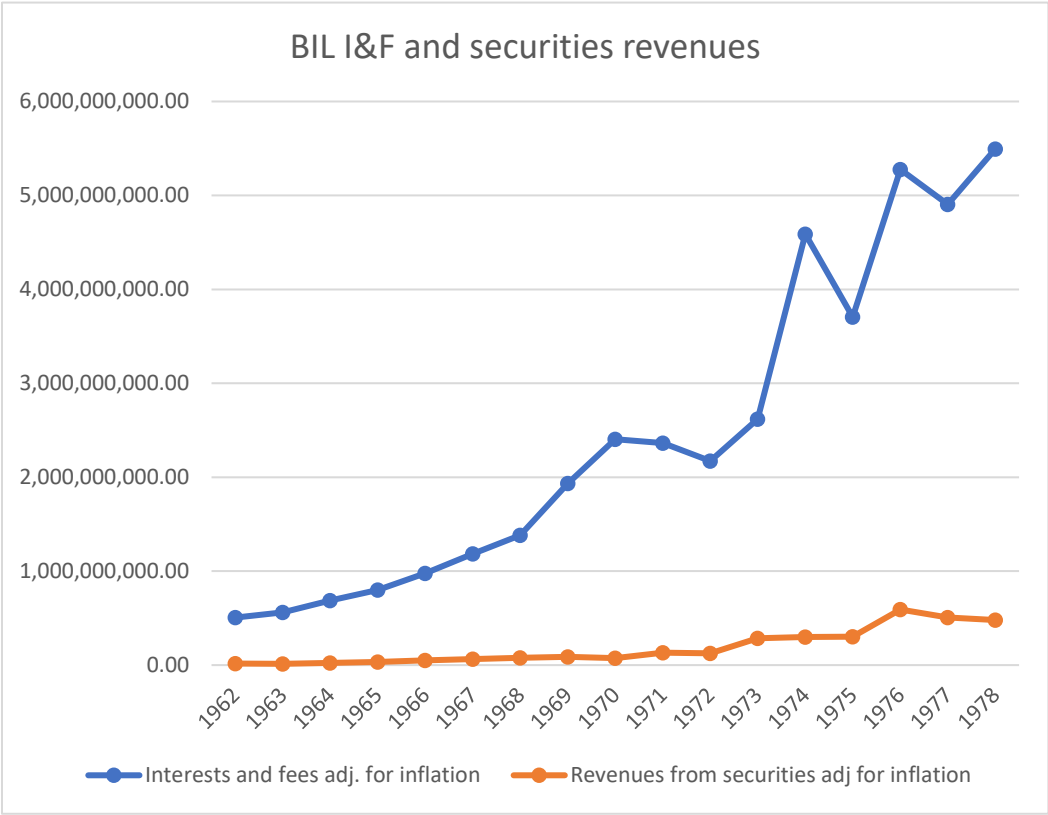
<sup>468</sup> *Ibid*, footnote 16.

<sup>469</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, Communication entre Fonditalia management and Banque Rothschild Paris, 23/4/1970.

<sup>470</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, Prospetto del Fondo di Investiment, 1985. Original in Italian, translation of the author ; CSSF, box 3630, FONDITALIA 9.85-5.86, lettre au CCB de Jacques Delvaux, 30/3/1973. The administration of the fund instead, passed in 1974, after the collapse of IOS, to “Services Administratifs S.A”, a company created under Luxembourg law and controlled by the Italian IMI (*Istituto Mobiliare Italiano*) (CSSF, box 3630, FONDITALIA 9.85-5.86, letter to M. Bodry, Institut Monétaire Luxembourgeois).



**Figure 4.8. BIL’s budget items “Interests and Fees” (I&F) and “Revenues from Securities” (LUF) 1962-1978, adjusted for inflation (ref. year 1978)**



Source: BIL Profit and Loss Accounts 1962-1978, BIL Management Reports

Besides the support of BIL as a registrar and transfer agent, IOS could rely moreover on a wide array of connections to the highest economic and political spheres in Luxembourg. On January 28, 1963, Cornfeld incorporated in Luxembourg a branch of the parent company Investor Overseas Services. Its social object was “[...] researching the capital market and training specialists in the sale of investment funds; negotiating and promoting, through advertising and other means, the sale of investment fund certificates by third parties, and providing expert and advisory services

in investment and placement matters".<sup>471</sup> On the administration board of the IOS subsidiary in Luxembourg, sat Lambert Dupong, a Luxembourgish lawyer who was the son of former prime minister and H29 first political sponsor Pierre Dupong. Lambert Dupong and his brother Jean were both business lawyers (in the broad meaning seen above for this definition<sup>472</sup>), in the same family law firm, and they sat in several administration boards of Luxembourgish banks – Lambert at the Crédit Européen (1966-1985), Jean at the same Crédit Européen (1960-1966) and at the Société de Banque Suisse<sup>473</sup>. Jean was also going to be multiple times deputy for the CSV party at the Luxembourgish Chamber of Deputies (1954-1958, 1959-1967, 1974-1979).<sup>474</sup> Alongside the 1960s, the Dupong law firm was strenuously active within the tentacular expansion of IOS in Luxembourg. Jean, for example, acted as intermediary first, between IOS and the Ministry of Finance, at the time of the process of incorporation of two IOS banks in Luxembourg: the Investors Bank Luxembourg and the Overseas Development Bank (ODB).<sup>475</sup> Second, also with the CCB, that respectively in 1965 and 1966, gave its approval to the incorporation of the two institutions in the Grand Duchy.<sup>476</sup> Lambert, at the same time, was relentlessly working so to transform the Luxembourgish branch of the ODB in the custodian bank for the overall activities of IOS, succeeding so to the Crédit Suisse, that, as seen, was going to have that role until March 1972.<sup>477</sup> Just before the complete collapse of the two banks in 1973, the CCB of Albert Dondelinger gave again a *placet* also for this dubious operation<sup>478</sup>.

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<sup>471</sup> Banque Internationale à Luxembourg, BIL, (1969). *Annuaire des Sociétés Anonymes du Grand-Duché de Luxembourg*. Luxembourg, p. 51.

<sup>472</sup> Trausch, G. (December, 2017). L'émergence de l'avocature d'affaire et des Big Four. *D'Letzebuurger Land*, 12–13.

<sup>473</sup> FINLUX database.

<sup>474</sup> Majerus, B. (2020), *art. cit.* p.77.

<sup>475</sup> ANL, CSSF, boîte B-III-113 ; lettre du 20 janvier 1966 par Jean Dupong à Marcel Fischbach.

<sup>476</sup> See FINLUX database. See also the report of Albert Dondelinger of 1966 (ANL, CSSF, boîte B-III-113 ; rapport du 8 avril 1966 d'Albert Dondelinger).

<sup>477</sup> CSSF, box 16656, Liquidation du fonds IIT, Letter of Georges Baden and Jacques Delvaux to Jacques Santer, 29 June 1988, p. 5-7. See also Perrenoud, M. (2016). Le scandale de l'Investors Overseas Services (IOS). Les épisodes suisses dans les années 1960-1970. In Mazbouri, M. and Vallotton, F. (eds.). *Scandale et histoire*. Lausanne, Éditions Antipodes, 53-80.

<sup>478</sup> CSSF, box 16656, Liquidation du fonds IIT, Letter of Georges Baden and Jacques Delvaux to Jacques Santer, 29 June 1988, p. 5-7 See also ANL, CSSF, boîte 16656, lettre d'Elvinger à l'IML du 26 septembre 1985. Original in French, translation of the author.

The figure of Albert Dondelinger, head commissioner of the CCB since 1968 until 1976, appears however as more complex as that of a powerless civil servant leading an institution that, as discussed in the introduction to this chapter, was operating with limited leeway of surveillance and regulatory tools – limited to the extent that, as seen, André Elvinger has spoken of “self control” of the fund industry in this phase. During the years of the outbreak of the IOS scandal, Dondelinger was seen in the international press as maintaining an accommodating position towards the Panama-resident organization, even when the pyramid schemes of Cornfeld and his IOS were creating worldwide concerns and then even outrage.<sup>479</sup> While the local Luxembourgish press was instead initially somehow benevolent towards him,<sup>480</sup> the slow process of liquidation of the main components of the IOS structure in Luxembourg, was eventually causing increasing concern also in Luxembourg.<sup>481</sup> Yet, archival evidence reveals that the relationship between Dondelinger and IOS organization together with its legal representatives in Luxembourg had been until that point much more conflictual than what appears from the analysis of the official notices regarding the public acts involving the funds and the CCB in its surveillance role during these years (for example, the letters accompanying the CCB’s granting of the funds’ visas).

“I cannot accept the purely dilatory procedure used in this case by the Deputy Commissioner, which is likely to call into question the good faith of our public authorities, and to make me look ridiculous in the eyes of my clients and which puts at risk very large financial interests. [...] Already at the end of July the Deputy Commissioner had received the promoters of the fund [...] in such a cavalier manner [*de façon tellement cavalière*] that his attitude suggested that he would not miss the opportunity to create difficulties for

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<sup>479</sup> Majerus, B. (2020), *art. cit.*, p.81

<sup>480</sup> *Ibid.*

<sup>481</sup> “Commissioner Albert Dondelinger, who is responsible for the supervision of the banks and the credit system as well as securities trading, has also made it clear in this context that no one has filed a complaint against the IOS so far. This is a remarkable statement in two respects. On the one hand, it can be assumed that some of the investors did not want to disclose their losses voluntarily - perhaps in order to spare themselves the gloating of their fellow human beings, or perhaps because they had the nosy tax authorities in their sights and feared having to account for the origin of the money they had lost? On the other hand, it can be assumed that most investors were unaware of the legal remedies available to them or were convinced from the outset of the ineffectiveness of a lawsuit against the highly impostor” ((6 July, 1973) Die Entwicklung der Wirtschafts- und Währungsunion. *d’Lëtzebuurger Land*, p. 6. Original in German, translation of the author.

them. [...] Without wishing to question Mr. Dondelinger's intellectual capacity, I can nevertheless express the opinion that the problem, on which the greatest luminaries of the American financial world have been working, is of a much greater complexity than the Deputy Commissioner could imagine”.<sup>482</sup>

“On 12 October 1967, you sent me by urgent notice a letter from Mr Lambert Dupong [...] concerning the admission to listing of the Fonditalia mutual fund certificates. [...] It was with amazement that I read the letter from the lawyer. I do not want to believe that the accumulation of denigrating terms is aimed beyond the case which is the pretext. Lacking the practice of the outrageous word, I will limit myself to the facts. [...] The questions relating to the long-term investment programs and the sales network of I.O.S. in the Grand Duchy remain still open”.<sup>483</sup>

This harsh exchange comes from two letters. The first is dated October 1967, and has been written by Lambert Dupong to the Minister of Finance as well prime minister Pierre Werner on the subject of the actions around the listing procedure of IOS’ Fonditalia by CCB Deputy Commissioner (“*commissaire-adjoint*”) Albert Dondelinger. The second, instead, is a letter that Dondelinger wrote to the Ministry of Finance to comment the other one. Apparently, Lambert Dupong’s fury had been unleashed by a further previous letter of Dondelinger, dated September 21, 1967, to the Ministry of Finances, in which the *commissaire-adjoint* expressed all his doubts on giving his *nihil obstat* to the listing of Fonditalia in the Luxembourg Stock Exchange – so to start the public offering of its share to investors. A task given to the CCB based on the article 4 of the *arrêté grand-ducal* of 1965 on the surveillance powers of this institution.<sup>484</sup> Dondelinger’s concern was largely

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<sup>482</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, letter of Lambert Dupong to the Minister of Finance Pierre Werner, 3/10/1967. Original in French, translation of the author.

<sup>483</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, letter of Albert Dondelinger to the Ministry of Finance, 16/10/1967. Original in French, translation of the author.

<sup>484</sup> The article 4 of the *arrêté* of 1965 essentially requested the CCB to control that: “[...] (a) the capital market remains balanced; and (b) offers must not be made in such a way as to mislead the public as to the nature of the issuer's business and the rights attached to the securities being issued or offered. [...] The *arrêté grand-ducal* of 19 June 1965 therefore gives jurisdiction to the Banking Supervision Commissioner only in respect of funds offered publicly or for which admission to listing in the Stock Exchange is requested” (Journal Officiel du Grand-Duché du Luxembourg, Projet d’arrêté grand-ducal

due to the broad array of unorthodox requests presented by IOS representatives to CCB. First, Fonditalia's statute charged the joint guarantee ("*garantie solidaire*") to the administrators of the fund and not to its promoters (so, up to IOS top money managers, including Cornfeld). This practice presented a much higher degree of risk for the fund's investors in case of bankruptcy of the fund, since, as Dondelinger clearly explained to his interlocutors at the Ministry of Finance, the administrators of the fund could be just strawmen ("*hommes de paille*") lacking a real financial safeguard capital stock to be destined to cover the eventual investor's losses. Second, the sales commissions levied by the same fund on sales operations concerning the fund's shares was established at 8.5 per cent. This value was much higher than the usual fees levied by the other funds registered in Luxembourg (usually between 3 to 4 per cent and while the American SEC limited that to 5 per cent<sup>485</sup>), and had only a precedent among the other priorly listed funds: the I.I.T. fund, for which Dondelinger with some sarcasm asked "the right of not considering it as a model".<sup>486</sup> Third, the statute of Fonditalia disposed, in its article 20, the publication of its balance sheet and its profit and loss account statements only by summary ("*par extrait*"). For Dondelinger, this was a kind of unheard practice that clashed with the overall Luxembourg's jurisprudence on the subject, up to the law on the commercial companies of 1915.

The answer of the Ministry of Finance – that, as seen above, based on the jurisprudence of the *arrêté grand-ducal* of 1965, had the final word on the "recommendations" of CCB on these matters – dates October 12, 1967 and has the signature of Pierre Werner.<sup>487</sup> While recognizing the soundness of some of Dondelinger's objections, for example on the inadmissibility of Fonditalia's pretense to publishing only "summaries" of the balance sheet and profit and loss account

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ayant pour objet le Contrôle des fonds d'investissement, N.1652, 18.12.72). Original in French, translation of the author.

<sup>485</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, letter of Albert Dondelinger to the Ministry of Finance, 16/10/1967. Original in French, translation of the author.

<sup>486</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, letter of Albert Dondelinger to the Ministry of Finance, 21/9/1967. Original in French, translation of the author.

<sup>487</sup> Although it is possible that the collaborators of the Minister of Finance were in charge of revising at least part of the multiple documents and folders circulating in Werner's office due to the accumulation of roles in the Werner-Cravatte government of 1964-1969 (Pierre Werner, besides being prime minister, was also minister for the civil service – see Thewes, G., op. cit., p. 163) it is nevertheless possible to hypothesize a direct involvement of Werner in the study of cases of this level of urgency and importance.

statements (but it was most likely just due to an “incorrect translation from the original in English”<sup>488</sup>), the answer of Pierre Werner to the previous alarmed letter of Dondelinger from September 21 appears as accommodating with regards to the requests of Lambert Dupong. At times, somehow even patronizing towards Dondelinger, to whom the Ministry of Finance reminds in many passages the limits of the role and powers of the CCB under the current regulation framework in Luxembourg. The question of the very high commission fees of Fonditalia on the sales of the fund’s shares, for example, is just dismissed as “free choice” of the administrators of the fund and on which the Ministry of Finance and the CCB have no judiciable power (unless the rates are “dramatically abusive” and then the Deputy Commissioner should explain that more in detail in a further meeting with the minister himself<sup>489</sup>). On the question raised by Dondelinger about the joint guarantee charged on the administrators instead than on the promoters of the fund, Werner is even harsher: “Your criticism of the joint liability of the fund promoters must be based on a misunderstanding. A careful reading of Article 1 of the management regulations would have showed you that this responsibility is assumed by the shareholders of the management company who are also the promoters of Fonditalia”.<sup>490</sup> Although referring also to other similar clauses existing in the statutes of other Luxembourg-domiciled funds already registered, though, the Minister of Finance did not ultimately explain what should have been the position of CCB and of the Ministry of Finance regarding the possibility that, throughout the life of the fund, the administrators could cease to overlap with the promoters.<sup>491</sup>

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<sup>488</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, letter of Ministry of Finance (signed by Pierre Werner) to Albert Dondelinger (14/10/1967). Original in French, translation of the author.

<sup>489</sup> Ibid.

<sup>490</sup> Ibid.

<sup>491</sup> See also on this point, the interpretation of the State Council on the “joint illimited guarantee” and its analysis of the de facto use of this principle prior to the *arrêté grand-ducal* of 1972: “[...] the supervision of compliance with the provisions of the management regulations was left to the fund's bodies and in particular to the depositary bank. Indeed, the existence of a joint and several guarantee from the promoters seemed to make it superfluous, The existence of an unlimited joint and several guarantee from the promoters seemed to make it superfluous, at that time, to engage the responsibility of the State in a public control” ( *Journal Officiel du Grand-Duché du Luxembourg*, *Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissement*, N.1652, 18.12.72). Original in French, translation of the author.

However, the interpretation of Werner was eventually accepted by CCB and Fonditalia from the end of 1967 was therefore listed in the LuxSE as requested by Lambert Dupong and IOS organization.<sup>492</sup> Moreover, in subsequent occasions, the Ministry of Finances approved also other apparently opaque operations concerning Fonditalia. For example, in December 1968, Pierre Werner gave again a positive advice on two financial operations involving the sales of shares of Fonditalia. First, to IOS Development Company with headquarters in London, controlled by the mother company Panama-resident IOS. Then, to the Investors Overseas Services Management Limited, with headquarters in Toronto, Ontario, Canada, and as well controlled by Panamanian IOS.<sup>493</sup> In this context, the final words of the letter of Dondelinger to the Ministry of Finance, written in October of one year earlier, sound rather prophetic: “[...] From the political point of view, one may ask whether it is in the interest of the good reputation of our financial centre to allow funds to be set up in Luxembourg whose investment methods are widely criticised in many countries (cf. my report of 14 August 1967) and whether one day an Aristarchus will not stand up to better inform public opinion, with all the foreseeable consequences of such action. [...] Is not it time to legislate on this matter?”<sup>494</sup>

#### *4.2. The arrêt  Grand-Ducal of 1972 and the role of the “Elvinger and Hoss” law firm*

Whether Luxembourg’s personalities involved in the holding and investment fund’s system were expecting it or not, IOS scandal represented a turning point in this early phase of the history of investment funds in the Grand Duchy. As in effect Dondelinger was already pushing for in October 1967, new legal barriers appeared as necessary for the survival of Luxembourg’s fund industry, at least against those “rapacious” and speculative features that the IOS funds had blatantly brought

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<sup>492</sup> Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications, December 1967.

<sup>493</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, letter of Ministry of Finance (signed by Pierre Werner) to Lambert Dupong (4/12/1968). Original in French, translation of the author.

<sup>494</sup> CSSF, box 3630, FONDITALIA 9.85-5.86, letter of Albert Dondelinger to the Ministry of Finance, 16/10/1967. Original in French, translation of the author.

to evidence. The introduction in Luxembourg’s jurisprudence of additional code of capital on the subject would have pursued two further objectives. First, the introduction for the first time in Luxembourg’s jurisprudence of legal code explicitly addressed to the regulation of the investment fund industry. Until that moment indeed, as seen above, although referring in principle to H29 (with its correlations with the law on business companies of 1915 and the Civil Code) and with regards to the powers of the CCB to the *arrêté grand-ducal* of 1965, the overall juridical framework on funds had been essentially based on those *de facto* decisions of the AED and of the Ministry of Finances from the early 1930s and concurrently with the incorporation of the Eurunion fund. A specific regulation, on the one hand, able to finally introduce by law the notion of investment fund in Luxembourg’s juridical framework and on the other, to clearly define the field of action and the limits of the CCB and its commissioner on this domain, represented moreover a way to eventually regulate the excessive freedom left to the “self-control” practices of funds’ managers. In this regard, it appears rather contradictory that the legal instrument chosen for the introduction of the “new” source of code of capital was that of the governmental regulation and not that of a national law approved at the Chamber, after a debate and a final vote (that would have showed the consistency and size of potential opposition to it, as it had been for the socialists opponents at the time of the 1929 debate on the promulgation of H29). The drafters of the *arrêté* of 1972, instead, justified the use of the governmental regulation with “[...] the urgency and the interest of protecting both national and international savings. [It must be possible to implement these proposals] by means of a grand-ducal regulation based on the law....[sic] empowering the Grand Duke to regulate certain matters”.<sup>495</sup>

The second additional purpose pursued through the promulgation of the *arrêté* of 1972 was the creation of a legal environment that, while maintaining a certain vagueness in the definition of the existing funds and their features, would have been able at the same time (or by means of that) to easily include new types of investment funds under the same juridical framework. In a request of the CCB for a modification of a previous version of the text that was then going to be forwarded by Pierre Werner to the president of the Chamber of Deputies, it was considered the addition of further types of funds, besides FCPs and *Sociétés d’investissement* (open-end and closed-end

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<sup>495</sup> Journal Officiel du Grand-Duché du Luxembourg, Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissement, N.1652, 18.12.72). Original in French, translation of the author.



funds), for example “[...] any other similar undertaking, whatever its legal form the activity, as long as it has as main activity the collective investment of savings raised from the public by means of a public or private offer of a public or private offer of securities or of any negotiable or nonnegotiable securities, as well as of any documents representing such securities or securities or conferring a right to acquire them”.<sup>496</sup>

According to Luxembourgish business lawyer André Elvinger, interviewed by Laurent Moyse and his coauthors for the 2014 book “*Les artisans de l’industrie financière*”, his law firm “Elvinger and Hoss” had been the main advisor behind the drafting of the *arrêté grand-ducal* of 1972.<sup>497</sup> The draft had been then further analysed and amended by several Luxembourgish institutions, including the Ministry of Finances (for example, Pierre Werner added several remarks in the incipit part of the “project of *arrêté*”<sup>498</sup>), the State Council (that notably, confirmed the interpretation of “urgence” of regulation through an *arrêté* instead of a law debated in the Parliament<sup>499</sup>), and the Chamber of Commerce.<sup>500</sup> Furthermore, this reconstruction, individuating in André Elvinger and his firm the main architects of the *arrêté* on funds of 1972, is in fact corroborated also by later reconstructions of politicians such as former Luxembourg’s prime minister Jacques Santer,<sup>501</sup> and of other professionals of the fund industry of the time, such as economist Marie-Jeanne Chèvremont<sup>502</sup> and lawyer and jurist Claude Kremer.<sup>503</sup>

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<sup>496</sup> Journal Officiel du Grand-Duché du Luxembourg, *arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissement*, 22 December 1972). Original in French, translation of the author.

<sup>497</sup> Moyse et al. (2014), *op.cit.*, pp. 114-116.

<sup>498</sup> Journal Officiel du Grand-Duché du Luxembourg, *Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissement*, N.1652, 18.12.72). Original in French, translation of the author.

<sup>499</sup> “The urgency is also evident in the situation created in the global stock market by the imminent entry of the United Kingdom into the Community of Nine, where the power of the City power may threaten the positions acquired by the Luxembourg market in the euro-dollar issue market”, from the advice of the State Council in *Journal Officiel du Grand-Duché du Luxembourg, Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissement*, N.1652, 18.12.72). Original in French, translation of the author.

<sup>500</sup> *Ibid.*

<sup>501</sup> Jacques Santer. Interview with the author, October 1, 2021.

<sup>502</sup> Jeanne Chèvremont, Interview with the author, November 23, 2022.

<sup>503</sup> Claude Kremer, Interview with the author, January 11, 2023.

As in the case of the preparation and drafting of H29 and that of the debate around the incorporation of the Eurunion fund, the role of Elvinger in the formulation of the regulation of 1972 highlights once again the presence of forms of potential conflict of interests deriving from the dense intermingling of business, political, and sometimes even family relations that seems to surround the foundations of the overall regulatory environment of the investment fund's industry in Luxembourg. With regards to the *arrêté* of 1972, first, as seen in chapter 3.3., André Elvinger's law firm had played a key role in the introduction under Luxembourgish law of the sub-type of funds known as closed-end funds with a buyout company from the second half of the 1960s. "Elvinger and Hoss" had therefore a strong interest in a *de jure* transposition of a juridical framework that at the time was still a *de facto* procedure. Second, André Elvinger and his firm could count in these years on a potential proximity with the government ensured by the presence of Paul Elvinger at the Chamber as deputy in these years. Besides being the founder of the Elvinger law firm, Paul had been Minister of Justice (and of Economic Affairs) in the government of Pierre Werner between 1959 and 1964,<sup>504</sup> but he was also a cousin of André – as the latter was going to say many years later, "[...] among my many cousins, the one who was to play an essential role in my life".<sup>505</sup> The Elvinger's law firm, had therefore a potential channel well connected to the ministries of Justice and Economic Affairs.<sup>506</sup>

However, regardless of the motives behind its formulation, the *arrêté grand-ducal* of 1972 emerged since its very first days, under many respects, as a sort of paradox. First, as it has been

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<sup>504</sup> Thewes, G. (2006), op. cit. p. 153.

<sup>505</sup> Elvinger, A. (2017). *Hommage à notre pionnier*, p.8. Original in French, translation of the author.

<sup>506</sup> "[...] Paul took me around the Palais de Justice, introducing me to the heads of the judiciary and the Parquet, but also to the clerks. At that time, the clerks still depended to some extent on the 'casual', a modest fee for copies of judgments and minutes, and some members of the Bar, hardly to be believed, were known to pay copy counts very late, a matter on which Paul was exemplary in punctuality. Paul was also quick to give me advice on private matters, such as clothing, an area where I had remained a bit rustic. Paul and André had a close relationship and used to see each other on a frequent basis: "[...] As far as I was concerned, Paul's entry into the Government placed me in the difficult but exhilarating position of boss of the firm that Paul had not hesitated for a moment to leave in my hands. Throughout these years, despite Paul's new and very absorbing activity, we remained in trusting and friendly contact. But I had to give up my cosy little office on Boulevard Joseph II and move to the ground floor of Rue des Bains, in a house belonging to Alex Bonn's parents-in-law, with a nice office overlooking the garden (Ibid., pp. 17-22)

already argued in the literature,<sup>507</sup> the governmental regulation of 1972, rather than modifying the current *de facto* juridical framework for the investment funds incorporated in Luxembourg – the framework that had allowed extreme models of capitalism<sup>508</sup> such as that of IOS –, eventually gave it a first *de jure* confirmation. As seen above, most likely with the purpose of preserving the character of flexibility of the regulation so to make easier the introduction of new fund types, the text of the *arrêté* of 1972 was kept short and essential. Yet, it appeared at the same time somehow excessively generic in its formulation (for example in terms of description of the funds and their fiscal features) and once again perpetuating a certain indeterminacy around the roles and attributions of the CCB and of the Ministry of Finances. On the one hand, the *arrêté* apparently gave more control power to the CCB Commissioner – now also over the funds non publicly traded<sup>509</sup> and those funds non-domiciled in Luxembourg whose shares were sold by Luxembourg-based intermediaries<sup>510</sup> – also with the advice of “independent experts”.<sup>511</sup> On the other, though, any decision of the Commissioner on the listing suspension for a fund was, under request of the fund’s managers, subject to appeal to the Minister of Finance.<sup>512</sup>

Second, and most importantly, the *arrêté* of 1972, due to its inherent nature of governmental procedure bypassing any Chamber’s and therefore public debate, appeared as affected by a structural weakness. As seen in chapter 2, between the formulation and then promulgation of H29, the weight of the political factions supporting the law had clearly emerged in the Parliament’s debates and in the final public vote at the Chamber. Leading politicians such as Pierre Dupong and Victor Thorn had publicly advertised and supported the new law and

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<sup>507</sup> See Majerus, B. (2020), *art. cit.*

<sup>508</sup> “Many small savers in Europe have suffered substantial financial losses which, if they appear to be recoverable in the long run when the savings have been entrusted to honest and reliable promoters, are to be considered definitive when the investments were made in funds whose management had been, to say the least, audacious. There is also no doubt that advertising methods have sometimes been used with the aim of mislead the public as to the meaning and scope of their investment decisions” (N° 1652 Projet d’arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissements. Original in French, translation from the author).

<sup>509</sup> Journal Officiel du Grand-Duché du Luxembourg, arrêté grand-ducal ayant pour objet le Contrôle des fonds d’investissement, 22 December 1972, Art. 1.

<sup>510</sup> *Ibid.*, Art.1-(2).

<sup>511</sup> *Ibid.*, Art. 3.

<sup>512</sup> *Ibid.*, Art. 5.

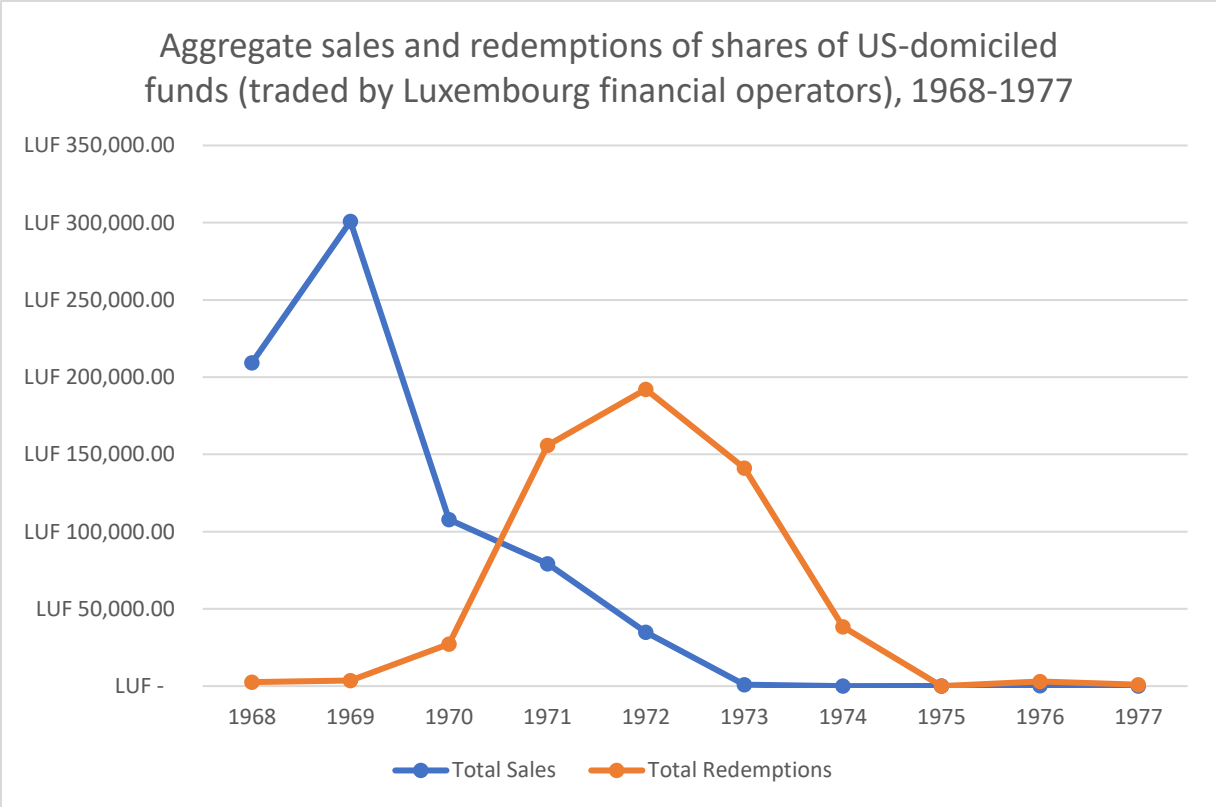
strenuously objected to the criticisms of the socialist opposition. This contributed therefore to increase the reputation of stability of H29 legal framework. On the contrary, the *arrêté* of 1972, appeared as weakened by its self-referentiality paired at the same time with a lack of supporting initiative at the political level.

#### *4.3 Luxembourg's repositioning as a node of the investment fund global city network throughout the 1970s*

The period following the termination of the I.I.T. fund and the first years of Luxembourg's fund industry under the regulatory framework of the *arrêté* of 1972, had been characterised, as seen above, by an overall downsizing in terms of aggregate capital stock and number of resident funds (see Figure 6 and 7). The stock reduction had been also the outcome of on the one hand, growing redemptions requests from both resident and non-resident investors and on the other, of a decline of the sales of new shares of Luxembourg-domiciled investment funds from Luxembourgish financial operators (see Figure 1). However, in this phase of slowing down, new investment and organizational strategies gained momentum, both from the side of the funds' managers and from that of the investors.

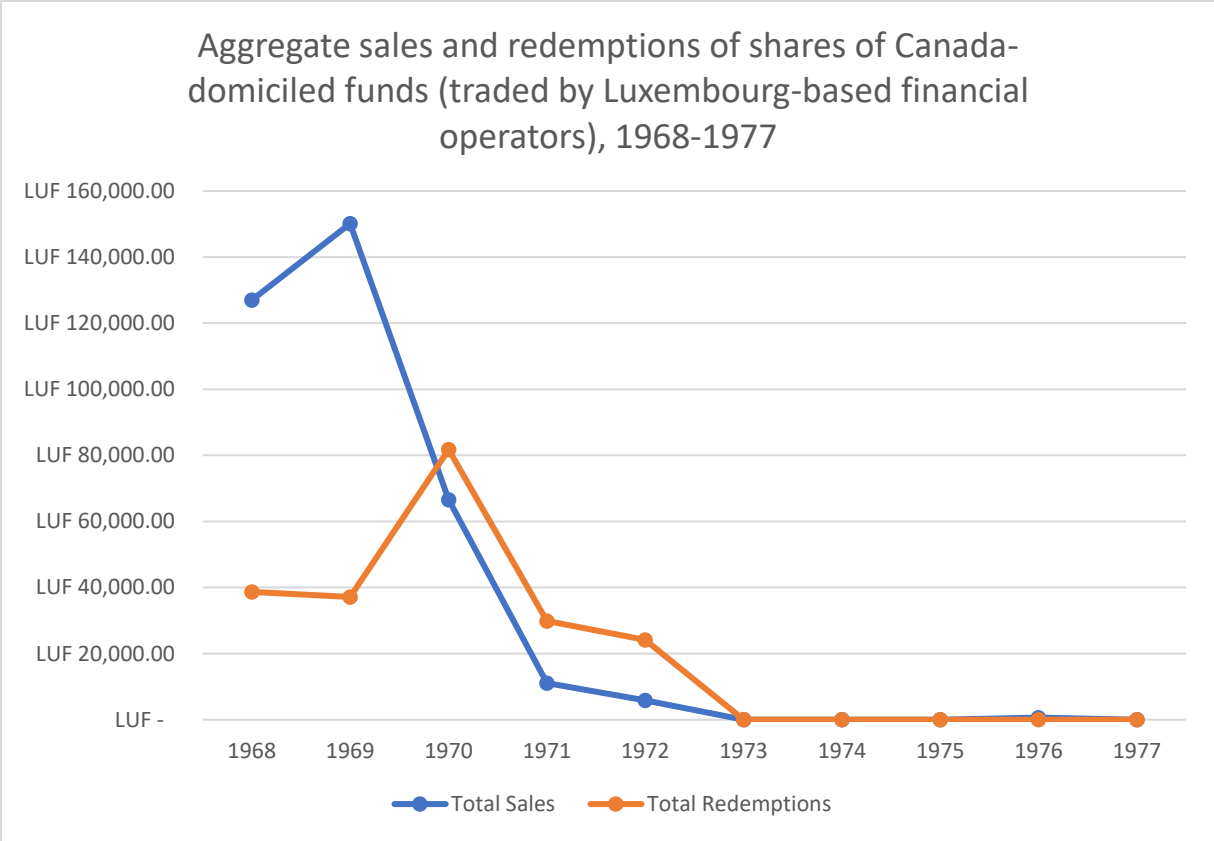
As it is visible in Figure 4.9 and Figure 4.10, by using the aggregate sales and redemptions of shares of US and Canada-domiciled investment funds (traded in Luxembourg's LuxSE) to investors (both resident and non-resident in Luxembourg) as a proxy for the level of perceived interest in the US and Canadian-domiciled funds sold and redeemed through European-based financial intermediaries, it is evident a decline already between 1969 and 1970. The decrement of the sales and the increment of the redemptions started therefore concurrently with the negative stock exchange cycle of the period 1969-1970 and continued, with an even sharper drop, concurrently with the post-Bretton Wood inflationary crisis and with the wave of distrust towards these financial instruments enhanced by the crack of IOS. By the second half of the 1970s, there is instead a stasis, with null or low sales and redemptions of shares of US and Canada-domiciled funds traded through Luxembourg-based financial operators.

**Figure 4.9. Total sales and redemptions of shares of US-domiciled investment funds (thousand LUF) of aggregate investors (resident and non-residents in Luxembourg), 1968-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d’investissement au Grand-Duché de Luxembourg. Calculations of the author.

**Figure 4.10. Total sales and redemptions of shares of Canada-domiciled investment funds (thousand LUF) of aggregate investors (resident and non-residents in Luxembourg), 1968-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d’investissement au Grand-Duché de Luxembourg. Calculations of the author.

Already by the end of the 1960s, fund’s managers using Luxembourg as a platform for either the listing or the trading of funds, had begun however to prospect the opening towards new markets. For example, as seen, the law firm “Elvinger and Hoss” had been one of the first Luxembourg-

based financial intermediaries contacted by Japanese fund managers, interested in listing funds in Luxembourg addressed also to Japanese customers. Banque Lambert, once again playing as a frontrunner, also had opened-up its market interests to “the east”. In February 1969, the Belgian bank, together with Soges, Banque Lambert-Luxembourg, Compagnie Lambert pour l’Industrie et la Finance, and a group of other Belgian companies strongly connected to the group Lambert and based in Brussels<sup>513</sup> (in Avenue Marnix 24, same headquarters of Lambert in Brussels), promoted the incorporation of the Gulf Investment Fund, a mutual fund especially addressed to investors with residence in the Gulf countries.<sup>514</sup> Among the administrators, there were baron Léon Lambert (so the president of Banque Lambert) and Marcel Décleve (that had meanwhile had also become managing director of the Soges<sup>515</sup>), Julien Becker (bank director of Lambert-Luxembourg<sup>516</sup>) for the Lambert group. Together with the Belgian administrators there were two London-based administrators: Colin McFadyen (bank director) and Sir George Middleton<sup>517</sup>, a British diplomat that had been previously in residency in Bahrein.<sup>518</sup> The distribution of the shares to new investors was instead entrusted to Midsan Consultants Ltd., a firm based in the Bahamas, of which Banque Lambert was one of the main stakeholders, represented by Marcel Decleve, Colin McFadyen, and Henri Ruhl.<sup>519</sup>

Also in terms of investment strategies of the two main categories of investors buying and redeeming their fund’s shares through Luxembourg-based financial intermediaries – so, resident and non-resident in Luxembourg – it is possible to detect changes related to the geographical origin of the funds throughout the second half of the 1970s. Already from the 1960s,<sup>520</sup> Luxembourg’s financial intermediaries, besides the shares of Luxembourg-domiciled funds, had been actively selling also shares of funds domiciled elsewhere. Foreign investment companies and the

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<sup>513</sup> ARB, Banque Lambert, box 12792, Gulf Investment Fund, Extrait du Memorial Recueil Spécial 24 April 1969.

<sup>514</sup> Smets, P. (2012), *op. cit.*, p. 269.

<sup>515</sup> ARB, Banque Lambert, box 1187, Soges, Exercice 1966, p.2.

<sup>516</sup> See FINLUX archive.

<sup>517</sup> ARB, Banque Lambert, box 12792, Gulf Investment Fund, Extrait du Memorial Recueil Spécial 24 April 1969, p. 7.

<sup>518</sup> Smets, P. (2012), *op. cit.*, p 269.

<sup>519</sup> Ibid.

<sup>520</sup> Israel, E. (1970), *art. cit.*, p. 200.

management companies in the case of open-end funds, since non-domiciled in Luxembourg were not subject to any taxes on capital or income. However, when subsidiaries of these companies, with tasks of book-keeping, or for transfers and sales operations, were established in Luxembourg they were subject to the ordinary tax regime of commercial companies under Luxembourgish law. If the investors were non-resident in Luxembourg, they were therefore non-taxable in the Grand Duchy, even when their shares were deposited as securities in Luxembourg or when the dividends from their investment in these funds were collected through Luxembourg banks.<sup>521</sup> Luxembourg's residents, instead, were subject to the normal income and net wealth taxes of Luxembourg. Yet, as for the non-resident, also Luxembourg's taxpayers investing on foreign funds did not have any withholding tax in Luxembourg on the dividends and interests of their fund's shares. Withholding taxes could nevertheless be levied in the country of domiciliation of the foreign fund. The Luxembourg-resident investor could obtain a partial or total refund of the withholding tax if double taxation agreements had been concluded with the country of origin of the fund. By the 1970s, double taxation agreements in this sense were in place with Austria, Belgium, France, Germany, the Netherlands, the UK, and the US.<sup>522</sup>

In 1968, the Luxembourg Stock Exchange granted official quotations to 23 of those non-resident funds.<sup>523</sup> By 1977, the number of foreign funds traded in Luxembourg was of 24, divided in 7 open-end funds, and 17 closed-end funds.<sup>524</sup> In Table 4.1, it is reported the country of domiciliation for each of the foreign funds traded in Luxembourg in the third trimester of 1977. In Figure 4.11, the countries of origin of non-resident funds traded in Luxembourg in 1977 are plotted on a map.

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<sup>521</sup> Israel, E. (1970), *art. cit.*, p. 201.

<sup>522</sup> *Ibid.*

<sup>523</sup> Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications, December 1968.

<sup>524</sup> Archive of the Graduate Institute of International and Development Studies (Geneva), 4.16.1.CMoW SEQ LUXEMBOURG, Luxembourg Stock Exchange publications, December 1977; CSSF, Bulletin trimestriel, 1977-3, p. 33.



**Table 4.1. Non-resident funds traded in Luxembourg in the third trimester of 1977, by country of domiciliation.**

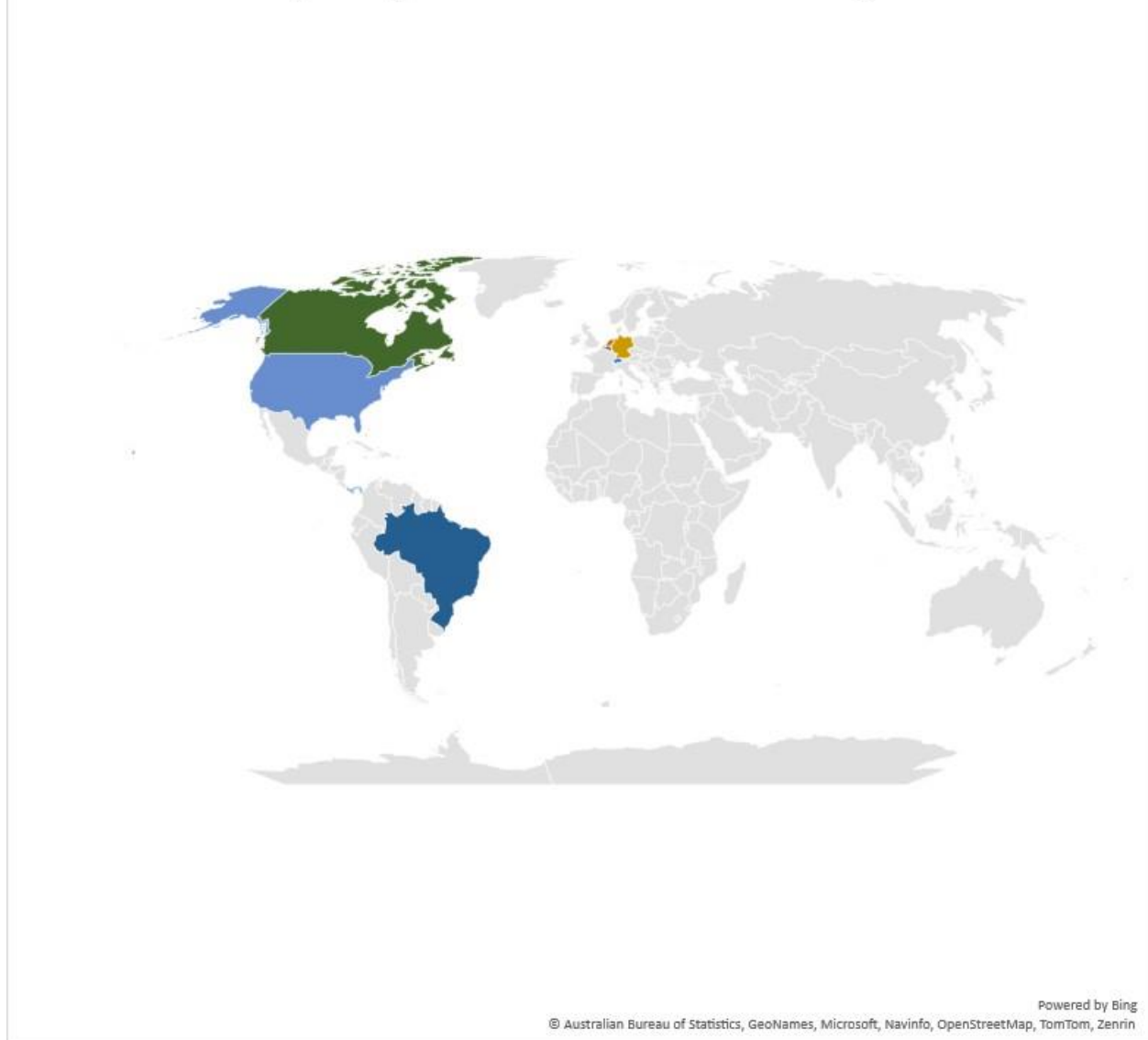
<b>Country of residence</b>	<b>Name of the fund</b>
<b>Netherlands Antilles</b>	Arrow Capital N.V.
	The Convertible Bond Fund N.V.
	Energy International N.V.
	Fidelity American Assets N.V.
	Fidelity International Fund N.V.
	Five Arrows Fund N.V.
	The Gresham Street Dollar Fund N.V.
<b>Bahamas</b>	USIF Real Estate
<b>Belgium</b>	Interselex Pacific Fund
<b>Bermudes</b>	Chevy Chase Property Company Limited
<b>Brasil</b>	The Brazil Fund S.A.
<b>Canada</b>	Western Canadian Resources Fund Limited
<b>US</b>	Sogen International Fund Inc.
<b>Jersey Island</b>	International Income Fund
	Save & Prosper (Jersey) Commodity Fund Limite
	Worldinvest Income Fund
<b>Panama</b>	Fidelity Pacific Fund S.A.
	Safe Fund

	Safe Trust Fund
<b>Netherlands</b>	Robeco N.V.
	Rolinco N.V.
<b>RFA (Germany)</b>	Concentra
<b>Switzerland</b>	Europrogramme Internation
	The Treaty Trust Holding S.A.

*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg (III trimestre 1977)

**Figure 4.11. Countries of domiciliation of non-resident funds traded in Luxembourg in the third trimester of 1977.**

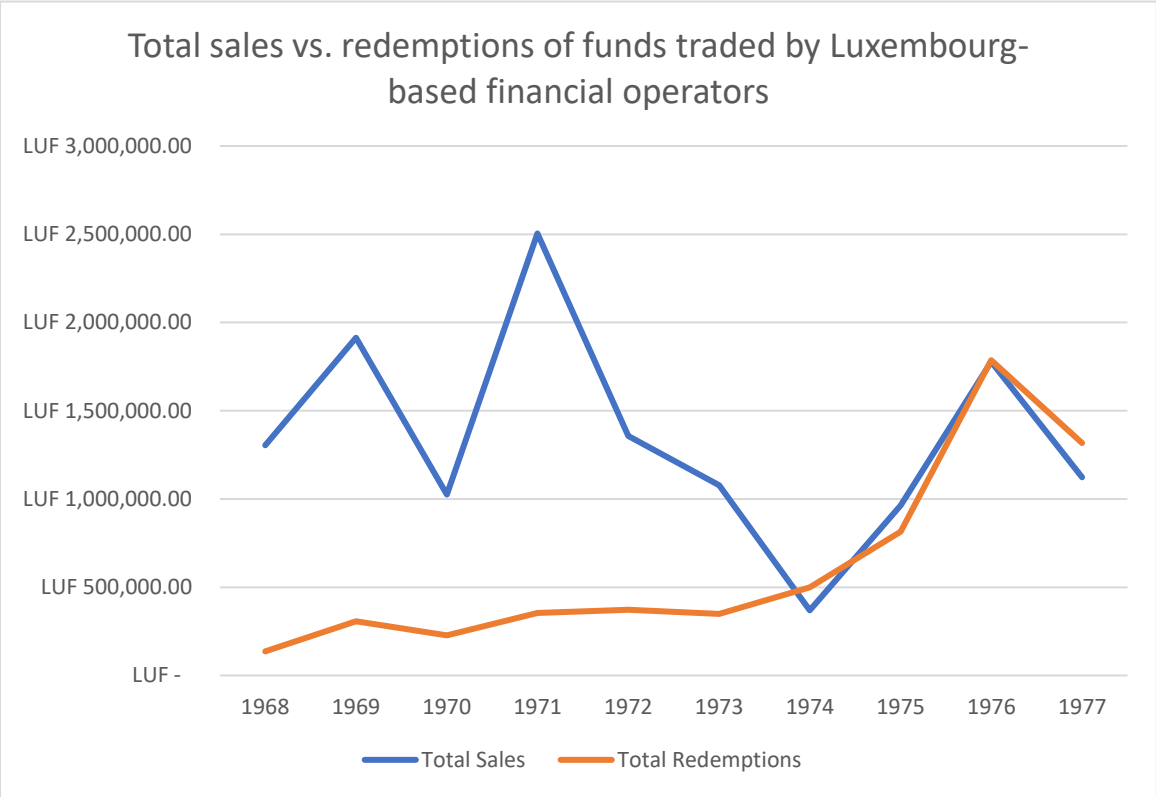
### Country of origin of funds traded in Luxembourg, 1977



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

Archival evidence shows that, while the second half of the 1970s was characterised by reduced sales of shares of funds resident either in Luxembourg (see Figure 1), in US (see Figure 9), or in Canada (Figure 10), once also the sales of investment funds from other countries of domiciliation are considered in the aggregate, sales tend to be on average in net parity with redemptions. Figure 4.12 shows that the aggregate of total sales of funds' shares from any country of origin and from any type of investors (resident and non-resident in Luxembourg) are below total redemptions only in 1974 and 1977.

**Figure 4.12. Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from the following countries: Luxembourg, Belgium, Germany, Netherlands, Canada, United States, Jersey Island, Netherlands Antilles, Bermudas, Bahamas, Panama. 1968-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

Behind these figures, there is in the first place, the growth of sales of fund's shares from countries such as Belgium,<sup>525</sup> Germany, and the Netherlands, in particular in 1976 (see Appendix, Figures 8.1a, b, and c). But also, it has to be considered the exploit of the sales of Bahamas-domiciled fund USIF Real Estate, effectively sold to European customers through the Luxembourgish operator Dewaay Luxembourg S.A.<sup>526</sup> – in Picture 4.1, an advertising in *Luxemburger Wort* for this fund in Luxembourg in 1972 – before communicating an expected loss of 100 million dollars by February 1978.<sup>527</sup> Throughout 1977, the sales of this fund had reached their peak in Luxembourg and accounted for 18 per cent of the overall aggregate sales of shares of funds from any country of residence (including Luxembourg) – see Figure 4.13.

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<sup>525</sup> It is interesting to note that concurrently, in Belgium, the market of Luxembourg-domiciled fund's shares was instead declining (see for example, December 13, 1975, Les souscriptions neites en Belgique à des fonds d'investissement luxembourgeois tendent à diminuer, *Luxemburger Wort*, p. 22

<sup>526</sup> See also <https://www.somersoft.com/threads/anyone-heard-of-usif-real-estate.10312/>

<sup>527</sup> 7 July, 1978 "Usif Real Estate", *Luxemburger Wort*, p. 21

Picture 4.1. Advertisement of USIF Real Estate fund in Luxemburger Wort, 20 June 1972

Effective May 18, 1972,

**USIF, REAL ESTATE**

is reorganized as a closed-end investment trust with

**Arlen Bahamas (Management) Limited**  
a wholly-owned subsidiary of  
**Arlen Realty & Development Corp.**  
as Managing Trustee and

**Trust Corporation of Bahamas Limited**  
as Custodian Trustee.

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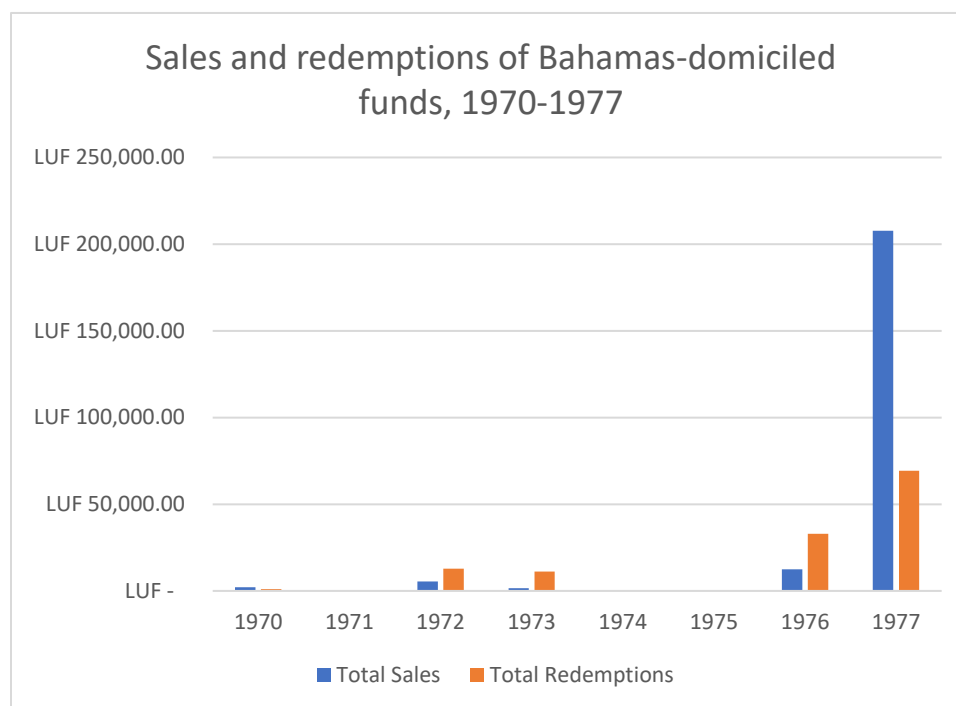
**James D. Landauer Associates, Inc.**  
acted as real estate consultants.

*The undersigned acted as financial advisor to the Trust in the reorganization.*

**LEHMAN BROTHERS**  
*Established 1850*

NEW YORK CHICAGO DALLAS HOUSTON LOS ANGELES PARIS SAN FRANCISCO WASHINGTON, D. C.

**Figure 4.13. Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from the Bahamas, 1970-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

The aggregate data statistics from the CCB, therefore, give a dynamic picture of the investment fund market in Luxembourg by the end of the 1970s. Luxembourg-based operators involved in the market of funds' shares through the Luxembourg Stock Exchange, once facing the confidence crisis towards Luxembourg-domiciled funds, appear to have redirected the interest of the investors (in particular non-resident ones) towards the purchase of shares of investment funds non-domiciled in Luxembourg. Shares of funds incorporated in Belgium, the Netherlands, but also OFCs such as the Bahamas, and that were sold in Luxembourg through bearer certificates. In this way,

Luxembourg's financial operators were thus able to somehow mitigate the crisis of Luxembourg's fund market by offering investors alternative, not-domiciled in Luxembourg, products.



## 5. “We had to start a new niche”. The breakthrough of Luxembourg’s fund industry in the 1980s

*“[The law on funds] was my main achievement at this time, and it was also perceived as so by the banking community and so on”.*

Jacques Santer. Interview with the author, October 1, 2021

In 1978, CCB described the situation of Luxembourg’s macroeconomic indicators as “the most difficult in forty years”.<sup>528</sup> The financial surveillance institution was mainly referring to the effect on Luxembourg’s occupational trends and GDP of the “Western Europe steel crisis”<sup>529</sup> which had hit the US and the European net exporters since the middle 1970s. The steel crisis had been triggered on the one hand, by the negative cycle resulting from the oil crisis of 1973-1974, as seen in the previous chapter. At the same time, it had been the inevitable outcome of a series of structural trends at the international level. First, the rise of new international players such as Japan (see Figure 5.1). Second, the decline in the demand of crude and manufactured steel from high-income countries related to technological advances,<sup>530</sup> to the wider introduction of post-Fordist modes of production,<sup>531</sup> and despite the growing demand from those countries entering a phase of rapid

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<sup>528</sup> CSSF, CCB, bulletin trimestral, 1978, I.

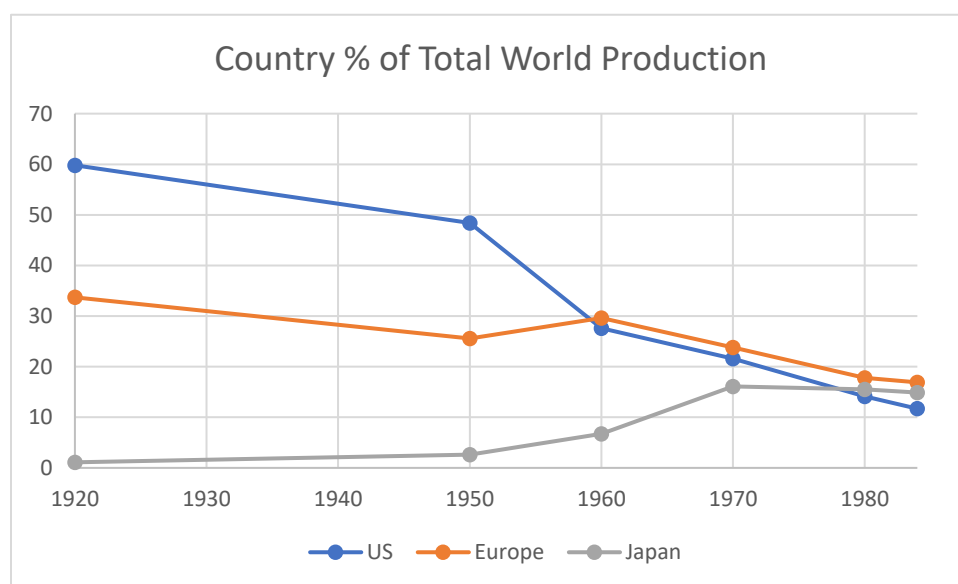
<sup>529</sup> Meny, Y., Wright, V., and Rhodes, M. (1986). *The Politics of Steel: Western Europe and the Steel Industry in the Crisis Years (1974-1984)*. Berlin, Boston: De Gruyter.

<sup>530</sup> See the contemporary analysis of Tarr, D. G. (1988). The Steel Crisis in the United States and the European Community: Causes and Adjustments. NBER Chapters, in: *Issues in US-EC Trade Relations*, pages 173-200, National Bureau of Economic Research, Inc.

<sup>531</sup> On the passage in Luxembourg from a “Fordist” to a “post-Fordist” industrial environment see Trausch, G. (2017), *op. cit.*, pp. 288-290.

industrialization (such as those from the area of the “East-Asian miracle”<sup>532</sup>) since they were nevertheless buying from other producing hubs. Third and finally, the increasing market strength of competitor countries that could rely on inferior production relative costs (see Table 5.1). These were all factors that contributed moreover to a world-level overproduction crisis<sup>533</sup> which in turn resulted into a sudden (and in a certain way astonishing<sup>534</sup>) downsizing of Luxembourg’s national steel sector.

**Figure 5.1. Quota of world total production (%) of steel for US, Europe, and Japan, 1920-1984**



<sup>532</sup> Birdsall, N. M., Campos, J. E. L., Kim, C.S., Corden, W.M., MacDonald, L., Pack, H., Page, J., Sabor, R., Stiglitz, J. E. (1993). *The East Asian miracle : economic growth and public policy : Main report (English)*. A World Bank policy research report. New York, New York : Oxford University Press.

<sup>533</sup> Trausch, G. (2017), *op. cit.*, p. 265.

<sup>534</sup> Luxembourg’s newspapers of the time tend to describe the steel crisis for example as “alarming” (see e.g.,(April3,1975).*Crise dans la sidérurgie lorraine: La situation dans la sidérurgie lorraine est à ce jour in quiétante. Luxembourg Wort*, p. 5. Original in French, translation of the author); “unprecedented” (see e.g., Faber, G. (September 17, 1982). *La sidérurgie luxembourgeoise face a la crise. d’Letzeburger Land*; and as “the greatest economic danger that Luxembourg has ever faced” (see Als, G. (11 December, 1981). *Le modele luxembourgeois menacé. d’Letzeburger Land*, pp. 11-13.

*Note:* Source: Tarr, D. G. (1988). The Steel Crisis in the United States and the European Community: Causes and Adjustments. NBER Chapters, in: Issues in US-EC Trade Relations, pp. 173-200, National Bureau of Economic Research, Inc

**Table 5.1. Steel sector relative input costs (\$ per net ton) per area of production, 1984**

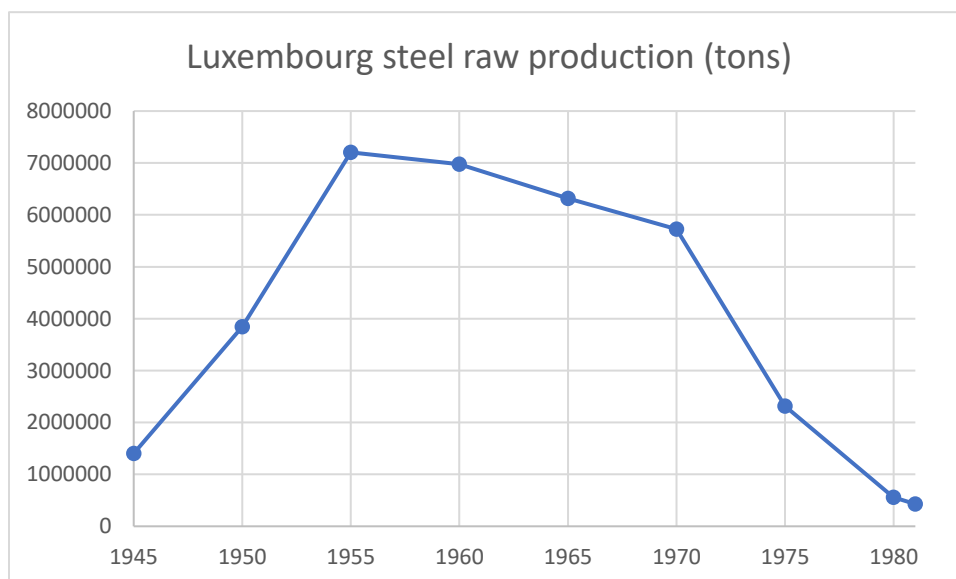
Country	Labor	Coal & Ore	Energy	Capital	Total
<i>US</i>	170	102	76	55	403
<i>Europe</i>	97	102	48	67	314
<i>Japan</i>	82	97	46	77	302
<i>Brazil</i>	44	86	50	114	296
<i>South Korea</i>	24	97	48	85	256

*Note:* Source: Tarr, D. G. (1988). The Steel Crisis in the United States and the European Community: Causes and Adjustments. NBER Chapters, in: Issues in US-EC Trade Relations, p. 180

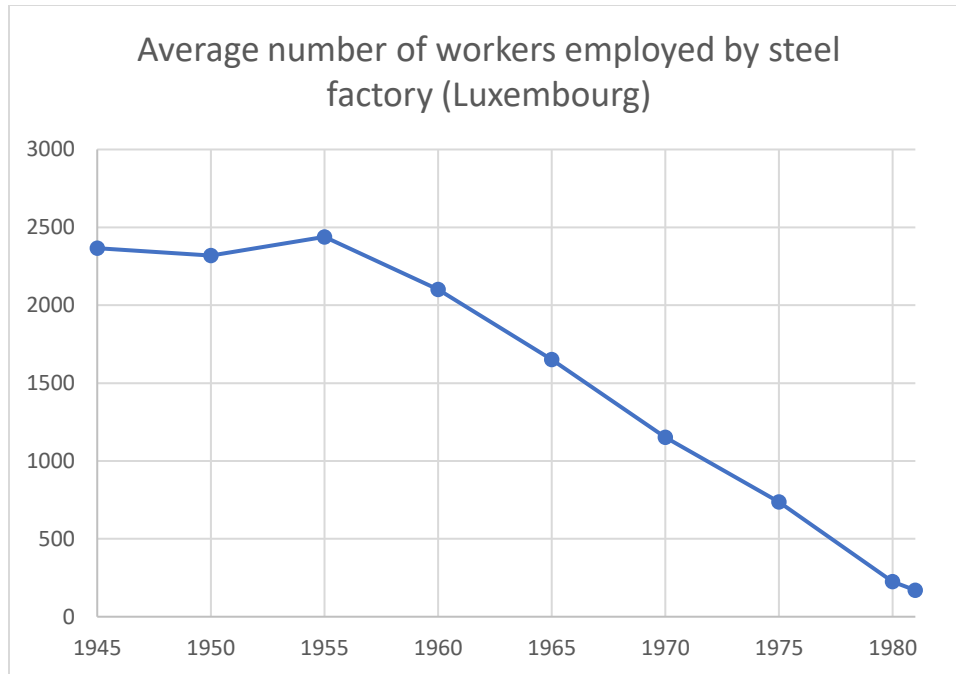
The steel sector contributed to ca. 30 per cent of Luxembourg's GDP in 1960 – when, as seen in Figure 1, Europe had overcome the US in terms of percentage of world production of steel. By 1980, steel industry's contribution to Luxembourg's GDP had nevertheless shrunk to 12 per cent,

to then reach 2 per cent in 2011.<sup>535</sup> The decline in the output and its effect on the national occupational trends for the sector are evident in the figures reported in Figure 5.2.

**Figure 5.2. Raw steel production (tons) and average number of workers employed by steel-related factory in Luxembourg (1945-1981)**



<sup>535</sup> Casali, S. (2013). L'industrie sidérurgique, in : Guy Schuller (coord.). *Luxembourg Un demi-siècle de constantes et de variables*. Luxembourg (Statec), p. 92. See also Trausch, G. (2017), *op. cit.*, p. 297.



*Note:* Source: Trausch, G. (2017), *op. cit.*, p. 122

The steel crisis eventually resulted in an increased burden on Luxembourg’s state budget, not only in terms of declining fiscal revenues and overall effect on the general economy deriving from the reduced (and in 1975 and 1981 even negative) GDP growth during these years – see Figure 5.3 on GDP growth in Luxembourg between 1961 and 1989. Luxembourg’s policymakers had to face indeed also increasing state costs due to the resources redirected towards the growing share of population affected by the crisis and to the “rescue” of the national steel sector. It has been calculated that, between January 1975 and December 1986, 20.8 billion of Luxembourg francs were used by the state to sustain social benefits<sup>536</sup> – for example in terms of unemployment benefits but also for buffering policies based on retirement and early retirement campaigns;<sup>537</sup> 20.1 billion were addressed at the same time towards the financial restructuring of the sector, while 6 billion

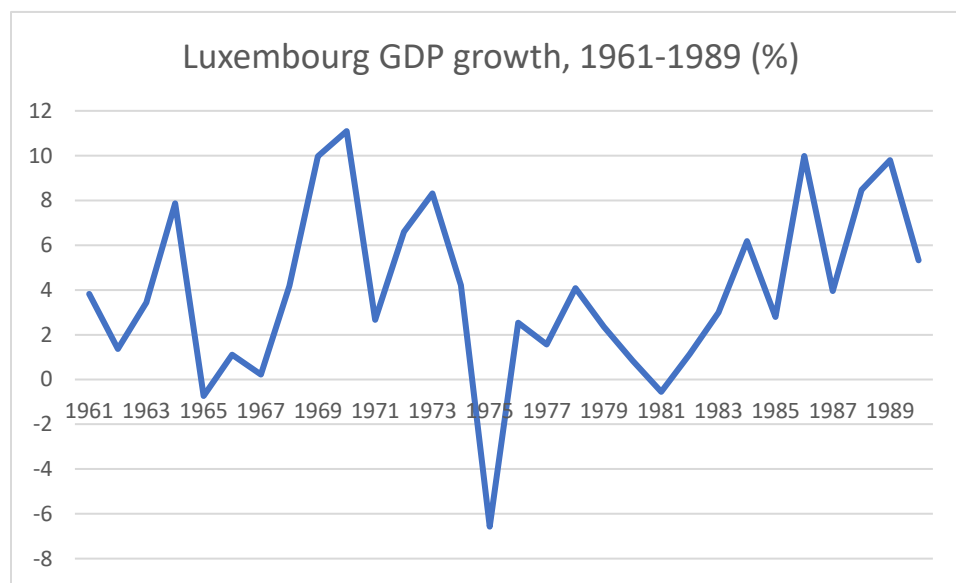
<sup>536</sup> Statec, *L’économie industrielle du Luxembourg 1966-1983*, Luxembourg, 1987, cahier économique n° 73, p. 192.

<sup>537</sup> See Trausch, G. (2017), *op. cit.*, Table 7.11, p. 269.

in investment aid.<sup>538</sup> A total of ca. 47.5 billion of Luxembourg francs was therefore employed to mitigate the effect of the crisis on Luxembourg's society and economy.

These figures can be moreover assessed in comparison with the evolution of the state budget size in the same years. Between 1972 and 1989, Luxembourg's budget increased on average by 5 per cent a year – see Figure 5.4. Yet, until 1975 the growth had been around 10 per cent a year, before starting to slow down after the negative peak in GDP growth in that year. Once the yearly growth of GDP turned again negative in 1981, for the first time in this phase the estimated budget was deemed by state accountants as inferior compared to the previous year (-1.5 per cent).<sup>539</sup>

**Figure 5.3. Luxembourg's GDP growth (%), 1961-1989.**

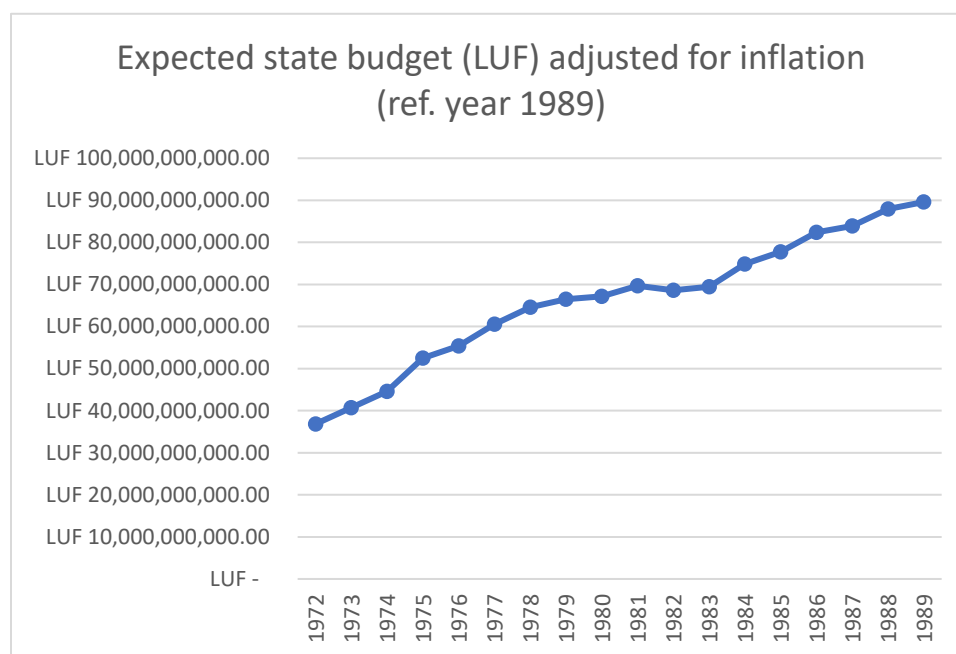


*Note:* Source: <https://donnees.banquemondiale.org/indicateur/NY.GDP.MKTP.KD.ZG?locations=LU>  
Consulted on April 8, 2023.

<sup>538</sup> Statec, L'économie industrielle du Luxembourg 1966-1983, Luxembourg, 1987, cahier économique n° 73, p. 192.

<sup>539</sup> Luxembourg's budget laws between 1971 to 1988 (Loi concernant le des recettes et des dépenses de l'Etat pour l'exercice courant, 1971-1988. Retrieved on April 8, 2023 from <https://legilux.public.lu/>

**Figure 5.4. Luxembourg’s expected state budget (LUF), adjusted for inflation (ref. year 1989), 1972-1989.**



*Note:* Source: Luxembourg’s budget laws between 1971 to 1988 (*Loi concernant le budget des recettes et des dépenses de l’Etat pour l’exercice courant*, 1971-1988. Retrieved on April 8, 2023, from <https://legilux.public.lu/> . Calculations of the author

At the same time, though, the CCB acknowledged that while the country was undergoing this structural negative trend “[...] the banking sector is not only ensuring the stability of the many jobs it has generated but is even continuing to offer new ones. In fact, it is this sector that has been, through its rapid expansion over the last fifteen years, one of the factors in our traditional full employment”.<sup>540</sup> Luxembourg’s banking system had indeed been constantly growing in the previous two decades, in a context of increasing “financialization of world economy” – to be here

<sup>540</sup> CSSF, CCB, bulletin trimestral, 1978, I.

intended in the sense given to this concept for example by Epstein,<sup>541</sup> so as a broad but constant expansion of the financial sector within the general economy, not necessarily resulting in higher returns compared to the first half of the twentieth century.<sup>542</sup> Meanwhile, at the European level, wider “freedom” had been granted to the circulation of capitals in the European Single Market as a result of Rome’s agreements of 1957.<sup>543</sup> As seen in the previous chapters, already from the 1930s, local Luxembourgish banks such as BIL or BGL had progressively further broadened their international vocation, on the one hand, through investment as stakeholders or as financial intermediaries in the holding sector (including the involvement in the business of the so called “*holding de placement*”, as in the case of the same BIL and Banque Levy – see chapter 2). On the other hand, between 1945 and the early 1960s, by becoming the custodians and intermediaries within the market of the international investment funds incorporated in Luxembourg. During this period the number of credit institutions in Luxembourg had been nevertheless stayed rather stable (see Figure 5.5).

**Figure 5.5. Number of banks in Luxembourg, 1920-2000**

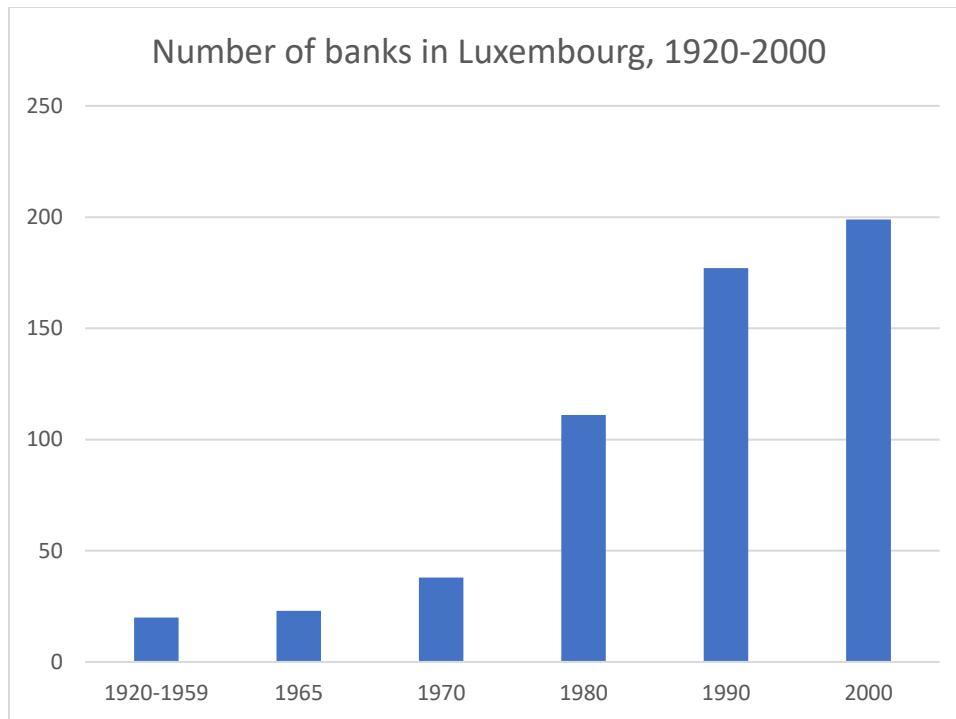
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<sup>541</sup> Epstein, G.A. (2005) *Financialization and the World Economy*. Cheltenham, UK and Northampton, MA: Edward Elgar.

<sup>542</sup> Fasianos, A., Guevara, D., and Pierros, C. (2018). Have we been here before? Phases of financialization within the twentieth century in the US. *Review of Keynesian Economics*, 6(1), 34-61.

<sup>543</sup> See e.g., Trausch, G. and de Vreese, M. (1995), *op. cit.*, p. 52.





Note: Source: <https://lustat.statec.lu/>

The 1960s, though, represented a turning point for Luxembourg’s banking sector. First, after the introduction in 1963 of the Interest Equalization Tax (IET) by Kennedy’s administration in the US, Luxembourg-based banks became quickly involved in the Euromarkets. While there is still an open debate in the literature on what should be identified as the first Eurobond listed in Europe (see also chapter 3.1), there is no doubt that the Eurobond issued by the Italian state company “Autostrade per l’Italia” (“Concessioni e Costruzioni Autostrade”), listed in the Luxembourg Stock Exchange starting from July 17, 1963, was the first issuance of this type<sup>544</sup> that can be directly connected to the introduction of the IET in the US. Described as a “piece of clever financial engineering”,<sup>545</sup> the bond had been originally organized by British-based bank S. G. Warburg – the same bank that, as seen in chapter 2, while still resident in Hamburg before fleeing the Nazi persecution, had been

<sup>544</sup> Also Luxembourg’s press identified this Eurobond as the first issuance in Luxembourg related to the Euromarket (see e.g., (September 9, 1978). Le premier euro-emprunt, Autostrade, vient d’être remboursé. *Luxemburger Wort*, p. 25).

<sup>545</sup> “Money Will Find a Way,” *The Economist*, July 6 2013, 18, in Ogle, V. (2017), *art. cit.*

one of the primary actors in the creation of the investment trust Union Internationale de Placements under Luxembourg's H29 legal code. The bond was firstly issued in Schiphol airport in Amsterdam (a move made to avoid the British stamp tax), and then sold to purchasers through Luxembourg Stock Exchange, where Eurobonds became to be regularly listed.<sup>546</sup> Asked why Warburg bank opted for the listing of Autostrade's bond in Luxembourg rather than in London Stock Exchange, Jean Krier (president between 2001 and 2003 of the administration board of Luxembourg Stock Exchange<sup>547</sup>), summarised Luxembourg's comparative advantage as so:

“[...] Of course, the Londoners would have preferred to list this first Eurobond on the London Stock Exchange. However, as the listing procedure in London was longer and more laborious than in Luxembourg, and as a quick decision was essential, Sir Siegmund Warburg found, after consulting his friends in Luxembourg, that the Luxembourg Stock Exchange best met this requirement. It must also be said that at the time, bonds could be listed without a prospectus. Only the publication of a legal notice containing certain data on the issuer and the conditions of the issue was required. This had to be published in the *Recueil Spécial du Mémorial* [Luxembourg Business Register] twice at eight-day intervals, once before the first day of listing”.<sup>548</sup>

Yet, as it has been described in the literature for example by Trausch and de Vreese<sup>549</sup> and more recently by Ogle,<sup>550</sup> three additional factors should be considered as determinant for the success of the Luxembourg Stock Exchange as a key node within the Euromarkets system. First, the absence of withholding tax on the interest coupons of the bonds' shares.<sup>551</sup> Second, the fact that the issuers of Eurobonds could use holding companies incorporated in Luxembourg (and therefore subject to the H29 regime with no dividend and interest taxes) as “issuance vehicles” for these

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<sup>546</sup>See e.g., Cassis, Y. (2006), *op. cit.*

<sup>547</sup> See <https://paperjam.lu/article/news-deces-de-jean-krier-president-du-conseil-dadministration-de-la-bourse-de-luxembourg>. Consulted on April 20, 2023

<sup>548</sup> Interview to Jean Krier (September 2003). *Le mensuel d'AGEFI Luxembourg*. Retrieved on April 20, 2023 from <https://www.agefi.lu/mensuel/Article.asp?NumArticle=5551>. Original in French, translation of the author.

<sup>549</sup> Trausch, G., and de Vreese, M. (1995), *op. cit.*

<sup>550</sup> Ogle, V. (2017). Archipelago Capitalism: Tax Havens, Offshore Money, and the State, 1950s-1970s. *American Historical Review* 122 (5): 1431–58.

<sup>551</sup> See Trausch, G., and de Vreese, M. (1995) *op. cit.*, p.52.

bonds.<sup>552</sup> Third, the use of the “bearer form” modality through which these bonds were issued to the purchasers, whose anonymity was ensured by the non-requirement of registration at the purchase. This resulted in higher chances of successful recourse to tax evasion due to the fact that the ownership of the bond was essentially based on the possess of a paper bond certificate, which could have been easily hidden from the tax authorities of the investor’s country of residence<sup>553</sup> – and that can be considered as a manifestation of the “democratization of tax avoidance” phenomenon as described for example by Zucman<sup>554</sup> and Ogle<sup>555</sup> for these years. This overall mechanism was therefore eventually not so different from what seen in chapter 4.3 for the market of shares of Luxembourg-domiciled and non-domiciled funds, listed in the LuxSE, and sold through the intermediation of Luxembourg-based banking agencies mainly to investors non-resident in Luxembourg as ownership certificates that ensured their anonymity and their potential use as vehicles of tax evasion, in the context of absence of withholding tax on distributed dividends.<sup>556</sup>

Banks such as BIL, BGL, and KBL became soon heavily involved as listing and paying agents<sup>557</sup> in a market, that of the Eurobonds, that grew exponentially and whose massive volume of transactions proved difficult to be “rationally managed” already by the end of the 1960s, and in need of a brand new agency for clearing and settlement appositely installed in Luxembourg<sup>558</sup> – the so called CEDEL (*Centrale de Livraison de Valeurs Mobilières*), created in September 1970

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<sup>552</sup> “It is interesting to note that Eurobond issuers, or rather their financial and legal advisors, very quickly discovered that the Luxembourg finance holding company could usefully serve as an issuing vehicle for their bonds”. Interview to Jean Krier (September 2003), *Le mensuel d’AGEFI Luxembourg*. Retrieved on April 20, 2023 from <https://www.agefi.lu/mensuel/Article.asp?NumArticle=5551>. Original in French, translation of the author.

<sup>553</sup> Ogle, V. (2017), *art. cit.*

<sup>554</sup> Zucman, G. (2015), *op. cit.*

<sup>555</sup> Ogle, V. (2017), *art. cit.*

<sup>556</sup> See also Dor, R. (October 19, 1973). *La querelle des holdings rebondit sur le plan Communautaire. d’Letzeburger Land*, p. 3.

<sup>557</sup> Interview to Jean Krier (September 2003), *Le mensuel d’AGEFI Luxembourg*. Retrieved on April 20, 2023 from <https://www.agefi.lu/mensuel/Article.asp?NumArticle=5551>.

<sup>558</sup> *Ibid.*

under the far-sighted initiative of the banker and future president of LuxSE (1989-1996) Edmond Israel.<sup>559</sup>

In this context of further “internationalization of the place financière”,<sup>560</sup> Luxembourg’s banking system benefitted also from the consistent attitude maintained by Luxembourg’s financial regulatory institutions throughout the years in terms of approach to quality reviewing practices for banking assets. The rising inflation scenario of the end of the 1960s (see chapter 3 and 4) triggered for example German authorities to adopt the so called “Bardepot” measure, namely the obligation for German-resident banks to place part of their deposits at the Bundesbank as “non-interest bearing reserves”. This obligation together with a minimum bank solvency ratio of 1 to 18, as a mandatory legal requirement under German banking law, resulted in a loss of comparative advantage against Luxembourg’s banking regulatory system. In the Grand Duchy, the solvency ratio was indeed kept at 1 to 33. For this reason, German banks had an incentive to incorporate subsidiaries in Luxembourg where they could issue credits in eurocurrencies (in their case so through euro-deutsche marks) with no obligation to place deposits at Luxembourg’s national central bank – which did not exist at the time<sup>561</sup> – in a lighter regulatory and surveillance environment due to the lower bank solvency ratio (calculated as a ratio between the bank’s shareholders equity capital and its issued credits)<sup>562</sup> Banks such as Dresdner, Commerzbank, and Deutsche Bank, incorporated subsidiaries in Luxembourg by 1970 – while in 1970 in Luxembourg there were 3 banks whose “geographical origin” could be identified in Germany, by 1973 their number had reached 16 units (see Figure 5.6).<sup>563</sup>

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<sup>559</sup>Israel, E. (2006). *In love with Life: an American Dream of a Luxembourgier*. Sacred Heart Univ. Press. See also Dörry, S. (2016), *art. cit.*

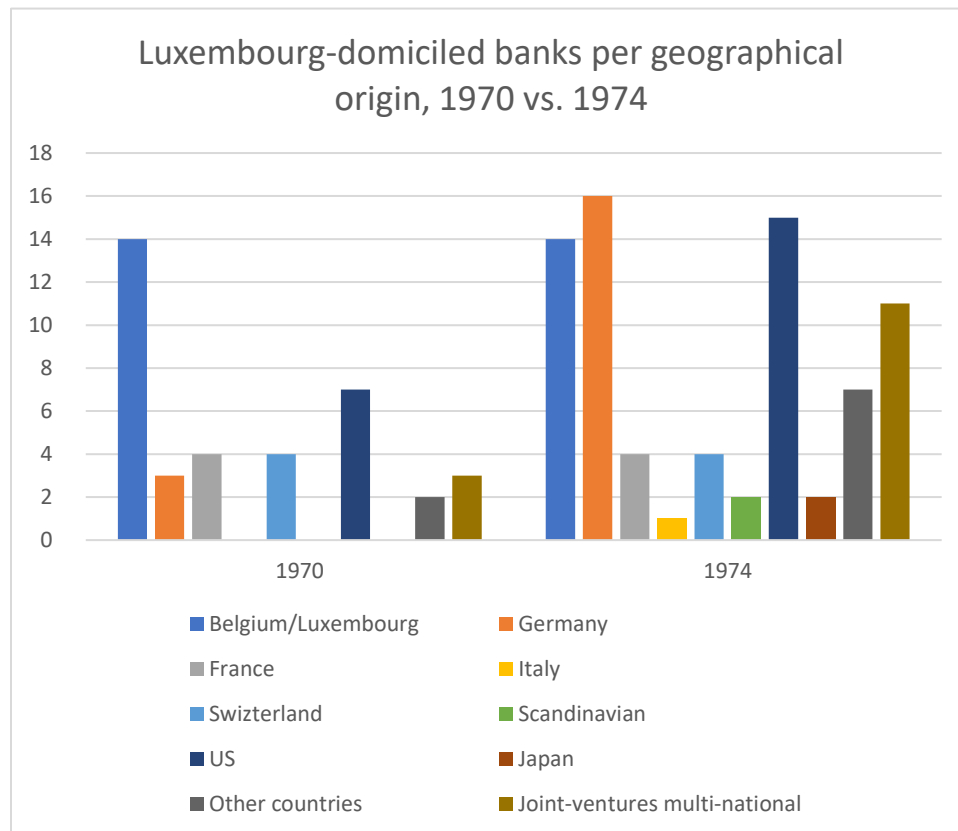
<sup>560</sup> Moyses et al. (2014), *op. cit.* p. 82

<sup>561</sup> See [https://www.bcl.lu/fr/apropos/histoire\\_monetaire/index.html](https://www.bcl.lu/fr/apropos/histoire_monetaire/index.html) (Consulted on April 21, 2023); see also Jungblut, M.P. (1995), *art. cit.*

<sup>562</sup> Trausch, G., and de Vreese, M. (1995), *op. cit.*, p. 56.

<sup>563</sup> The increasing initiatives on the incorporation in Luxembourg of German (and French) banks’ subsidiaries triggered some political reaction at the European-level and towards international organisms such as the IMF from the German and French political classes: “[...] The German and French delegations, in contrast to the British delegation, had never openly spoken out against Luxembourg, but had also never expressed their agreement. Rumour had it that both countries would raise questions of fiscal harmonisation in the context of the discussion on the seat of the Monetary Fund. The Federal Republic was primarily concerned with banking statistics on the positions of German banking subsidiaries in

**Figure 5.6. Geographical origin of Luxembourg-domiciled banks, 1970 vs. 1974**



*Note:* Source : Tableau 11.1. Nombre et origine géographique des établissements de crédit établis au Luxembourg (1970 - 2002). Retrieved on April 21, 2023 from [https://www.bcl.lu/fr/statistiques/series\\_statistiques\\_luxembourg/11\\_etablissements\\_credit/index.html](https://www.bcl.lu/fr/statistiques/series_statistiques_luxembourg/11_etablissements_credit/index.html)

Luxembourg" ((April 3, 1973). Keine Kausalbeziehung zwischen Sitz und fiskalpolitischer Harmonisierung. *Luxembourg Wort*, p. 1. Original in German, author's translation).

It has been assessed<sup>564</sup> that the overall Euromarkets-related yields in Luxembourg were eventually only marginally affected by the withdrawal of the Interest Equalization Tax in the US in 1974 and by the persistent stagflation cycle during the second half of the 1970s.<sup>565</sup> This since the “fictional space”<sup>566</sup> occupied by the Euromarkets had been at the same time expanding due to the above-mentioned dynamics involving Western-headquartered banks that, while facing the consequences of the combined monetary and oil crises in their home countries were concurrently acting as intermediaries in the management of the higher volumes of Eurodollars increasingly circulating between the OPEC members and several low-income countries, in particular in South America<sup>567</sup> (see also the introduction to chapter 4). “Petrodollars” became in this phase bastions of stability of the Eurodollar market, and were able to “fend off”, by recycling OPEC’s surplus money,<sup>568</sup> a “global financial disaster”.<sup>569</sup> Luxembourg continued therefore to play its role as a centre of “collection and redistribution” of Euromarkets capitals,<sup>570</sup> with its financial intermediaries benefitting from the externalities arising from the Eurobonds’ listing in the LuxSE. Luxembourg’s fiscal agencies could at the same time benefit from increasing tax revenues collected from the

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<sup>564</sup> See e.g., Cassis, Y. (2006), *op. cit.*; Dörry, S. (2016), *art. cit.* See also for example the title of Luxembourg Wort of October 23, 1976, that spoke of the Eurobond market in Luxembourg “smashing all previous records” ((October 23, 1976). Le marché des euro-émissions a pulvérisé les anciens records BIL: Un mois de septembre très actif. *Luxemburger Wort*, p. 26.

<sup>565</sup> Trausch, G., and de Vreese, M. (1995), *op. cit.*

<sup>566</sup> The offshore finance market(s) therefore may be thought of as “fictional” or purely “juridical spaces (Palan, R. (1998), *art. cit.*, p. 632)

<sup>567</sup> See Altamura, C. E. (2015), *art. cit.* p. 30.

<sup>568</sup> Alvarez, S. (2019). *Euromarkets and Debt Crisis. In: Mexican Banks and Foreign Finance*. Palgrave Macmillan,

<sup>569</sup> Meadows, E. (1979). How the Euromarket fends off global financial disaster. Successfully recycles OPEC's surplus money. United States. Retrieved on April 22, 2023 from <https://www.osti.gov/biblio/6023604> (US D, Department of Energy, Office of Scientific and Technical Information).

<sup>570</sup> “[...] In this context, Luxembourg will have to play the role of a centre for the collection and redistribution of capital. Various positive facts speak in favour of Luxembourg as a location: rapidly expanding economy; social peace; monetary association with Belgium; organised banking supervision; international vocation of the Luxembourg Stock Exchange; good legislation on holding companies, etc. Luxembourg therefore has the right political and socio-economic environment for the establishment of banks” (March 3, 1973). *L’avenir de la place financière de Luxembourg – Interview to Edmond Israel. Luxembourg Wort*, p.3. Original in French, translation of the author.

holding companies related to the Eurobond market – in their role, as seen above, of issuance vehicles. For the period 1963-1978, it has been calculated that the number of holding companies grew on average of ca. 9 per cent a year.<sup>571</sup> In a context characterised by the downsizing of the investment fund industry (see chapter 4), the post-1973 crisis economic environment, and despite the increasing fears of international investors due to the declarations of the DP-LSAP Luxembourg's government (that had won the general elections of 1974) on their plans for the introduction of limitations to the tax exemptions of H29 (see chapter 5.1), the number of Luxembourg-domiciled holding companies and of their aggregate assets was indeed still on the rise – although slowing down during the period 1974-1978 compared to the previous phase (see Figure 5.7). According to contemporary commentators,<sup>572</sup> the growth in this phase can be attributed to the incorporation of new holding companies within the Euromarkets system.

**Figure 5.7. Number of holding companies in Luxembourg, 1963-1978**

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<sup>571</sup> Eich, e. (1979), *op. cit.* p. 37.

<sup>572</sup> *Ibid.*, pp. 36-40.



Note: Source : Annuaire statistique 1978, sociétés existantes au 31 Décembre.

However, the “lending boom” through the Euromarkets in several developing countries ultimately resulted in an over-exposure of the integrated system of European and American banks in South America’s debt market, in particular Mexican one.<sup>573</sup> By heavily relying on foreign bank loans – as never before in their history – Mexico-based commercial banks magnified their systemic fragility, moreover in a context of rapidly progressing banking deregulation, and with their foreign agencies operating under asset-liability imbalances.<sup>574</sup> These structural factors increased the level of systemic risk at the international level, so involving all Latin America countries, that had borrowed in the Euromarkets, but also their European and North-American lenders. Once Mexico declared its sovereign default in 1982, the debt crisis rapidly backlashed from South America to the foreign banking hubs most exposed to Eurocredits, such as Luxembourg – which, partly as a

<sup>573</sup> See e.g., Alvarez, S. (2015). The Mexican debt crisis redux: International interbank markets and financial crisis, 1977–1982. *Financial History Review*, 22(1), 79-105; Devlin, R. (1989). *Debt and Crisis in Latin America: The Supply Side of the Story*. Princeton: Princeton University Press.

<sup>574</sup> Ibid.



consequence of the upheaval on the Euromarkets following the south American debt crisis, accelerated its diversification into private banking and asset management – a “pivotal step” for the evolution of Luxembourg as a modern international financial centre.<sup>575</sup>

Luxembourg’s economy was thus at this point held in the grip of a group of critical issues, ranging, as seen, from the rapid downsizing of the national steel sector to the implications of the South American debt crisis on Luxembourg’s Euromarkets actors. Furthermore, before Mexico’s bankruptcy, in August 1982, sparked the international Euromarkets crisis, two further factors had already created turmoil in Luxembourg’s financial markets. First, in February 1982, in the context of Belgian economy being struck by stagflation and a worrisome growth of the public debt,<sup>576</sup> Belgian monetary authorities had decided unilaterally to devalue by 8.5 per cent the Belgian franc, which since 1922 (except between 1935 and 1944 as seen in chapter 2), had been in a 1:1 parity with the Luxembourgish Franc. Pierre Werner – who in 1979 had become again prime minister in Luxembourg<sup>577</sup> – spoke at Luxembourg’s Chamber of Deputies of a “[...] currency devaluation that leaves a bitter taste in the eyes of Luxembourgers, not to say a trauma, for both substantive and procedural reasons” in a context of a “better state budget” and bigger “openness to international markets” of Luxembourg’s economy.<sup>578</sup> While such a measure could result in a stimulus for exportations<sup>579</sup> – and therefore being also somehow beneficial for Luxembourg’s raw steel producers – at the same time, contributed to generate uncertainty in Luxembourg’s financial sector. As seen in the previous chapters, part of Luxembourg-domiciled holding companies and investment funds had their capital assets registered in Luxembourg francs, and this currency had been used in secondary markets’ transactions since the 1930s (also due to the reduced control of financial surveillance institutions in absence of an issuing national Central Bank<sup>580</sup>). In order to preserve the future stability of Luxembourg’s currency – which was going nevertheless to be in a

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<sup>575</sup>See e.g. Dörry, S. (2016), *art. cit.*–36, p. 30. See also Trausch, G., and de Vreese M. (1995), *op. cit.*, p. 62.

<sup>576</sup> <https://trends.levif.be/a-la-une/les-cotes-obscurs-de-la-devaluation-de-1982/> (March 15, 2012, Les côtés obscurs de la dévaluation de 1982). Consulted on May 21, 2023.

<sup>577</sup> Thewes, G. (2006), *op. cit.*

<sup>578</sup> <https://paperjam.lu/article/1982-devaluation-subie-franc-l> (Fassone, M (August 24, 2022), 1982: la dévaluation subie du franc luxembourgeois), Consulted on May 21, 2023.

<sup>579</sup> <https://trends.levif.be/a-la-une/les-cotes-obscurs-de-la-devaluation-de-1982/> (March 15, 2012, Les côtés obscurs de la dévaluation de 1982). Consulted on May 21, 2023.

<sup>580</sup> Jungblut, M. P. (1995), *art. cit.*, pp. 139-160. See also Calabrese, M. and Majerus B. (2023), *art. cit.*

1:1 parity with Belgian franc until the introduction of the euro – Luxembourg’s policymakers reacted in turn by giving new functions to the CCB, which from 1983 was reorganized as *Institut Monétaire Luxembourgeois* (IML). Besides its previous financial surveillance and regulation functions, the IML began from that date to also issue Luxembourg francs – until 1998, when IML’s monetary powers were transferred to the new Banque Centrale du Luxembourg.<sup>581</sup>

Second, in June 1982, the outbreak of the so called “Banco Ambrosiano scandal” resulted in further reputational damage for the place financière, after that of IOS scandal 10 years before. Banco Ambrosiano had been until the end of 1970s a prestigious Italian bank, strongly connected with Vatican City, and led by Roberto Calvi, a manager whose public characterization appeared as antithetical to that of Bernie Cornfeld. As the latter was extrovert and flamboyant, so the other was known for his inscrutability and for being a devoted family man – in this regard, Gianni Agnelli, main stakeholder of Italian automotive company FIAT, famously said that Calvi during business dinners was extremely silent and “looked all the time at the tips of his shoes”.<sup>582</sup> His astonishing death in June 1982 – Calvi was found hanged under the Black Friar Bridge in London – and the decision in August of the Italian Ministry of Finances to liquidate the bank drew eventually international attention on the system of unsecured debts and loans among the companies managed by Calvi and Banco Ambrosiano as well as their use for money laundering from criminal activities.<sup>583</sup> Among the shell companies used by Banco Ambrosiano there was also a Luxembourg-domiciled holding company, the Banco Ambrosiano Holding.<sup>584</sup> As pointed out in the literature, the scandal gave therefore new impetus to the discussion at the international and national level on

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<sup>581</sup> [https://www.bcl.lu/fr/apropos/histoire\\_monetaire/index.html](https://www.bcl.lu/fr/apropos/histoire_monetaire/index.html) Consulted on April 25, 2023.

<sup>582</sup> <https://www.raiplay.it/video/2019/07/Blu-notte-Il-Caso-Roberto-Calvi-68216410-6e17-4a33-a399-340b3a65b73d.html> Retrieved on June 13, 2023.

<sup>583</sup> See Zenner, B. (2020). Banco Ambrosiano : les sociétés holding et la place financière luxembourgeoise entre scandalisation et banalisation. *Entreprises et histoire*, 101, 88-99.

<sup>584</sup> In the years prior to the scandal, the Banco Ambrosiano Holding hit some headline in Luxembourg for its high yearly profits. For example, in May 1978, the Luxemburger Wort reported the news of profits for 4.9 million of Swiss francs, despite Banco Ambrosiano was “did not establish in Luxembourg a subsidiary [...] but a holding company through which it manages its portfolio of participations” ((May 13, 1978). Banco Ambrosiano Holding a dégagé un bénéfice de 4,9 millions de francs suisses. *Luxemburger Wort*, p. 25). Original in French, translation of the author.

the lack of transparency of Luxembourg’s holding companies and ultimately on their use for “unfair fiscal competition” practices among countries.<sup>585</sup>

It was so in this context, that the government CSV-DP (Werner-Thorn-Flesch<sup>586</sup>) – which had taken office on July 16, 1979 – promoted in 1983 the promulgation of a new law on investment funds in Luxembourg. Not anymore just a governmental interpretation, as it had been for the *arrêté* of 1972, but a fully-fledged law discussed and approved at the Chamber, with a clear stand from both the Parliamentary majority and opposition. As seen for H29 in chapter 2, its contemporary commentators had observed that one of the primary factors behind the “success” of the code of capital introduced by H29 was essentially of reputational nature. In particular, since international entrepreneurs and investors deemed the juridical framework established by the law and the political context in which the law had emerged as both “stable” and “predictable”. According to Jacques Santer, who served as minister for finances in Werner’s government between 1979 and 1984 – and who was going to be the future prime minister and minister for finances in the next cohabitation government of CSV with the socialists of Jacques Poos’ LSAP until 1989<sup>587</sup> – the fund law of 1983 was brought for discussion at the Chamber with a very concrete aim. While the country was struck by the steel crisis and its financial markets were in turmoil due to the Euromarkets crisis and the devaluation of the Belgian franc, the state was looking for alternative resources so to cover the increased welfare costs<sup>588</sup> – for example, as seen, for the unemployment benefits of the workers losing their jobs in the steel sector. Santer and his advisors – among those there was also his “family friend”<sup>589</sup> Edmond Israel – individuated thus in Luxembourg’s investment fund industry, the market segment that could offer, once provided with a better suited *de jure* capital encoding, an alternative source of revenues for the state. As seen in chapter 4, the aggregate size of Luxembourg-domiciled investment funds had been shrinking throughout the whole second half of the 1970s and had reached between 1978 and 1979 its lower values for both the number of listed funds and their aggregate capital stock (see Figure 6.4). For this reason, Santer

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<sup>585</sup> Zenner, B. (2020), *art. cit.*, p. 89.

<sup>586</sup> Thewes, G. (2006), *op. cit.*, p. 193.

<sup>587</sup> *Ibid.*

<sup>588</sup> Jacques Santer, interview with the author, October 1, 2021.

<sup>589</sup> *Ibid.*

spoke indeed of Luxembourg's investment fund industry in this phase as a "new niche market",<sup>590</sup> that had on the one hand, to overcome the reputational damage resulted from the IOS scandal, and on the other, to clarify to managers and investors its medium and long-run perspectives under Luxembourgish law – also in view of a legal scenario which had seen the modifications of H29 introduced by Thorn's government in 1978, in particular the rise of the yearly stock capital tax on holding companies from 0.16 to 0.20 per cent (see chapter 5.1).

According to Santer, it was therefore Werner's government that promoted the promulgation of a new law on funds in 1983; then, the CCB/IML proceeded to the creation of a series of concertation tables<sup>591</sup> where advisors from the Ministry of Finances could discuss the draft of the law with experts from the main financial intermediaries involved in Luxembourg's investment fund industry, from banks to audit and law firms – among those, for example, there was once again also André Elvinger.<sup>592</sup> This reconstruction, though, is in part challenged by the accounts of some of the financial operators active in the investment fund market of the time,<sup>593</sup> who underline instead their role as primary contributors to the drafting of the law as well as of main actors behind the very first initiative on the introduction of new capital code on the matter during this phase. While as in the case of the genesis of H29, the available archival sources do not give conclusive indications in one sense or the other, yet both the oral accounts of Luxembourg's fund industry operators and the archival evidence converge, first on the fact that earlier projects of the fund law of 1983 began to be discussed and drafted in Luxembourg already from the second half of the 1970s. Second, on the fact that throughout the long gestation of the law, its drafts were composed and modified in accordance with the developments of the parallel work and rebounding between the European Commission and Council of the European Communities on early formulations of proposals for a European directive on the harmonisation of the integrated European investment fund market among its member states.<sup>594</sup> Not only the law of 1988, therefore, was structured so to transpose

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<sup>590</sup> Ibid.

<sup>591</sup> See CSSF, box C000016745, Comité OPC Documents de Travail I, 1984-1987; see also Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>592</sup> Ibid.

<sup>593</sup> Ibid.

<sup>594</sup> See also Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Historique des fonds d'investissement au Luxembourg, Le marché des fonds en Europe.

the indications of the European directive on UCITS of 1985 – which was thus the final outcome of the work of the Council on the matter and whose first proposal dated back to April 1976.<sup>595</sup> Also, the law of 1983 – which was going to be used in 1988 as the basis for the subsequent legal formulation of that year – had been progressively drafted in Luxembourg’s with the work of its regulatory institutions together with that of the above-mentioned concertation tables, through a process that spanned over more than a decade.

It can thus be ultimately argued that, once compared to the other European competitors, Luxembourg’s “first mover advantage”<sup>596</sup> in the transposition of the UCITS directive of 1985 lied on two main pillars. First, the peculiar set of conditions characterizing Luxembourg’s fund industry history, from the 1930s until the turbulent phase following the IOS scandal. By the time that the EEC Council began to discuss the harmonisation directive in the second half of the 1970s, Luxembourg as an investment fund hub represented a sort of unicum in the European landscape. First, it had gone, at that point, through a long history of incorporations of closed-end and open-end funds, that dated back to the interwar years. Local financial intermediaries, such as law firms, notaries, and banks, had therefore gained broad experience in this industry. Moreover, as a consequence of the small size of the fund domestic market in Luxembourg,<sup>597</sup> these intermediaries had been growing in a context where the Grand Duchy played from the beginning the role of international “gateway”<sup>598</sup> between non-resident fund managers and investors. Yet, on the contrary of other European fund hubs, such as France and Germany but also Belgium and the Netherlands, by the 1970s, Luxembourg’s fund industry was essentially still operating, as seen, in a legal scenario characterised by the absence of an all-encompassing *de jure* framework on funds. In a way, this lack of legislation was turned into an advantage. Compared to other EEC countries, such as for example France and Germany that had already promulgated consistent laws for funds by the second half of the 1950s – implemented in the first place for their domestic markets (see chapter

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<sup>595</sup> Council of the European Union Archives, R-1095/76, Proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières.

<sup>596</sup> See e.g., Wójcik, D. Urban, M., & Dörry, S. (2022), *art. cit.*

<sup>597</sup> See Jeanne Chèvremont, interview with the author, November 23, 2022; Claude Kremer, interview with the author, January 11, 2023.

<sup>598</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

3.1) – Luxembourg had therefore a higher degree of freedom in the formulation of new capital code, to be progressively adapted to the state-of-the-art juridical debate at the European Council.

The second factor ensuring the market success of the juridical framework on investment funds composed into the two laws of 1983 and 1988 can be ultimately identified in the consistent effort of Luxembourg’s policymakers to promote broad forms of cooperation among the fund industry financial operators and the government. The state could thus conjugate its demand for increasing fiscal revenues from this financial vehicle – by 2013 Luxembourg-domiciled investment fund were going to provide with their yearly capital tax on net aggregate assets up to 10 per cent of the entire state budget<sup>599</sup> – with the instances discussed at the EEC Council on higher protection in particular for retail investors. At the same time, business lawyers, bankers and auditors active in the concertation tables could contribute with their technical experience towards the implementation of new coding able to maintain for example the flexibility of the funds’ types standardized under Luxembourgish law.

*5.1. Luxembourg’s code of capital on investment funds during the 1980s and its relationship with the debate at the European level.*

As seen, potential margins of further tightening-up of the 1972 regulatory framework on funds, also in terms of its sanction regime, had been discussed in the preparatory drafts of the *arrêté* of 1972.<sup>600</sup> In a context already marked by widespread “disillusion”<sup>601</sup> among resident and non-

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<sup>599</sup> Elvinger, A. (2014). *Les fonds d’investissement : explosion des avoirs en gestion, défis et opportunités de nouveaux marchés*. In Actes de la Section des Sciences Morales et Politiques, Institut Grand-Ducal, Volume XVII, Luxembourg, p. 243.

<sup>600</sup> See chapter 4.

<sup>601</sup> “[...] This is also true for the potential clientele of investment funds who, some five years ago, had been greatly disillusioned, since they had been forced to pay a heavy price to non-serious investment funds. Allusion is obviously made here to the indelicacy and even the swindling of the former directors of IOS” (Muhlen, E. (March 18, 1978). *Les fonds d’investissement au Luxembourg. Les investisseurs sont devenus plus circonspects. Luxemburger Wort*, p. 25. Original in French, translation of the author.

resident fund's investors after the IOS scandal,<sup>602</sup> and by the higher propension of fund's managers towards less risk-taking investing behaviors – in particular, through changes oriented towards the expansion of the fixed-income portion of the funds' portfolios while reducing the equities' exposure<sup>603</sup> – the declared political agenda of Thorn's DP-LSAP government on the revision of the “fiscal privileges” granted in Luxembourg to holding companies<sup>604</sup> together with the plans of the EEC Council for the implementation of a Europe-level harmonised regulatory framework on funds, further contributed to exacerbate the climate of uncertainty negatively affecting the overall performance of Luxembourg's fund industry in the second half of the 1970s.

The IOS scandal had been detrimental, as seen, also for retail Luxembourg-resident investors. At the same time, it showed that the concerns of even liberal regulators such as Albert Dondelinger (see chapter 4.2) on the excessive freedom given to opaque organizations such as that led by Cornfeld were founded, and therefore more stringent regulation necessary. During the electoral competition of 1974 – in a national context that was seeing increasing malcontent against multinational companies operating in Luxembourg (see for example the protest of steel workers

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<sup>602</sup> The memory of the IOS scandal was still well vivid in the European Parliament in the 1980s. The Dutch European parliamentarian Bouke Beumer in January 1984 addressed the Commission with the following question, around the request of more protection for small fund investors: “In the early 1970s, many investors, mostly small investors, were seriously harmed when the IOS Imperium ran into difficulties. Irregularities in investment funds can largely be avoided if the management of investment funds, the custody of securities and the determination of the value of securities are done independently of each other. Can the Commission inform it whether in the European Economic Community, in each Member State, there are regulations which specify the rules applicable to the management, custody and valuation of the assets of investment funds?” (European Parliament Archive, 84/C 116/23, Question Ecrise de M/ Bouke Beumer (PPE – NL) N. 1715/83 a' la Commission des Communautés européennes, January 23, 1984. Original in French, translation of the author.

<sup>603</sup> “[...] It is known that investment funds generally invest their assets in securities. Obviously, a distinction should be made between funds which invest their assets primarily, if not exclusively, in shares and those which invest preferably in fixed-income securities. If, for reasons that are well known, variable-income securities are not in vogue today, investment funds specialising in bond investments, on the other hand, continue to enjoy favourable contingencies. In this respect, it should not be forgotten that many investment funds domiciled in Luxembourg are oriented towards fixed-income investments” (Muhlen, E. (April 1, 1978), *Les fonds d'investissement au Luxembourg Les fonds de valeurs mobilières prédominant, Luxemburger Wort*, p. 19). Original in French, translation of the author.

<sup>604</sup> See Eich, M. (1979), *op. cit.*, p. 40.

against oil multinationals in October 1974<sup>605</sup> – projects of reforms of the H29 legal framework began to be eventually discussed also among liberal political forces. In May 1974, for example, CSV agreed on fixing an “unprecised” minimum capital threshold for the listing in the Memorial of holding companies.<sup>606</sup> Similarly, on holding’s fiscal matters, the Economic and Social Council (CES), a consultive institution of Luxembourg’s government,<sup>607</sup> was incline to suggest to the new government of 1974 an acceleration of the “inevitable” equalisation of the *taxe d’abonnement* for holding companies (that H29, as seen in Chapter 2, had fixed at 0.16 per cent) with that of Luxembourg-resident ordinary commercial companies.<sup>608</sup> Modifications of the H29 juridical framework had to be considered within the picture of increasing “fight against tax evasion” making use of the fictional fiscal space generated by holding companies pursued at the European level.<sup>609</sup> Furthermore, any thorough assessment of the European Commission on fiscal evasion practices involving holding companies – practices that had made Luxembourg’s holding system subject to critique motions coming from for example, French, and German delegations in front of the European Commission<sup>610</sup> – could not but critically evaluate also the integrated system of withholding taxation on the income deriving from obligations traded in Luxembourg.<sup>611</sup> Finally, due to their reliance on the same code of capital, the overall process of harmonisation at the

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<sup>605</sup> (October 5, 1974). Les métallurgistes protestent contre les sociétés multinationales. *Luxemburger Wort*, p. 1.

<sup>606</sup> (May 20, 1974). Fixation d’un capital minimum pour les sociétés holding? *Luxemburger Wort*, p. 15.

<sup>607</sup> <https://ces.public.lu/fr/ces.html> Consulted on May 1, 2023.

<sup>608</sup> (July 20, 1974). Vers un alignement du taux de la taxe d’abonnement relative aux sociétés de droit commun sur celui appliqué aux sociétés holding? Une proposition intéressante du Conseil économique et social. *Luxemburger Wort*, p. 20.

<sup>609</sup> (February 15, 1975). La Communauté européenne lutte contre l’évasion fiscale. *Luxemburger Wort*, p. 23.

<sup>610</sup> See e.g., Dor, R. (October 19, 1973). La querelle des holdings rebondit sur le plan Communautaire. *d’Letzeburger Land*, p. 3.

<sup>611</sup> “[...] Another crucial issue for the Grand Duchy is the harmonisation of withholding tax regimes on bond income and the generalisation of the collection of a withholding tax at the very high rate of 25% on bond interest, as the Commission would like in principle” ((March 13, 1976). Rapport annuel de l’Association des Banques et Banquiers, Luxembourg, pour 1975. *Luxemburger Wort*, p. 24. Original in French, translation of the author.



European level of national legal frameworks on holding companies, was inevitably going to affect also the legislation on investment funds in Luxembourg.<sup>612</sup>

The cohabitation government with socialists led by liberal-centrist Gaston Thorn, within this climate, on July 29, 1977, first introduced a new governmental regulation establishing at 1 million Luxembourg francs the minimum initial capital for listing a holding company in Luxembourg<sup>613</sup> (while the holding companies already listed in the National Business Register had one year to set their capital to threshold otherwise would be de-listed<sup>614</sup>). Second, in the context of a reformulation in 1978 of double taxation bilateral agreements with the UK and Ireland<sup>615</sup> (and prospecting future ones for all the other European Community member together with for example, Switzerland and Brazil<sup>616</sup>), the DP-LSAP majority raised the yearly H29 capital tax on holding companies from 0.16 to 0.20 per cent in November.<sup>617</sup> While the modifications of H29 were judged of “excessive character” by CSV,<sup>618</sup> and some “red scare” concerns were even emerging within Luxembourg’s industrial milieus,<sup>619</sup> Thorn’s government justified the amendments as part of a bigger plan aimed at promoting the “success of Luxembourg’s banking sector” in a globalized scenario so that “[...] eventually, the planned reforms will enable capital available in the Grand Duchy to be channelled

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<sup>612</sup> See e.g., (June 5, 1976) *Nous avons lu pour vous* Les sociétés holding luxembourgeoises au feu de la critique par Guy Bernard. *Luxemburger Wort*, p. 30. Original in French, translation of the author.

<sup>613</sup> Memorial, Règlement grand-ducal du 29 juillet 1977 fixant le minimum du capital social libéré dont doit disposer une société holding pour être admise au bénéfice des dispositions fiscales de l'article premier de la loi du 31 juillet 1929.

<sup>614</sup> *Ibid*, Art. 2

<sup>615</sup> Projet de loi N.2296 portant approbation de l'Avenant, signé à Londres, le 18 juillet 1978, à la Convention entre le Grand-Duché de Luxembourg et le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et la fortune, signée à Londres le 24 mai 1967, March 13, 1979.

<sup>616</sup> *Ibid*.

<sup>617</sup> Loi du 30 novembre 1978 modifiant certaines dispositions de l'impôt sur le revenu, de l'impôt de fonctionnement des sociétés de participations financières et du droit de timbre, Chapitre III, art. 5.

<sup>618</sup> June 25, 1977, Nouvelle loi relative au Contrôle des sociétés holding, *Luxemburger Wort*, p. 29

<sup>619</sup> See e.g., Verpreset, G. (January 10, 1977). Et si la gauche arrivait au pouvoir? Ce qu'il adviendrait des entreprises françaises. *Luxemburger Wort*, p. 12.

to developing countries, without being exposed to prohibitive double taxation”.<sup>620</sup> In this regard, while the yearly capital tax was raised, the absence of withholding tax on holding companies’ revenues was maintained.<sup>621</sup> On the other hand, an increase of the tax was deemed as substantially non-impacting the long-run trend of new incorporations of holding companies in Luxembourg.<sup>622</sup>

This plan, however – while Luxembourg’s Chamber of Commerce even “called for the total abolition of this tax [the *taxe d’abonnement*], described as anachronistic”<sup>623</sup> – had been supported with some “apprehension” by Luxembourg’s bankers association (ABBL), also considering that, as commented by contemporary observers, and by the same State Council<sup>624</sup> the combined effect of the two reforms would have probably reduced the rate of new listings of holding companies in the short run.<sup>625</sup> Furthermore, the 1977-1978 reforms were going to inevitably affect also the yearly capital taxation of Luxembourg-domiciled closed-end investment funds – that, as seen in in the previous chapters, were *de facto* fully fiscal equivalent of holding companies on the contrary of open-end funds that were taxed instead at a 0.06 lump-sum rate.

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<sup>620</sup> Projet de Loi N. 2160 modifiant certaines dispositions de l’impôt sur le revenu, de l’impôt de fonctionnement des sociétés de participations financières et du droit de timbre, Avis du Conseil d’Etat, October 12, 1978.

<sup>621</sup> N° 2160 Projet de Loi modifiant certaines dispositions de l’impôt sur le revenu. de l’impôt de fonctionnement des sociétés de participations financières et du droit de timbre, February 2, 1978, Commentaire Des Articles, Chapter III.

<sup>622</sup> Projet de Loi N. 2160 modifiant certaines dispositions de l’impôt sur le revenu, de l’impôt de fonctionnement des sociétés de participations financières et du droit de timbre, Avis du Conseil d’Etat, October 12, 1978.

<sup>623</sup> Ibid. On this point raised by the Chamber of Commerce, the answer of the Council is straightforward: “[...] With regard to the question raised by the Chamber of Commerce, it seems that the general abolition of a tax, even an old-fashioned one, which brings in 750 to 800 million francs a year, cannot be done without carefully examining the budgetary implications of such a measure” (Ibid.). Original in French, translation of the author. Moreover, the yearly capital tax on holding companies was deemed to “[...] to not have followed the general increasing trend involving the yearly capital tax paid by the other companies in Luxembourg” (N° 2160 Projet de Loi modifiant certaines dispositions de l’impôt sur le revenu. de l’impôt de fonctionnement des sociétés de participations financières et du droit de timbre, February 2, 1978, Commentaire Des Articles, Chapter III. Original in French, translation of the author.)

<sup>624</sup> Projet de Loi N. 2160 modifiant certaines dispositions de l’impôt sur le revenu, de l’impôt de fonctionnement des sociétés de participations financières et du droit de timbre, Avis du Conseil d’Etat, October 12, 1978.

<sup>625</sup> Eich, M. (1979), *op. cit.*, p. 42.

In this context of uncertainty, with the overall market size of Luxembourg-domiciled fund constantly decreasing, from 1973,<sup>626</sup> the European Council began also to discuss the first drafted proposals on a directive for the harmonisation of the investment fund market among European Community's member states. On April 29, 1976, Gaston Thorn, who at the time was also serving as Luxembourg's six month-turn rotating president of the Council of the European Union,<sup>627</sup> received from the European Commission – with the signature of the Belgian socialist vice-president of the Commission Henri Simonet – a proposal for a “Council Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)”.<sup>628</sup> The three main targets pursued by the directive referred first, to an improvement of the “protection” criteria for fund investors in the European Community; second, to a close standardization of the “competition conditions” for these financial vehicles; third, at the same time, to the promotion of the removal of any restrictions that could hinder the “free movement” of the shares of the fund within the European Community member states.<sup>629</sup> The proposed directive was aimed at regulating only the funds “other than closed-end” – where in this category were included the funds of the type of the “*sociétés d'investissement*” in France, the “*investment trusts*” in the UK and the “*società invest*” in Italy.<sup>630</sup> The directive was therefore addressed to all European funds whose leveraging procedure was based on the issuance of an elastic supply of shares, subsequently publicly traded – including thus, as explicitly mentioned in the text,<sup>631</sup> also those Luxembourg's closed-end funds with a buyout company, introduced in chapter 3.3. The main targets of the Council's intervention were established in defining harmonised standards for a series of aspects including the structure of the funds, their limits in the investment in transferable securities, the information to be disclosed to

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<sup>626</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Historique des fonds d'investissement au Luxembourg, Le marché des fonds en Europe.

<sup>627</sup> <https://www.consilium.europa.eu/fr/council-eu/presidency-council-eu/> Consulted on May 2, 2023

<sup>628</sup> Council of the European Union Archives, R-1095/76, Proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières.

<sup>629</sup> Ibid., Exposé des motifs, p. 1. Original in French, translation of the author.

<sup>630</sup> Ibid. p. 2.

<sup>631</sup> Ibid. p. 4.

investor before being publicly traded and throughout the life of the fund,<sup>632</sup> the procedure for selling shares of the funds in member states other than the issuance one, the legal requirements of the custodians (banks and savings institutes in Luxembourg's case<sup>633</sup>), and the attributions of national surveillance and regulation institutional bodies.<sup>634</sup> For example, among the "stricter" legal provisions to which national legislations on funds should comply once harmonised to directive framework, there was the 5 per cent limit to the placement of the fund's capital in the financial assets issued by a single entity<sup>635</sup> (even though with some exceptions<sup>636</sup>).

However, the directive draft of 1976 outlined also the limits of its scope, by stating that

"[...] [it] felt reasonable to stipulate that Community [UCITS] should normally be subject only to the regulations of the Member State, in which they are situated. This is because the minimum rules laid down in the proposed Directive would appear to form an adequate basis for safeguarding savers and ensuring sound conditions of competition between the various [UCITS]. The single system of authorization and supervision mentioned above is also based on the mutual confidence which the competent authorities of the Member States should extend to each other as regards the diligence with which each of them will ensure that the Directive is properly applied and, generally speaking, that all savers will be adequately protected".<sup>637</sup>

The persistence of an independent regulatory approach at the national level yet coexisting with the harmonisation course of the Council of the European Communities, was concurrently matter of debate in Luxembourg, especially with regards to survivance of the fiscal features of H29 in the context of a harmonised framework at the European level. While some Luxembourgish commentators were arguing that the "[...] the tax advantages granted by Luxembourg to holding

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<sup>632</sup> Starting already from the name of the fund, that could not be misleading: "[...] Paragraph 1 is aimed at preventing a [UCITS] falling within the scope of this proposed Directive from trading under a name which might mislead the public. Such would be the case if, for instance, a unit trust investing its assets in a very small number of countries described itself as a 'world-wide unit trust'". Ibid. p. 28.

<sup>633</sup> Ibid. p. 18.

<sup>634</sup> Ibid. p. 12.

<sup>635</sup> Ibid. pp. 11-12.

<sup>636</sup> Ibid. p. 21.

<sup>637</sup> Ibid. p. 10.

companies are not exorbitant” and that “[...] they are not incompatible with an economic and monetary union, which does not require a standardization of the tax systems of the E.E.C. member countries, but a simple harmonisation of these systems”, and to which therefore “[...] as far as we know, Luxembourg has never been opposed to”,<sup>638</sup> Luxembourg’s delegation at the Council was advocating for a harmonisation that should pursue at the same time the two criteria of “minimality” and “widest applicability”. The first should be intended as a “flexible adaptation” of the directive framework to the existing regulatory environment of the member states, also in order to “reach a rapid conclusion of the preparatory work for the draft directive”.<sup>639</sup> The second, instead, as a “sufficient stringent” characterization of the directive’s provisions so to allow the “free movement of funds’ shares” among the member states of the European Community.<sup>640</sup> On this second principle, concerns were raised by the Belgian delegation,<sup>641</sup> and then the Irish one, which highlighted the fact that the free circulation of the funds’ capitals should have been conditioned also to the harmonisation of funds’ fiscality frameworks in the other member states.<sup>642</sup> Greece’s delegation was even more explicit on the effect on their country of a non-homogeneous path of harmonisation between free circulation of capitals and national fiscal legislation on funds:

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<sup>638</sup> (June 5, 1976). Nous avons lu pour vous Les sociétés holding luxembourgeoises au feu de la critique par Guy Bernard. *Luxemburger Wort*, p. 30.

<sup>639</sup> Council of the European Union Archives, 5712/80, Résumé des travaux du Groupe des questions économiques (Etablissement et Services) sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, February 14 and 15, 1980, p. 3. Original in French, translation of the author.

<sup>640</sup> Council of the European Union Archives, 9019/80, Rapport intérimaire du Groupe des questions économiques (Etablissement et Services) au Comité des représentants permanents sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, July 29, 1980, p. 3. Original in French, translation of the author.

<sup>641</sup> Council of the European Union Archives, 7177/82, Résumé des travaux du Groupe des questions économiques (Etablissement et Services) sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, May 6-7, 1982, p. 7.

<sup>642</sup> Council of the European Union Archives, 6054/83, Résumé des travaux du Groupe des questions économiques (Etablissement et Services) sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, Annexe, Section I - Dispositions générales et champ d'application, February 24-25, 1983.

[...] The adoption of the Directive in conjunction with the Directive on the liberalisation of mutual funds will create strong tendencies for capital flows abroad and, consequently, for tax evasion, due to the existence of the above-mentioned more attractive tax advantages enjoyed by some UCITS on certain international capital markets. This phenomenon, in addition to the country's commitments under [...] Council Directives on the free movement of capital, will create very acute problems for the implementation of the country's economic and monetary policy”.<sup>643</sup>

By the time of the discussion of the directive, Ireland<sup>644</sup> as well Greece<sup>645</sup>'s delegations were playing in a scenario in which their respective countries had still limited-size national fund industries and inconsistencies in the interactions between their code of capital on the matter and their local regulatory institutions. On the contrary, member states such as Germany, France, as it has been argued in the literature,<sup>646</sup> had an interest in maintaining the status quo of their fiscal frameworks for locally domiciled funds as they had been introduced in the mid-1950s (see chapter 3) and that were largely consistent with well-established domestic market-oriented fund industries.<sup>647</sup> These instances eventually converged with those of Luxembourg, that while inclined to re-formulate its *de jure* code of capital on funds accordingly to the Council criteria on the protection of small savers, was nevertheless interested in keeping its role as “gateway” of investment through funds at the international level.<sup>648</sup>

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<sup>643</sup> Council of the European Union Archives, 7120/84, Addendum au Rapport du Groupe des questions économiques (Etablissement et Services) au Comité des représentants permanents sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, Annexe, Communication de la délégation hellénique, May 21, 1984, p. 3. Original in French, translation of the author.

<sup>644</sup> <https://www.funds-europe.com/ireland-report-2016/history-25-years-of-irish-funds>. Consulted on May 5, 2023.

<sup>645</sup> See Drakos, K. (2002). Estimating a Multifactor Model for the Greek Mutual Fund Market. *Russian & East European Finance and Trade*, 38(3), 73–92.

<sup>646</sup> Adema, R. (2008). *UCITS and Taxation: Towards Harmonisation of the Taxation of UCITS*. Kluwer Law International.

<sup>647</sup> *Ibid.*, pp. 19-21.

<sup>648</sup> See Jeanne Chèvremont, interview with the author, November 23, 2022.

The objections in this regard of the Belgian delegation – Belgium, as seen in Chapter 3, despite the promulgation of a consistent legislation for its local funds had been highly exposed to the fiscal competition of neighboring Grand Duchy<sup>649</sup> – together with those of the Irish and Greek ones ultimately brought the working parties at the Council to forecast the implementation of a second directive concerning the fiscal regime of European UCITS – a matter moreover, that already had entered the debate in 1978 in the context of the Council’s drafted proposal for a directive regulating the system of member states’ withholding taxes on the dividends of European investment funds (directive proposal “concerning the harmonisation of systems of company taxation and of withholding taxes on dividends, applied to Collective Investment Institutions (CII)”).<sup>650</sup> Yet, a “simultaneous adoption” of two directives was deemed at this stage as equivalent to “postpone sine die” the first directive on the coordination of the national legislations on funds.<sup>651</sup> These considerations resulted therefore in the non-inclusion in the final UCITS legislation of 1985 of any clause regarding the harmonisation of the national fiscal frameworks on UCITS,<sup>652</sup> which remained therefore a prerogative of the member state. Still in 2013, the revised UCITS Directive (UCITS IV) has been described as a further “missed chance for creating common rules on the taxation of UCITS”.<sup>653</sup> UCITS’s “direct taxation” was by that date still non-harmonised at the European Union level, while “indirect taxation” only partially.<sup>654</sup>

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<sup>649</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques. J. Peeters, and L. Cornelis (12 October 1991). “La réforme financière de 1990”, Les organismes de placement collectif, *Journal des Tribunaux*, p. 1. Original in French, translation of the author.

<sup>650</sup> EUI Historical Archives of the European Union, CEUE\_SEGE-COM(1978)0340 COM(1978)340 - Proposition de DIRECTIVE DU CONSEIL portant application, aux organismes de placement collectif, de la directive du Conseil du..... concernant l'harmonisation des systèmes d'impôt sur les sociétés et des régimes de retenue à la source sur les dividendes (présentée par la Commission au Conseil), July 18, 1978

<sup>651</sup> Council of the European Union Archives, 9738/85, Rapport du Groupe des questions économiques (Etablissement et Services) au Comité des représentants permanents sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, Problèmes Sur Lesquels Le Comité Est Appelé À Se Prononcer, October 22, 1985 p. 3. Original in French, translation of the author.

<sup>652</sup> Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ( 85 / 611 / EEC); see also, Adema, R. (2008), *op. cit.*, p. 19.

<sup>653</sup> Adema, R. (2013). The Revised UCITS Directive (UCITS IV): A Missed Chance for Creating Common Rules on the Taxation of UCITS. *Intertax*, (41)3, pp. 140-145.

<sup>654</sup> Kremer, C., and Lebbe, I. (2014), *op. cit.*, Titre XII. Organismes De Placement Collectif Et Droit Européen.

Both Luxembourg's fund laws of 1983 and 1988 were shaped by the parallel ongoing debate at the Council on the two directives' proposals, that on the taxation of dividends and withholding tax for CII, and that on the general harmonisation of the regulations for funds in the issuing hubs of the European Community. Multiple references to the ongoing European-level legislative work can be indeed found in the draft laws on the "taxation of persons holding co-ownership or participating interests in collective investment schemes",<sup>655</sup> and on "collective investment undertakings"<sup>656</sup> (this latter was going to be then approved at the Chamber as the law of 1983 on investment funds), together with a body of discussion and preparatory documents issued by several Luxembourg's institutions, including the AED, the CCB, the Chamber of Commerce, and the State Council. The two drafts – that were presented together at the Chamber on February 1980<sup>657</sup> to be both later examined by a "special commission" of deputies<sup>658</sup> – contained also internal reciprocal references, therefore emphasizing the fact that the two sources of law would have produced combined provisions on the overall UCITS regulation (from the side of managers and investors alike). See for example, the answer of the CCB to the observation of the Chamber of Commerce "regarding the possible disadvantages for [UCITS] investors of double taxation" that "[...] will be largely met by draft law 2379 on the taxation of persons holding securities in collective investment schemes".<sup>659</sup>

In 1978, in the context of the debate at the Commission and Council for a proposal of a directive on the "harmonisation of systems of company taxation and of withholding tax on dividends",

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<sup>655</sup> Projet de loi N° 2379 concernant l'imposition des personnes détenant des titres de copropriété ou de participation dans des organismes de placement collectif, March 4, 1980.

<sup>656</sup> Projet de loi relatif aux organismes de placement collectif (N.2366-1, 2, 3), December 31, 1979

<sup>657</sup> CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques), February 27, 1980 (38' séance)

<sup>658</sup> In the special commission there were the following MPs: Lulling, Polfer, Berg, Dondelinger, Fischbach, Hamilius, Hellinckx, Krieps, Mosar, Nanquette, Rau. (CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques, October 14, 1980, Séance d'Ouverture).

<sup>659</sup> Projet de loi relatif aux organismes de placement collectif (N.2366-2), July 9, 1980, Observations du commissaire au Contrôle des Banques sur l'avis de la chambre de commerce (6.6.1980) I., considerations generales. Original in French, translation of the author.



started in 1975,<sup>660</sup> the Council began to discuss also its applications to the case of collective investment undertakings issued in the European Community. Investment funds acted as intermediary between the distributing company and the investor, raising “particular problems for the granting of the tax credit [...which is] subject to the condition that the recipient is in principle liable to tax on the dividends, whereas, in the case of a Collective Investment Institution (CII), the body receiving the dividends and the person liable to tax are different entities”.<sup>661</sup>The Commission, once evaluated the possibility of a fully-fledged harmonisation of the tax arrangement to be applied to CIIs and deemed that as “an over-ambitious aim at the present stage”,<sup>662</sup>opted then for having the Council drafting only a group of common rules on the formulation of the tax credit and the modalities through which the system of withholding taxes levied by the issuance and the investor’s residence states could be then calculated and transferred, in the case of an investment through a CII.<sup>663</sup> In this regard, the draft proposal indicated that the tax credit (set-off against the withholding tax) should have been calculated only on the basis of the dividends redistributed by the CII, and that “[...] each Member State shall be free to charge a withholding tax on dividends redistributed by the CIIs of that State [while] the rate of such withholding tax shall not exceed 25 per cent”.<sup>664</sup>

Luxembourg’s Chamber of Commerce expressed concern for the potential effect that even a partial harmonisation at the European level of the integrated system of the couple tax credit-withholding tax levied on investment funds’ dividends could produce in the Grand Duchy. In particular, the Chamber examined the case of Luxembourg-domiciled closed-end funds that, while “offer[ing]

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<sup>660</sup> EUI Historical Archives of the European Union (*Preparatory Acts*) Commission Proposal for a Council Directive concerning the harmonisation of systems of company taxation and of withholding taxes on dividends (*Submitted to the Council by the Commission on 1 August 1975*), No C 253/2 Official Journal of the European Communities 5. 11. 75.

<sup>661</sup> EUI Historical Archives of the European Union, CEUE\_SEGE-COM(1978)0340 COM(1978)340 - Proposition de DIRECTIVE DU CONSEIL portant application, aux organismes de placement collectif, de la directive du Conseil du..... concernant l'harmonisation des systèmes d'impôt sur les sociétés et des régimes de retenue à la source sur les dividendes (présentée par la Commission au Conseil), July 18, 1978, Explanatory Memorandum I. General Considerations, p. 2.

<sup>662</sup> Ibid., Draft Proposal for a Council Directive on the application to collective investment institutions of the Council Directive of ... concerning the harmonisation of systems of company taxation and of withholding taxes on dividends (Communication from Mr. Burke), p. E.

<sup>663</sup> Ibid., Explanatory Memorandum I. General Considerations, p. 2.

<sup>664</sup> Ibid., Chapter Iii Provisions relating to withholding tax, Art. 6, p. 3

greater legal certainty for the saver”, could face performance consequences once the directive on the harmonisation of withholding taxes on dividends would be promulgated in case of absence of bilateral agreements on double taxation – with a contextual tendency of many states towards incrementing their withholding taxes – and in a context moreover already affected by the increase of the yearly capital stock tax to 0.20 per cent on holding companies and closed-end funds alike. The Chamber therefore suggested the legislator to also envision the possibility to generalize the 0.06 per cent rate of the subscription tax on fund assets regardless of the legal structure chosen within the legislation concurrently discussed in draft fund law of 1979-1980, which was going to be the basis for the investment fund law of 1983.<sup>665</sup>

Concerning the levying of withholding tax on the dividends of Luxembourg-domiciled UCITS for both resident and non-resident investors, Luxembourg’s legislator was going eventually to maintain a consistent position between 1983<sup>666</sup> and 1988<sup>667</sup>: irrespectively of the residence of the investor, UCITS’s dividends were distributed to investors without any withholding tax.<sup>668</sup> It can be therefore argued that, in principle,<sup>669</sup> the non-resident investor was not subject to any direct or indirect taxation in the Grand Duchy on his/her investment in Luxembourg-domiciled UCITS shares,<sup>670</sup> while the taxation levied in the residence state was regulated by the existing bilateral treaties on the avoidance of double taxation among Luxembourg and that state.<sup>671</sup> However, in the

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<sup>665</sup> Projet de loi relatif aux organismes de placement collectif (N.2366-2), Avis De La Chambre De Commerce (27.3.1980). Original in French, translation of the author.

<sup>666</sup> Memorial A, Loi du 25 août 1983 relative aux organismes de placement collectif, Chap. 6, Dispositions fiscales, Art. 62.

<sup>667</sup> Memorial A, Loi du 30 mars 1988 relative aux organismes de placement collectif, Chap 17, Art. 105

<sup>668</sup> Kremer, C., and Lebbe, I. (2014), *op. cit.*, p. 1637.

<sup>669</sup> Before the fund law of 2010, “[...] capital gains realised by a non-resident investor were taxable (subject to a tax treaty) if he had at any time held more than 10 per cent of the share capital of a UCI constituted as a capital company and would realise his investment within six months of the acquisition” (Ibid. p. 1637)

<sup>670</sup> Ibid., p. 1638.

<sup>671</sup> In the 1970s Luxembourg had established double taxation agreements with seven countries, namely, Austria, Belgium, the UK, the US, France, the Netherlands, Germany (see Elvinger, A., and Hoss, J. (1974). Cahiers de droit fiscal international 59a. - Rotterdam, 1974 P. II/185-II/196). By 2014, Luxembourg had tax treaties with Armenia, Austria, Azerbaijan, Germany, Bahrain, China, Denmark, Finland, Georgia, Hong Kong, Indonesia, Ireland, Israel, Malaysia, Malta, Moldova, Monaco, Morocco, Mongolia, Russian Federation, Poland, Portugal, Qatar, Romania, Russian Federation, Uzbekistan, San Marino, Singapore,

case of Luxembourg-resident investors, new fiscal exemption thresholds were introduced in April 1984 by the so called “Rau Act”. Fernand Rau, as seen in chapter 2.1, had been a journalist of *Luxemburger Wort*, as an expert in financial matters, and had then joined the CSV. He had also been in the Chamber Special Commission tasked between 1980 and 1983 with the examination of the drafts on the taxation of collective schemes and the investment fund law of 1983. In 1984, he was the author and first signatory<sup>672</sup> of a law (in force until December 1992<sup>673</sup>), that granted to Luxembourg’s taxpayers “who acquire, during the tax years 1984 to 1988, shares or units representing cash contributions in fully taxable resident capital companies”<sup>674</sup> – and therefore on Luxembourg-domiciled investment funds – exemptions from the income tax, based on the amount of the investment (starting from 27000 Luxembourg francs<sup>675</sup>) and increased based on the number of the investor’s household members<sup>676</sup>. As for the investment fund laws of 1983 and 1988, Luxembourg’s Parliament – at the moment in the transition period between Werner’s CSV-DP government of 1979-1984 and the first cohabitation CSV-LSAP government of Santer and Poos of 1984-1989<sup>677</sup> – voted unanimously also the Rau Act,<sup>678</sup> further enhancing the signals to resident and non-resident investors of the agreement among all Luxembourg’s political factions on the policy attitude towards the investment fund industry – see also chapter 5.3 on the image of stability and predictability of the new code of capital on funds built in Luxembourg through the cooperation of political and entrepreneurial actors during this phase.

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Slovak Republic, Slovenia, Spain, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, Vietnam (see Kremer, C., and Lebbe, I. (2014), *op. cit.*, p. 1630).

<sup>672</sup> CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques), 12 April, 1984 (56<sup>e</sup> séance), Proposition de loi 2568, visant à favoriser les investissements productifs des entreprises et la création d’emplois au moyen de la promotion de l’épargne mobilière.

<sup>673</sup> Kremer, C., and Lebbe, I. (2014), *op. cit.*, p. 1646.

<sup>674</sup> Memorial A, Loi du 27 avril 1984 visant à favoriser les investissements productifs des entreprises et la création d’emplois au moyen de la promotion de l’épargne mobilière., Art. 1.

<sup>675</sup> *ibid.*, Art. 3 to 6.

<sup>676</sup> *Ibid.*, Art. 3.

<sup>677</sup> See Thewes, G. (2006), *op. cit.*

<sup>678</sup> CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques), April 12, 1984, (56<sup>e</sup> séance), p. 2966, Proposition de loi 2568, visant à favoriser les investissements productifs des entreprises et la création d’emplois au moyen de la promotion de l’épargne mobilière.

## 5.2. *The European fund market in the 1980s: legislation and financial hubs competition*

Several other European hubs introduced or adapted their capital code on funds in the early 1980s, concurrently with the debate at the Council on the proposals for the directive on the harmonisation of the European UCITS market. Italy, that as seen in chapter 3 did not have a functional legal framework allowing the incorporation of open-end and closed-end funds, by March 1983 introduced a law on “Provisions concerning the establishment and operation of mutual funds”.<sup>679</sup> The law regulated the incorporation of open-end funds, whereas closed-end funds (and other collective investment schemes, including funds of funds) were still unregulated and the Italian legislation of the time was not adapt for their incorporation. The national surveillance institution was eventually indicated by law in 1985 as the CONSOB (National Commission for Companies and the Stock Exchange). Contemporary commentators assessed a further regulation of 1985 on mutual funds’ financial surveillance as being structured on the provisions of the EEC Council directives on taxation of securities markets and protection of savings channeled in collective investment vehicles. For example, mutual funds management companies were allowed to manage more than one fund, as prospected by the coeval 1985 Council Directive. This provision was therefore included in the Italian regulatory framework at an earlier stage, compared to Luxembourg – where it was going to be one of the main modifications of Luxembourg’s legal framework on funds introduced by the 1988 law<sup>680</sup> in contrast to the legislation of 1983.<sup>681</sup> Italy-domiciled mutual funds, based on the newly introduced code of capital were not subject to any individual, corporate, or local income taxes. Yet, the fund management company had to pay a yearly tax to the competent Treasury Province Office calculated as 0.25 per cent of the fund’s net capital stock value,<sup>682</sup> this

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<sup>679</sup>Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, “The investment fund regulations in Italy, Igino Pagani, Fideuram.

<sup>680</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques“ Grand Duchy of Luxembourg Investment Fund Law, April 1988”, New rules for management companies, p. 4.

<sup>681</sup> Memorial A, Loi du 25 août 1983 relative aux organismes de placement collectif, Chapitre Ier. - Des fonds communs de placement, Art. 2.

<sup>682</sup> “This tax replaces the traditional direct taxes to be paid by private citizens and corporations, as generally provided by the law; however [...], this system takes hardly any account of any depreciation which might have occurred during the fiscal year, so that the fund is obligated to pay said substitutive tax even in the even of a decrease of assets with respect to the previous fiscal year”(Banque Nationale de

rate was nevertheless reduced to 0.10 per cent when 55 per cent of the fund's portfolio consisted of securities issued by Italian-resident companies.<sup>683</sup> A similar clause, a portfolio with at least 50 per cent of assets from Italy-domiciled companies, was aimed at incentivizing new capital flows towards Italian industrial and commercial corporations had been set from 1969 to 1988 (when this limitation was released) also for the sales of foreign funds in Italy. For “more than fifteen years”, the only funds that were able to fulfil the clause and that were admitted for exchange in the Italy Stock Exchange were those from Luxembourg.<sup>684</sup> While capital gains earned by non-residents on investment in Italy-domiciled mutual funds were not subject to withholding tax, foreign mutual funds allowed to be listed for public trading in Italy were subject to a fixed-rate tax of 0.50 per cent, calculated on the average of their net value at beginning and end of the year.<sup>685</sup>

Between December 1985 and November 1986, also the UK revised its legislation on funds so to “almost exactly mirror the conditions required under the [Council] UCITS directive”.<sup>686</sup> UK's unit trusts schemes – broadly defined as “collective investment schemes under which the property in question is held on trust for the participants” and only type of UK's CIS “that [could] be marketed or promoted in the UK”<sup>687</sup> – as in the case of Italian mutual funds, had guarantees addressed to portfolio composition choices, once the investment was addressed to UK securities. On the contrary of Italian funds though, a UK unit trust was essentially treated as it were a company, by paying tax on its income in the same way as a corporation which calculated the amount of the final tax charge by deducting management expenses from that income. “[...] If the scheme invests in UK securities there will in fact be no further tax to be paid [...]; if it invests overseas, it can take a credit for any withholding tax suffered by way of deduction in the country of payment”.<sup>688</sup>

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Belgique, box I-813, Fonds Communs de Placement, Statistiques (“The investment fund regulations in Italy, Iginio Pagani, Fideuram)

<sup>683</sup> Ibid.

<sup>684</sup> Ibid.

<sup>685</sup> Ibid.

<sup>686</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, The regulation of investment funds in the United Kingdom, Paul Harris, linklaters & paines

<sup>687</sup> Ibid.

<sup>688</sup> Ibid.

As seen in chapter 3, West-Germany had introduced a law regulating the open-end fund domestic market in April 1957. Only the contractual type of investment fund was regulated by law – moreover, it was considered as an equivalent of an investment bank, under Germany’s in force Banking Act<sup>689</sup> – and therefore, Germany did not have the corporate type of investment fund, with the investors being shareholders of an investment company which invests on their behalf.<sup>690</sup> West-Germany-domiciled funds were exempt from corporate tax, trade tax, and property tax. Dividends and interests of the fund were subject to income tax only in case they were not distributed to investors. However, while the distribution was tax-exempted, it was nevertheless considered as taxable income of the investors, calculated as if the investor owned the securities of the fund directly. German Tax Reform Act of July 1988, however established that all the distributions by the funds to their investors were subject to withholding tax of 10 per cent.<sup>691</sup>

A law regulating the investment fund market in Belgium had been also promulgated in 1957. In 1982, an *arrêté royal* introduced fiscal exemptions for those funds increasing their investment in Belgian-resident securities. A new regulation in 1986 introduced a legal framework on pension-savings that allowed tax allowances also for connected CIS. Yet, these new regulations were implemented “in abstraction” of (so not in conformity with) the legal framework concurrently prospected by the Council directive of 1985.<sup>692</sup> As in the case of Germany, and on the contrary of Luxembourg (see chapter 5.3), also Belgium’s legal framework, did not allow the statutory form for its investment funds – the only form regulated in Belgium by 1988 was therefore the open-end one.<sup>693</sup> As seen in chapter 3, Belgium’s regulatory institutions considered the portfolio of an open-end fund as non-taxable due to the fact that it was an “undivided ownership” with no juridical personality. Yet, the gains obtained from Belgian-domiciled securities and distributed to the investors entailed, in principle, the debiting of withholding tax at a rate of 25 per cent. In the case of revenues of foreign origin instead, the withholding tax was considered on the part of the

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<sup>689</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, The Investment Fund Regulation in the Federal Republic of Germany, Jurgen Than, Dresdner Bank AG, Frankfurt/Main.

<sup>690</sup> Ibid.

<sup>691</sup> Ibid.

<sup>692</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, L’Evolution des Fonds Communs de Placement Belges, November 11, 1988.

<sup>693</sup> Ibid.

Belgian-resident financial intermediary operating the cashing-in this type of revenues and therefore not directly charged to the open-end fund.<sup>694</sup>

Dutch closed-end funds by the end of the 1980s, were not directly subject to taxation, while their stakeholders were instead taxed as they were investing directly in the assets of the fund's portfolio. Open-end funds were instead subject to ordinary corporate income tax with the exception of FBIs (*fiscale beleggingsinstelling*) which were taxed at a zero rate. Distributed dividends were however subject to a 25 per cent withholding tax for both resident and non-resident investors.<sup>695</sup>

France, as seen in chapter 3, had been a successful fund hub already for closed-end funds from the early 1950s, and had later introduced a regulatory framework also for open-end funds by 1957. Both types of funds were exempted from any indirect taxation, whether it is registration fees in connection with the subscription of units or shares in a UCITS or capital taxes levied on these funds.<sup>696</sup> While non-resident investors were subject to withholding tax of 25 per cent on the distributed dividends (with reductions based on double taxation bilateral agreements with other countries),<sup>697</sup> resident investors (either physical persons or companies) were instead subject to a different income taxation scheme on the distributed revenues. In 1979, the so called "Monory law" (from the name of France minister of Economy of the time) introduced for example fiscal deductions for French-resident investors buying shares (with a minimum of 15 000 francs) in French-domiciled funds or SICAVs investing in French companies, and "strongly marked" a phase of subsequent growth of the overall assets of the French fund industry.<sup>698</sup> By 1991, also thanks to

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<sup>694</sup> Ibid.

<sup>695</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, La fiscalité des dividendes et des OPCVM en Europe, Christian Donnefort, Responsable fiscal Demachy Worms & Cie, p. 50.

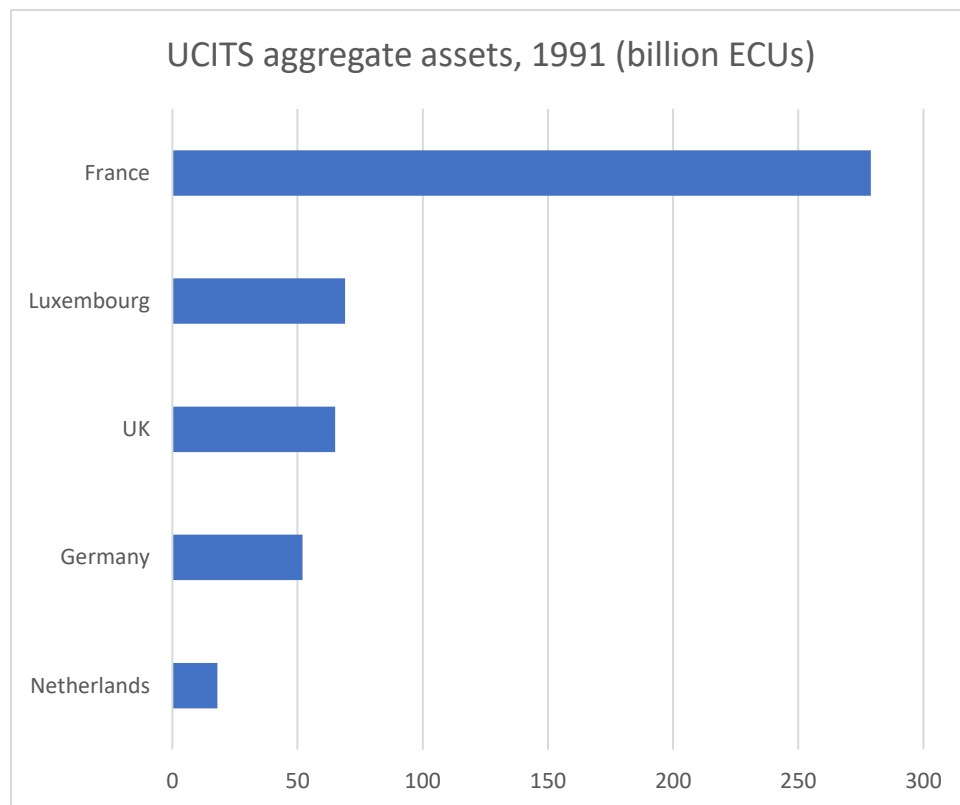
<sup>696</sup> Décret n°57-1342 du 28 décembre 1957 relatif aux fonds communs de placement <https://www.legifrance.gouv.fr/loda/id/LEGIARTI000006339093/1957-12-29/#LEGIARTI000006339093>. See also Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Etude comparative de la fiscalité des OPCVM en France et dans divers Pays Européens, Jean-Luc Pierre, Moquet Borde & Associés, Professeur à la Faculté de droit de Lyon.

<sup>697</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, La fiscalité des dividendes et des OPCVM en Europe, Christian Donnefort, Responsable fiscal Demachy Worms & Cie, pp. 49-50.

<sup>698</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Historique des fonds d'investissement au Luxembourg, Le marché des fonds en Europe, p. 8.

this further expansion of its domestic market, France was the largest investment fund hub in Europe, followed by Luxembourg, the UK, Germany, and the Netherlands<sup>699</sup> (see Figure 5.8).

**Figure 5.8. UCITS net aggregate assets (billion ECUs) in Europe, five largest hubs, 1991**



*Note:* Source : Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Etude comparative de la fiscalité des OPCVM en France et dans divers pays européens, Jean-Luc Pierre, Moquet Borde & Associés, p. 207

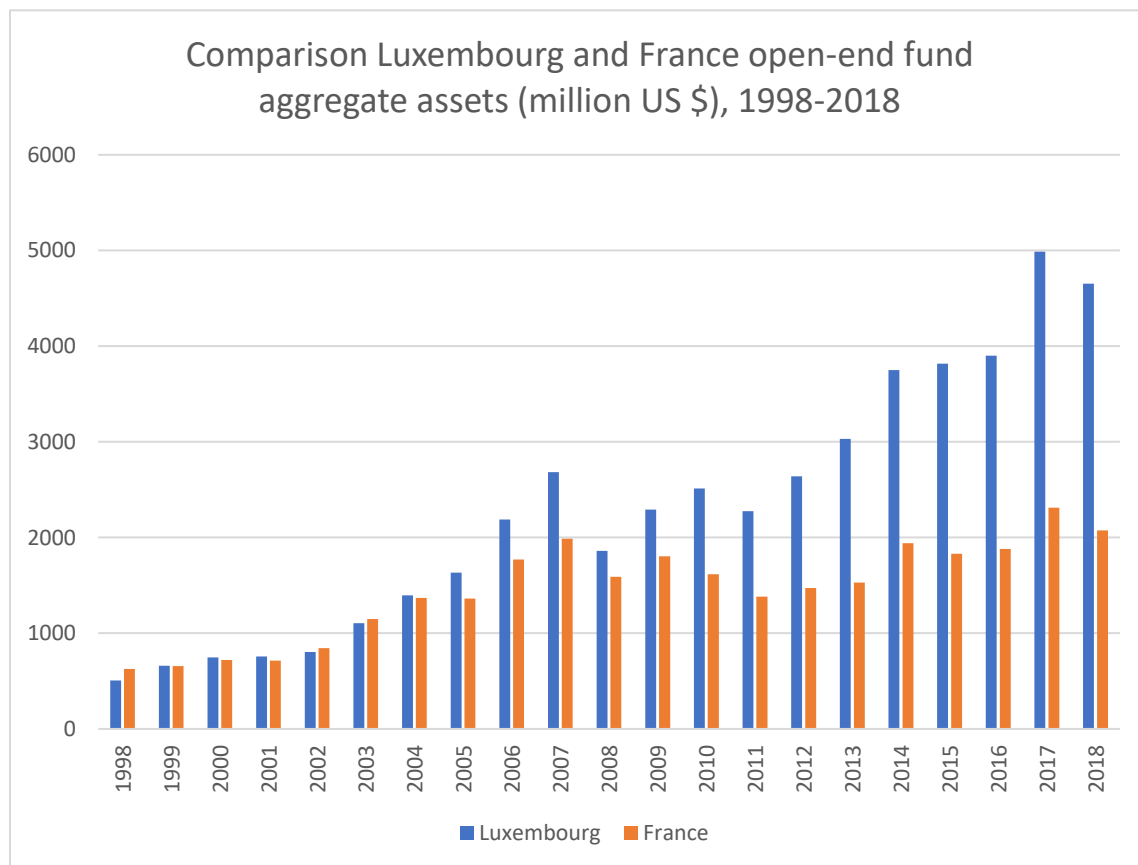
<sup>699</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Etude comparative de la fiscalité des OPCVM en France et dans divers pays européens, Jean-Luc Pierre, Moquet Borde & Associés, Professeur à la Faculté de droit de Lyon, p. 207



### 5.3. Reflections on the factors behind the skyrocketing growth of Luxembourg's fund industry in the 1980s

In 1998, ten years after the formal transposition under Luxembourgish law of the Council directive of 1985 on the harmonisation of the European Community fund market, Luxembourg was still behind France, in terms of aggregate size of open-end funds' net assets. Yet, as it is visible in Figure 5.9, in the subsequent twenty years, Luxembourg's fund industry steadily expanded until more than doubled French one throughout the 2010s.

**Figure 5.9. Luxembourg and France open-end fund aggregate net assets (million US dollars), 1998-2018**



Note: Source : Investment Company Institute (from 2004 to 2019). *Investment Company Factbook, A Review of Trends and Activities in the Investment Company Industry*, [www.icifactbook.org](http://www.icifactbook.org)

Consulted on May 15, 2023.

It has been argued that Luxembourg, by transposing the Council’s UCITS directive in 1988 “[...] realized a tremendous, yet unanticipated, first mover advantage attracting much business from abroad, mainly from Germany, France and Belgium [...] [T]his was not a genuine regulatory arbitrage; rather Luxembourg had obtained its competitive advantage by being first in the market”.<sup>700</sup> Furthermore, that “[...] key to the early growth of both Luxembourg and Ireland as [investment fund] domiciles was a quick implementation of the 1985 UCITS Directive [Luxembourg in 1988 and Ireland in 1989]. Prior to 1985, cross-border asset management in Europe was a relatively small industry, focusing mainly on private wealth management [...] The 1985 UCITS Directive was path-breaking in this respect and a milestone of European financial integration”.<sup>701</sup>

The above interpretations have the merit of correctly acknowledging the primary role played by the transposition under Luxembourgish law of the Council UCITS directive legislation framework in determining the subsequent rapid and in many respects astonishing growth of Luxembourg’s fund industry. It is moreover true that Luxembourg’s drafters<sup>702</sup> and legislators accelerated the parliamentary work and debate on the transposition fund law in March 1988 in a sort of last breath race in particular against the UK,<sup>703</sup> that was going to implement the directive in the

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<sup>700</sup> Dörry, S. (2015). Strategic Nodes in Investment Fund Global Production Networks: The Example of the Financial Centre Luxembourg. *Journal of Economic Geography*, (15) 4, 797–814, p. 806.

<sup>701</sup> Wójcik, D. Urban, M., and Dörry, S. (2022), *art. cit.* p. 6.

<sup>702</sup> See also Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>703</sup> It is worth noting that the UK and Ireland were, together with Luxembourg, the only two other fund hubs in the EEC that were going to provide, within the legal boundaries of the UCITS directive of 1985, non-resident investors with absence of withholding tax on the distributed dividends of UCITS. Yet, on the contrary of Luxembourg, while exempted from withholding tax, the non-resident investors in the UK could not benefit from a tax credit attached to the dividends; in Ireland, instead the refund of the tax credit was regulated by bilateral fiscal conventions, when in force (see Banque Nationale de Belgique, box I-813,

“Financial Service Act” in April. As described by Fernand Rau at the Chamber discussion on the approval of the 1988 law, a quick implementation of the directive was a necessary step to avoid that

“[...] a late adaptation of the Luxembourg legislation in this respect would therefore have entailed the risk that funds domiciled in the Grand Duchy could no longer have been marketed in Great Britain by British and other banks [...]; [t]he urgency of the procedure was therefore not imposed on us by the constraints of the European calendar, which only provides for a deadline of 1 October 1989, but by pragmatic considerations of competitiveness of the financial centre”.<sup>704</sup>

However, the focus on the contextual advantage on the market resulting from the rapid transposition of the directive, leaves essentially unanswered how the initial first mover advantage – considering moreover that most of the main EEC investment fund hubs transposed the directive between 1989 and 1990,<sup>705</sup> with Ireland becoming then the second implementer – resulted then in enduring effects on the long-term growth of Luxembourg’s fund industry, even considering the strength of initial bandwagon externalities or the catalyst effect for the development of regulatory arbitrage practices.<sup>706</sup> Thus, while on the one hand, the growth of Luxembourg’s fund industry from the 1980s should necessarily be put in relationship with the harmonisation legislation at the European level for investment funds and, on the other, Luxembourg’s fund industry most certainly benefit of positive externalities from its condition of first-mover in the first years after the transposition of the UCITS directive, yet it can be argued that the interpretational emphasis on the mere role of “first mover” as a conditional factor to the long-term growth of Luxembourg’s fund industry appears flawed on three main respects.

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Fonds Communs de Placement, Statistiques, La fiscalité des dividendes et des OPCVM en Europe, Christian Donnefort, Responsable fiscal Demachy Worms & Cie, 1995, p. 49).

<sup>704</sup> CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques), March 23, 1988 (35<sup>e</sup> séance), Discussion Générale sur Projet de loi 3172 relatif aux organismes de placement collectif, Intervention of Fernand Rau (CSV). Original in French, translation of the author.

<sup>705</sup> <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:31985L0611> Consulted on May 15, 2023

<sup>706</sup> Dörry, S. (2015), *art. cit.*, p. 806.

First, the idea itself of Luxembourg's as a "first mover" in 1988 seems to partially overlook the fact that other EEC countries, such as Italy, the UK, and most evidently the same Luxembourg, introduced between 1983 and 1985 new laws or regulations on investment funds by already adjusting their code of capital on funds to some of the preliminary benchmark principles contained in the draft proposals of the 1985 directive, as seen in chapter 5.2. Moreover, as seen in chapter 5.1, the long debate on the UCITS directive – that had started according to some sources already in 1973, in the wake of the explosion of the IOS scandal<sup>707</sup> – had been conditioned by the parallel critique work of all EEC national delegations, aimed at envisioning as much as possible the presence of legislation singularities at the member-state level so to facilitate a rapid implementation of the directive.<sup>708</sup>

Second, whereas it is true that the number of UCITS incorporated in Luxembourg increased of 126 units between 1988 and 1989 (see also Figure 5.10) – so during the phase in which the Grand Duchy fully benefitted from its first mover advantage – yet it can be argued that analysis of data on Luxembourg fund industry reveals the presence of a consistent process of trend growth already from 1979-1980, with an average growth of the number of Luxembourg-domiciled investment funds of ca. 21 per cent a year between 1980 and 1986. While this growth can be inserted in the context of the general reprise of the mutual fund industry at the global level (starting from the US<sup>709</sup>) after the downsizing of 1970s – concurrently with the expansion of portfolio strategies less centred on equities on the contrary of the typical 1960s "equity funds"<sup>710</sup> (see also chapter 1) – there is full agreement among several Luxembourgish institutional<sup>711</sup> and entrepreneurial<sup>712</sup> actors of the time in identifying the early 1980s work of adaptation of

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<sup>707</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Historique des fonds d'investissement au Luxembourg, Le marché des fonds en Europe.

<sup>708</sup> See e.g., Council of the European Union Archives, 6054/83, Résumé des travaux du Groupe des questions économiques (Etablissement et Services) sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, Annexe, Section I - Dispositions générales et champ d'application, February 24-25, 1983.

<sup>709</sup> See Fink, M. (2011), *op. cit.*

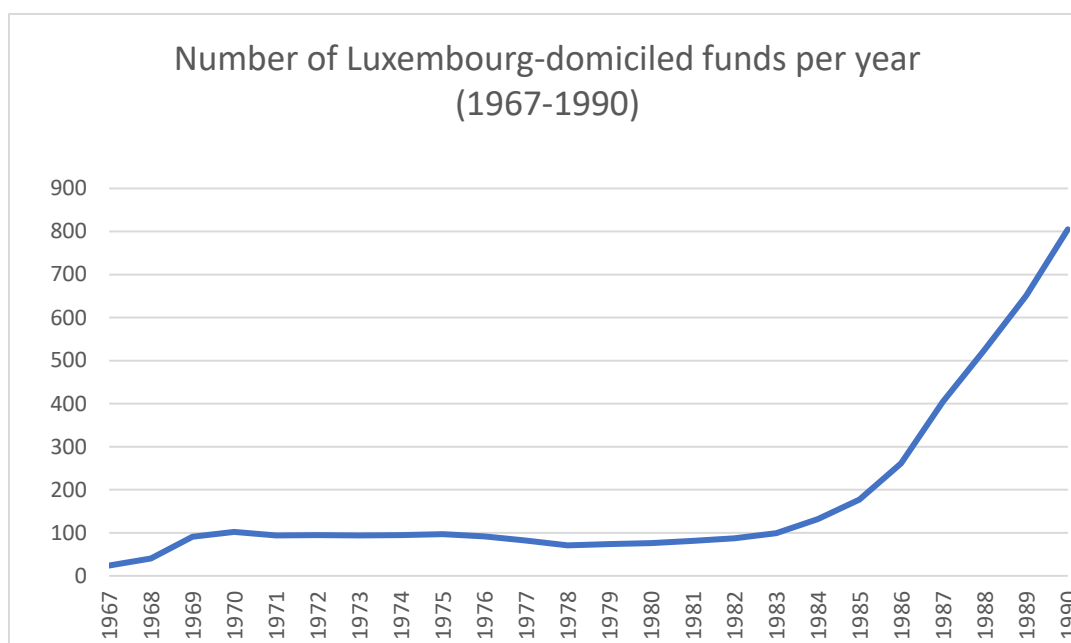
<sup>710</sup> *Ibid.*

<sup>711</sup> See Jacques Santer, interview with the author, October 1, 2021.

<sup>712</sup> See Jeanne Chèvremont, interview with the author, November 23, 2022; Claude Kremer, interview with the author, January 11, 2023.

Luxembourg's code to the Council provisional draft of the UCITS directive as a strong signal for fund investors and managers around the long-term stability of Luxembourg fund market.

**Figure 5.10. Number of Luxembourg-domiciled funds per year, 1967-1990**

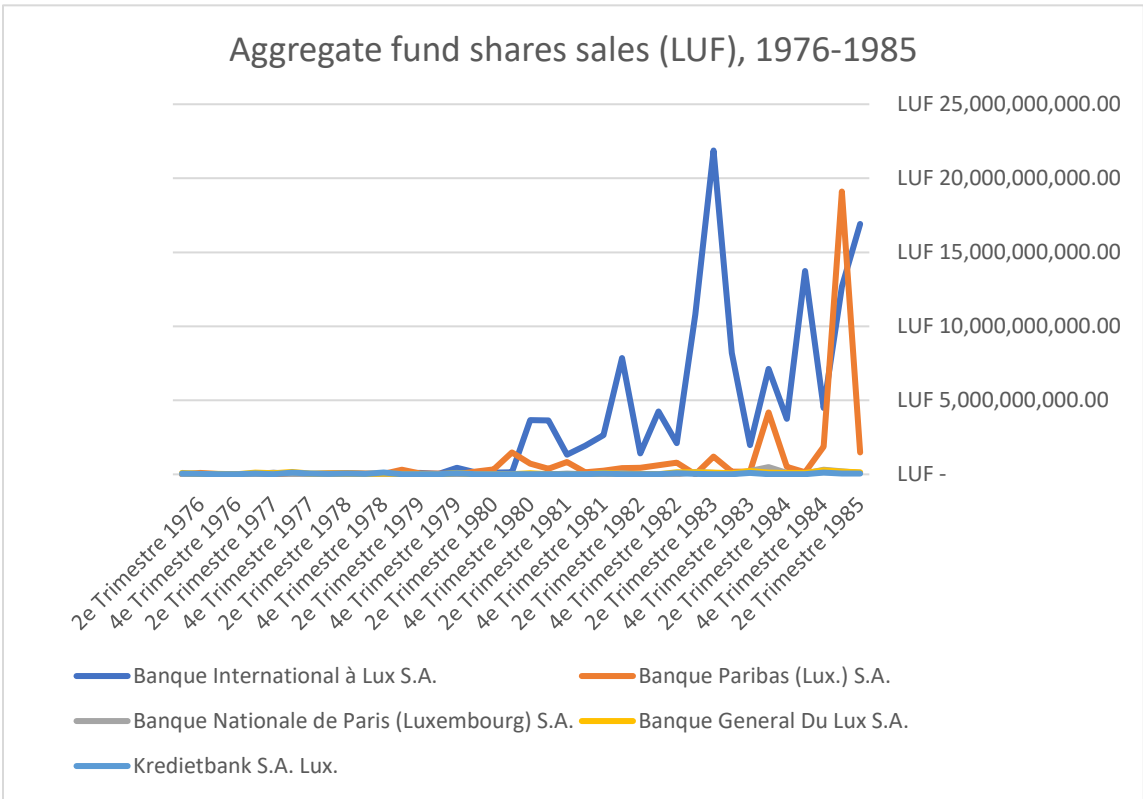


*Note:* Source: <https://lustat.statec.lu/> Organismes de placement collectif luxembourgeois. Consulted on May 16, 2023

Figures 5.11 a and b show indeed that the aggregate size of sales and redemptions transactions of funds' shares from the five largest bank intermediaries involved in this phase in the market of funds' shares in Luxembourg (BIL, Paribas, BNP, KBL, and BGL) began to steadily increase already by 1980, to then exponentially accelerate from the second and third trimesters of 1982. Not only, therefore, the growth was associated to the benchmark event of the promulgation of the fund law of 1983, which, as seen, was the first consistent piece of code of capital approved by Luxembourg's Parliament by-law, and moreover structured on the coeval state-of-the-art debate

at the Council of the European Communities on the future UCITS directive of 1985 (as demonstrated by the law draft proposals and preliminary documents of several Luxembourg’s regulatory and consultative institutions and confirmed by the eyewitness account of advisors present at round tables for the preparation of the laws<sup>713</sup>). The fact that Luxembourg’s market of sales and redemptions regained vitality (or better: began to magnify its scale) after the crisis of the second half of the 1970s can at the same time be interpreted as a sign of increased trust of resident and non-resident fund investors towards a market platform which was working on the implementation of a long-term regulative framework, consistently with the harmonised saver-protection principles as they were being concurrently formulated at the European-level.

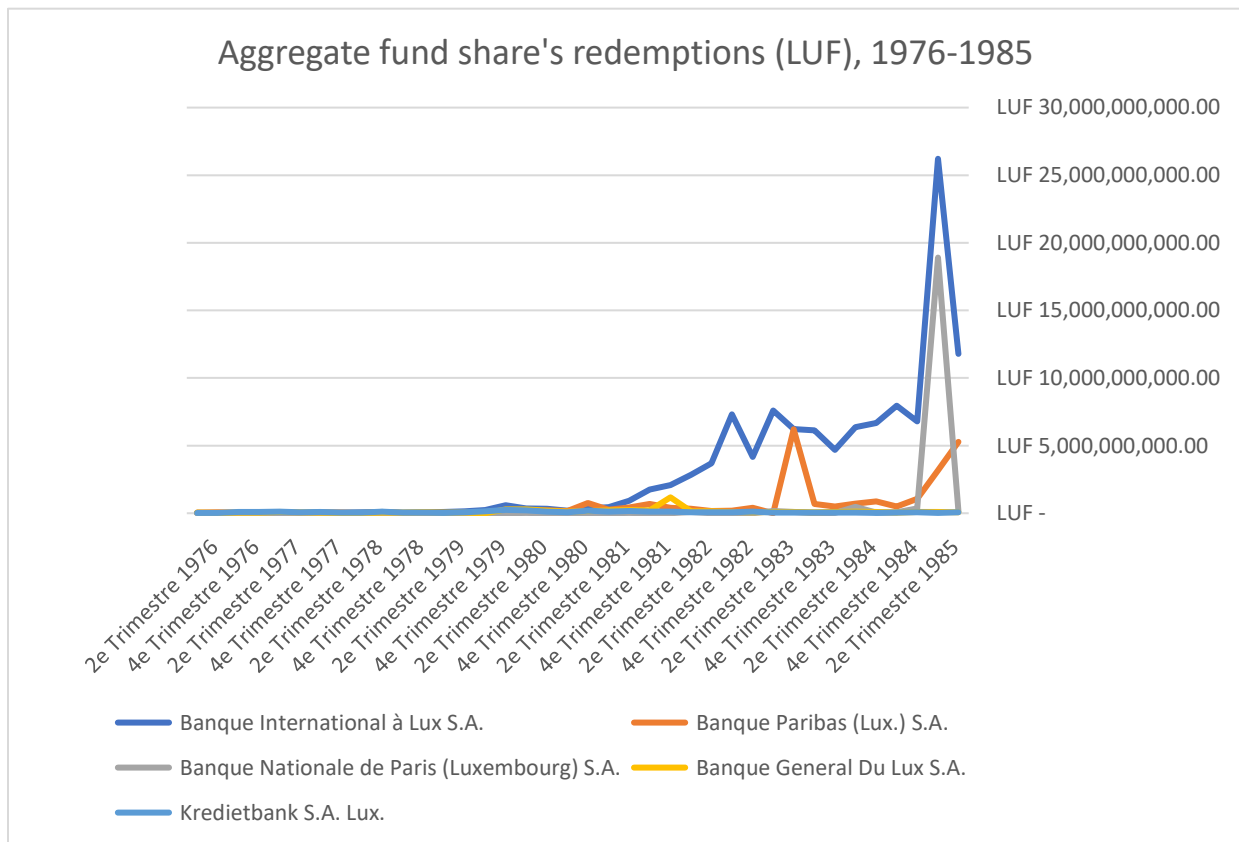
**Figure 5.11a. Aggregate sales (LUF) of investment fund shares from five largest Luxembourg-resident bank intermediaries, 1976-1985 (trimesters).**



<sup>713</sup> Jeanne Chèvremont, interview with the author, November 23, 2022

Note: Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

**Figure 5.11b. Aggregate redemptions (LUF) of investment fund shares from five largest Luxembourg-resident bank intermediaries, 1976-1985 (trimesters).**



Note: Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

Finally, as a third critique point to the use of an interpretational path individuating in Luxembourg's first mover advantage in the adoption of the UCITS directive of 1985 the main (if

not the only<sup>714</sup>) structural element on the basis of the extraordinary results reached by Luxembourg's fund industry in the subsequent thirty years, it can be argued that this approach seems to neglect the role played by a large group of factors that have deemed as fundamental in this regard by contemporary analysts and directly involved actors.

First, as seen in chapter 5.1, while discussing and eventually composing the UCITS directive of 1985, the Council had pursued a two-sided approach, by separating the harmonisation of the EEC member states' regulatory frameworks on the protection of savers and conditions of competition and "free circulation of capitals" from that of national tax regimes for locally domiciled investment funds. By pursuing diverse national interests, the delegations at the Council of the main European fund hubs of the time (including France, Luxembourg, Germany together with Belgium and the Netherlands) had converged, as seen, on postponing the issuance of a further directive on tax harmonisation of the European fund market. However, while the position of France and Germany had been dictated by an interest in maintaining a fiscal regulatory status quo for their resident investors, in the context of mainly domestically oriented fund markets (see chapter 5.2), Luxembourg's interest in preserving an independent taxation framework is to put in relation on the contrary with the traditional international vocation of its fund market, and the limited size of its domestic market.<sup>715</sup>

The two fund laws of 1983 and 1988, as prospected in the preparatory documents analysed in chapter 5.1, ultimately provided an "attractive"<sup>716</sup> fiscal environment for non-resident investors in

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<sup>714</sup> Dörry, for example, connects the first mover advantage in the adoption of the UCITS I to the subsequent adoption of UCITS II-IV and ultimately argues that "[...] a regulatory arbitrage only developed when Luxembourg directly implemented the UCITS Directives (I-IV), which gave its financial industry the largest possible freedom; by comparison, Germany favoured a so-called 'gold-plating' strategy, implementing the EU Directive/s much more stringently into national law. From that moment onward, a regulatory arbitrage has indeed benefitted Luxembourg (for almost two decades) and attracted large numbers of fund initiators from abroad" (Dörry, S. (2015), *art. cit.*, p. 806).

<sup>715</sup> See also Jeanne Chèvremont, interview with the author, November 23, 2022; Claude Kremer, interview with the author, January 11, 2023.

<sup>716</sup> As mentioned in a brochure translating in English the fund law of 1988 for a user base of international investors: "[...] the advantages of Luxembourg as a base for Fund operations are already well known to the investment funds established in Luxembourg. These have contributed significantly to the development of the financial sector in the country. Attractive aspects include: low-cost and rapid start-up formalities; a liberal tax regime for investment fund, absence of withholding tax on dividends paid, annual



Luxembourg-domiciled funds' shares, under two main respects. On the one hand, "from a purely fund perspective" – therefore "ignoring the problem of what may be best from the perspective of the individual shareholder whose own country seeks to tax his investment in an investment fund"<sup>717</sup> – Luxembourg's post-1983 regulatory framework on funds established a yearly capital tax of 0.06 per cent on net assets (the *taxe d'abonnement*<sup>718</sup>) for all Luxembourg-domiciled investment funds qualified as UCITS. Besides this tax and a one-time contribution of 50 000 Luxembourg francs (the registration tax<sup>719</sup>), no other taxes<sup>720</sup> were levied on UCITS incorporated in Luxembourg – in legal continuity with the main fiscal principles of the H29 framework. On the other hand, both laws,<sup>721</sup> as seen, provided a withholding-tax-free environment on the distributed dividends of Luxembourg-domiciled UCITS to non-resident investors. Moreover, as pointed out by coeval analyses of Luxembourg fund market dynamics of the time, the absence of withholding tax<sup>722</sup> was paired under Luxembourgish law also with strict rules on confidentiality of fund

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tax of 0.06 per cent on net assets; [...] anonymity provided to shareholders through bearer shares" (Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Grand Duchy of Luxembourg Investment Fund Law, April 1988, a free translation into English of the Luxembourg investment fund law of March 30, 1988).

<sup>717</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Investment Funds in Luxembourg, by Alex Schmitt of Bonn & Schmitt Luxembourg, 1993, p. 54.

<sup>718</sup> See Memorial A, Loi du 25 août 1983 relative aux organismes de placement collectif, CHap. 6, Dispositions fiscales, Art. 65. Memorial A, Loi du 30 mars 1988 relative aux organismes de placement collectif, Chapitre 17, Dispositions fiscales, Art. 108.

<sup>719</sup> Memorial A, Loi du 25 août 1983 relative aux organismes de placement collectif, CHap. 6, Dispositions fiscales, Art. 63 ; Memorial A, Loi du 30 mars 1988 relative aux organismes de placement collectif, Chapitre 17, Dispositions fiscales, Art. 106.

<sup>720</sup> In fact, as described in the literature, "[...] The exemption regime described above does not mean, however, that a Luxembourg UCI escapes any general taxes whatsoever, with the exception of the subscription tax. The parliamentary documents relating to the 1983 law already specified that UCIs would be subject to all "taxes normally designated as indirect, including property tax". (Kremer, C., and Lebbe, I. (2014), *op. cit.*, p. 1581).

<sup>721</sup> Memorial A, Loi du 25 août 1983 relative aux organismes de placement collectif, CHap. 6, Dispositions fiscales, Art. 62. Memorial A, Loi du 30 mars 1988 relative aux organismes de placement collectif, Chapitre 17, Dispositions fiscales, Art. 105. The 1988 framework essentially repropounded the fiscal framework of 1983, also, as said in the working documents of the Comité OPC so "[...] to consecrate a situation that has never brought any difficulties in the practice" (CSSF, box C000016745, Comité OPC Documents de Travail I, 1984-1987, Document de travail n. 19, p. 131. Original in French, translation of the author.

<sup>722</sup> As seen, the only two other EEC countries that were going to provide exemptions on withholding tax on dividends for non-residents (but with more restrictions on the formulation of tax credit compared to

investors' information.<sup>723</sup> On April 23, 1981, Luxembourg – that, as it has been argued in the literature,<sup>724</sup> until that time did not have a formal *de jure* banking secrecy framework, on the contrary of Switzerland – had promulgated the so called law on “banking secrecy”,<sup>725</sup> with a unanimous vote at the Chamber.<sup>726</sup> Luxembourg-domiciled UCITS and their management companies were not directly subject<sup>727</sup> to the banking secrecy laws of 1981 and later that of April

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Luxembourg) were the UK and Ireland (for a comparison with the other EEC countries in the aftermath of Luxembourg's 1988 regulation, see Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, La fiscalité des dividendes et des OPCVM en Europe, Christian Donnefort, Responsable fiscal Demachy Worms & Cie, 1995, p. 49.

<sup>723</sup> “Luxembourg offers a favourable tax regime for investment funds. All Luxembourg investment funds are subject to an annual subscription tax of 0.06 per cent of net assets, as valued on the last days of each quarter. There is also a one-time contribution tax of 50 000 Luxembourg francs applicable to the creation of any investment fund. Otherwise, the Luxembourg law provides that no other tax shall be payable by a UCITS in Luxembourg, and that the amounts distributed by such undertakings shall not be subject to any deduction at the source and are not taxable (in Luxembourg) if received by non-residents of Luxembourg. [...] in Luxembourg, the confidentiality of investor information may be protected by the issuance of “bearer certificates” for fund units. Moreover, the Luxembourg rules on banking secrecy protect investors in investment funds to the same degree as deposit customers of Luxembourg banks (Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Investment Funds in Luxembourg, by Alex Schmitt of Bonn & Schmitt Luxembourg, 1993, p. 54). See also Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Investment funds – Regulations – Taxation – Evolution, proceedings of Seminar November 1988, Institut Universitaire International Luxembourg Association des Juristes de Banque, André Elvinger.

<sup>724</sup> Bourbaki, R. (2016). *End of Paradise ? Le Luxembourg et son secret bancaire dans les filets du multilatéralisme. Critique internationale*, 71, 55-71.

<sup>725</sup> Memorial A, Loi du 23 avril 1981 portant application de la première directive du Conseil des Communautés Européennes du 12 décembre 1977 visant la coordination des dispositions législatives, réglementaires et administratives concernant l'accès à l'activité des établissements de crédit et son exercice.

<sup>726</sup> Proceedings of « Journées internationales de l'insig. banque et inspection. Rome 26, 27 et 28 mai 1982, La nouvelle loi bancaire luxembourgeoise du 23 avril 1981, Jean Guill (Conseiller Adjoint au Commissariat au Contrôle des Banques à Luxembourg) and Jean-Nicolas Schaus (Directeur du Service “Banques,, au Commissariat au Contrôle des Banques), p. 136.

<sup>727</sup> The absence of direct effect (neglecting the effect on selling agents) of the banking secrecy laws on Luxembourg-domiciled investment funds has brought some commentators to erroneously argue that “[...] banking secrecy will ensure the growth of the private banking industry. This was not without some gnashing of teeth by neighbouring states, whose citizens were the main clients of the Place. It was the era of the “Belgian dentist”. The image of the Place will deteriorate. To the great displeasure of insurance professionals and investment funds who had no use for banking secrecy” (Fassone, M. (August 17, 2022),

5, 1993,<sup>728</sup> which identified the breach of confidentiality by the banking operator, institution or professional, as a criminal offense under Luxembourgish law (moreover considering that the “breach of professional secrecy” produced legal consequences in Luxembourg even when perpetrated outside of the Grand Duchy<sup>729</sup>). Yet, the “banking secrecy” framework applied instead to those banks that were acting as distributors of investment funds shares (both from resident and non-resident funds, as seen in chapter 4) or registering agents for funds, and in case the fund investors deposited their dividends in Luxembourgish banking institutions.<sup>730</sup> The anonymity of investor information was eventually ensured by the issuance of “bearer certificates” to the purchaser of the fund’s share. The couple constituted by absence of withholding tax together with the confidentiality obligation on investors’ anonymity to which fund’s distributors were subject appeared to contemporary analysts as a factor of “attraction” for non-resident investors<sup>731</sup> and functional to the success of Luxembourg as an international-oriented fund hub. In this regard, it is indeed emblematic that André Elvinger, in an intervention in November 1988 at a seminar organized by Luxembourg’s Association des Juristes de Banque, mentioned two potential legal developments, at the EEC level, that could “jeopardize Luxembourg’s position” in the international fund market:

“[...] Two types of action have been contemplated: the first one would be increased exchange of information and assistance in the field of taxation with, as a result, further

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1981: L’adoption du secret bancaire, in <https://paperjam.lu/article/1981-adoption-secret-bancaire>. Consulted on May 18, 2023. Original in French, translation of the author.

<sup>728</sup> Memorial A, Loi du 5 avril 1993 relative au secteur financier

<sup>729</sup> See for example, Les conflicts entre l’obligation au secret bancaire instituée par la loi luxembourgeoise et l’obligation de déclaration imposée par une loi étrangère, Conférence organisée le 8 Novembre par l’Association Luxembourgeoise des Juristes de Banque en collaboration avec l’AEDBF-Belgium, Les divulgations opérées a l’étranger, pp. 9-11. Retrieved on May 17, 2023 at [https://www.elvingerhoss.lu/sites/default/files/documents/legal\\_topics/corporate/Conflits\\_entre\\_obligation\\_au\\_secret\\_bancaire\\_luxembourgeois\\_et\\_obligation\\_de\\_declaration\\_etrangere.pdf](https://www.elvingerhoss.lu/sites/default/files/documents/legal_topics/corporate/Conflits_entre_obligation_au_secret_bancaire_luxembourgeois_et_obligation_de_declaration_etrangere.pdf)

<sup>730</sup> See Hoffmann, A. and Veranneman, K (2020). Le secret bancaire, un risque pénal toujours d'actualité, *Le risque pénal du banquier*, Anthemis, 197-236, p. 200.

<sup>731</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Investment Funds in Luxembourg, by Alex Schmitt of Bonn & Schmitt Luxembourg, 1993, p. 54; Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Grand Duchy of Luxembourg Investment Fund Law, April 1988, a free translation into English of the Luxembourg investment fund law of March 30, 1988

limitations to banking secrecy; the second one, which is sometimes presented as an alternative to the first would consist in the introduction of a uniform or harmonised system of withholding taxes”.<sup>732</sup> Yet, in a context where “[...] harmonisation efforts of the EEC have been disappointing so far [and where] [the two draft directives of 1975 and 1978] have not become directives because of lack of interest on the part of the member States and because they were criticized, including by the European Parliament [...], in a prudent approach there is therefore no evidence presently of a tangible foreseeable change in the legal and tax environment of Luxembourg funds in the Common Market”.<sup>733</sup>

A second group of factors playing a decisive role in determining the attractiveness<sup>734</sup> of Luxembourg’s 1980s’ code of capital on investment funds concerns the legal artistry<sup>735</sup> showed by the fund laws’ drafters in balancing the characters of stability and at the same time flexibility of the fund juridical framework in Luxembourg. As vividly described by the CCB in the preparatory works for the fund law of 1983,

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<sup>732</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Investment funds – Regulations – Taxation – Evolution, proceedings of Seminar November 1988, Institut Universitaire International Luxembourg Association des Juristes de Banque, André Elvinger, p. 6.

<sup>733</sup> Ibid. pp. 5-6.

<sup>734</sup> See also in this regard, the words that DP member Colette Flesh – who at the time was Vice-President in Werner’s government, as well as Minister of Foreign Affairs, Foreign Trade and Cooperation Cooperation, Minister of National Economy and the Middle Classes and Middle Classes, and Minister of Justice (Thewes, G. (2008), op. cit., p. 196) – addressed to the Chamber on July 13, 1983: “[...] This project responds to a need to regulate in detail a matter which, in practice, is of interest to a large number of people, in particular savers who entrust their money to professionals who invest it in order to obtain a maximum return” (CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques), July 13, 1983 (87me séance).

<sup>735</sup> The final post-1988 legal set-up was nevertheless not exempt from criticisms in the technical press of the time. For example, in 1991, a IML circular on the interpretation of certain aspects of the 1988 law raised “doubts” among international fund firms due to “its lack of bite in certain areas, and its confused nature in one particular area, that of futures and options funds. [...] the way the section on futures and options was expressed made no sense”(Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Articles de Presse, Newell, R. (February 1991). IML circular raises doubts among fund firms.

“[...] [as t]he Chamber of Commerce thus rightly emphasises the advantages of simple, pragmatic and flexible legislation, but it also expresses the fear that the liberal approach will be sacrificed to excessive dirigisme [...] this bill which, on the initiative of the Minister of Justice, aims precisely at giving a solid legal basis to a sector which in the past may have given rise to legal insecurities [...] [T]he draft does not intend to abandon the flexibility that characterises our financial legislation. Such an approach, similar to that followed in banking matters, is particularly appropriate at a time when the Government is taking measures in favour of the financial centre, the perception of which abroad must not suffer from uncertainties and gaps in the legal framework”.<sup>736</sup>

Besides pursuing, as seen, full adherence to the principles discussed at and then approved by the EEC Council – with the law of 1988 eventually completing the process begun by that of 1983, for example by allowing management companies to manage more than one fund (as long as they activity was restricted to investment funds)<sup>737</sup> – the 1980s laws enhanced the image of stability of Luxembourg’s legal framework on funds also by on the one hand, *de jure* separating the course of the fund laws by that of H29. The law of 1983 introduced indeed a *sui generis* fiscal regime for the UCITS,<sup>738</sup> not anymore therefore directly connected to the H29 reference. The reasons behind this operation, as it has been argued in the literature,<sup>739</sup> can be found first, in the idea of “protecting” the new UCITS legislation from the potential attacks (and consequent modifications of the law) to which H29 was still highly exposed at the international level (starting from the EEC). Second, to have a neat distinction between holding companies and UCITS in the context of the applicability

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<sup>736</sup> Projet De Loi relatif aux organismes de placement collectif (N.2366-2), observations du commissaire au Contrôle des Banques sur l’avis de la chambre de commerce (June 6, 1980), I. Considerations Generales. Original in French, translation of the author.

<sup>737</sup> See e.g., Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Grand Duchy of Luxembourg Investment Fund Law, April 1988, a free translation into English of the Luxembourg investment fund law of March 30, 1988, p. 4; Kremer, C., and Lebbe, I. (2014), *op. cit.*, p. 1608.

<sup>738</sup> “In its initial form, the draft law had foreseen to maintain the application of the holding company regime to investment companies and other forms of UCIs which were neither FCPs nor SICAVs (17). This idea was subsequently abandoned and the special regime generalised to all forms of UCIs.” (Kremer, C., and Lebbe, I. (2014), *op. cit.*, pp. 1577-1578).

<sup>739</sup> *Ibid.* p. 1578.

of bilateral conventions on double taxation. Finally, to ensure a regime of transparency for the taxation of Luxembourg-resident investors investing in shares of Luxembourg's funds.

On the other hand, the law of 1983 provided Luxembourg for the first time with a juridical framework for the incorporation of SICAVs (*Sociétés d'Investissement à Capital Variable*). Defined as UCITS that have adopted the corporate form under Luxembourgish law<sup>740</sup> and that invested in transferable securities to then distribute the revenues to shareholders – who had bought shares previously placed under public or private offer<sup>741</sup> and who could redeem at any moment their shares<sup>742</sup> – the SICAVs had been prospected already in the preparatory documents of the law of 1983 as “[...] a new type of institution, [which] creates an opportunity for diversification of investment operations in the financial centre, which could lead to further progress in a sector that has been stagnant for several years [...]]; t]he project aims at favourably adjusting the tax regime of SICAVs, which offer a high degree of legal security for investors. security for the investor”.<sup>743</sup>

As it is visible in Figure 5.12, the number of SICAVs incorporated in Luxembourg and their aggregate net assets quickly increased starting already from the fourth trimester of 1983, after the promulgation of the law in August.

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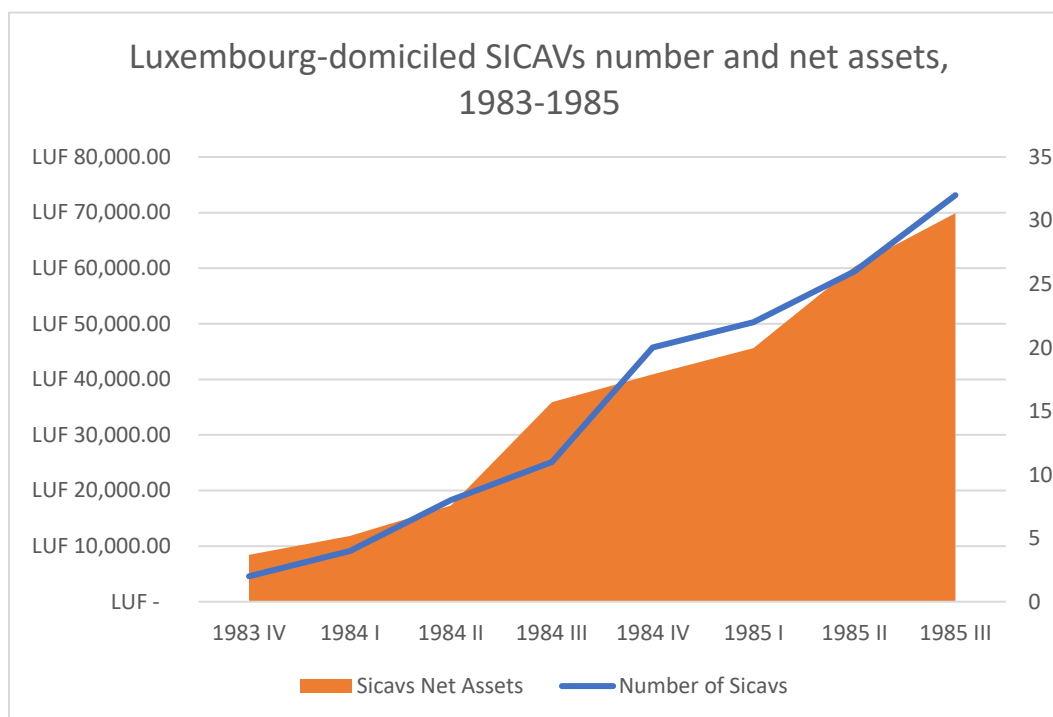
<sup>740</sup> “Unlike FCPs, SICAVs necessarily adopt a corporate form and, in so doing, adhere to a legal corporate form and, in so doing, adhere to a legal status established by the law of 1915. This law does not envisage the possibility for a company to be constituted with multiple compartments each corresponding to a distinct part of its assets” (Ibid., p. 199).

<sup>741</sup> Memorial A, Loi du 25 août 1983 relative aux organismes de placement collectif, Chapitre II. - Des sociétés d'investissement à capital variable Art. 22.

<sup>742</sup> Ibid. Art. 25.

<sup>743</sup> Projet de loi relatif aux organismes de placement collectif (N.2366-2), observations du commissaire au Contrôle des Banques sur l'avis de la chambre de commerce (June 6, 1980), I. Considerations Generales. Original in French, translation of the author.

**Figure 5.12. Number and aggregate net assets (million of LUF) of Luxembourg-domiciled SICAVs, IV trimester of 1983 – III trimester of 1985**



*Note:* source: CSSF, Bulletin Trimestriel, 1985/4.

It has been calculated that in 1987, Luxembourg-domiciled investment funds occupied a portion of the Belgian market of funds' shares around 40 per cent of the total – Belgian-domiciled funds occupied a similar quota of Belgian market, around 41 per cent of the total. Luxembourg's SICAVs alone, though, formally introduced with the 1983 investment fund law, in less than four years after the promulgation, accounted already for ca 20 per cent of the Belgian market.<sup>744</sup>

<sup>744</sup> Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, L'Evolution des Fonds Communs de Placement Belges, November 11, 1988.

The stability of the newly introduced juridical framework was paired with the fact that the “spirit of the law” had been conceived by its drafters<sup>745</sup> towards the “direction of flexibility” of interpretation of the fund framework in Luxembourg (within the broadest picture of the principles of the UCITS Council directive of 1985<sup>746</sup>) by the IML/CSSF at the listing of fund types which could be still intended as falling in the directive’s framework.<sup>747</sup> A IML circular of April 1988, for example, had already given room of admissibility to funds identifiable as “venture capital funds, mixed funds investing only partly in transferable securities, leveraged funds, funds of funds, money market funds and any umbrella funds one department of which falls within the other categories so defined”.<sup>748</sup> Moreover, while within the juridical framework of the law of 1983 FCPs and SICAVs could only invest in securities, part II of the law of 1988 had also opened to the investment in commodities and real estate.<sup>749</sup> Eventually, as it was argued again by André Elvinger in November 1988,

“[...] it can be said that we have a law which will continue to serve as a pole of attraction: it indeed combines continuity of legal structures and of administrative practice with full EEC compliance, being the first one to introduce not only nationally, but in EEC reciprocity, the European regulation. Better even, it maintains and even extends flexibility as to structure and investment areas”.<sup>750</sup>

Third and finally, it can be argued that, besides its stability and flexibility, Luxembourg’s code of capital on funds, as it had been elaborated throughout the 1980s, resulted in a pole of

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<sup>745</sup> See also Jeanne Chèvremont, interview with the author, November 23, 2022; Claude Kremer, interview with the author, January 11, 2023.

<sup>746</sup> And therefore, by considering that, for example, “the directive is inapplicable to funds that do not invest in transferable securities” (Banque Nationale de Belgique, box I-813, Fonds Communs de Placement, Statistiques, Investment funds – Regulations – Taxation – Evolution, proceedings of Seminar November 1988, Institut Universitaire International Luxembourg Association des Juristes de Banque, André Elvinger, p. 2.

<sup>747</sup> *Ibid.*, p. 4.

<sup>748</sup> *Ibid.*, p. 2.

<sup>749</sup> *Ibid.*, p. 4.

<sup>750</sup> *Ibid.*, p. 5.



attraction to both resident and non-resident fund investors also for its predictability, which can be intended as the outcome on the one hand, of the general agreement among the political forces that discussed the laws on funds and on the other, of the cooperative approach through which the drafting work had been implemented by the national regulator together with a wide range of institutional and private actors involved in Luxembourg's fund industry.

As seen in chapter 2, H29 had been approved at the Chamber despite the dissenting vote of the opposition, that had strenuously motivated its reasons through the debate. The two laws of 1983 and 1988<sup>751</sup> – but also, as seen, the law on banking secrecy of 1981 and the “Rau Act” of 1984 – had been instead all approved unanimously, first under the CSV-DP government of Werner and then, under the cohabitation government CSV-LSAP of Santer-Poos.<sup>752</sup> As Fernand Rau said in the parliamentary debate for the fund law of 1988, there was a

“[...] full unanimity [*une belle unanimité*] among the major political federations on the socio-economic and financial importance of the Luxembourg banking centre and, on the other hand, the rapporteur has dealt very exhaustively with the technical and legal aspects of the subject matter of the present draft”.<sup>753</sup>

The drafters, in the occasion of the preparatory works for both the law of 1983<sup>754</sup> and that of 1988,<sup>755</sup> had indeed proceeded by first discussing and drafting the articles (“one by one”, in meetings of “usually two hours” held “every one or two weeks”<sup>756</sup>) within technical committees defined as “Comité OPC” or “*Comité des valeurs mobilières*”,<sup>757</sup> to then have the consultation on

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<sup>751</sup> CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques), March 23, 1988, 35° séance, Discussion Générale sur Projet de loi 3172 relatif aux organismes de placement collectif, Vote et dispense du second vote constitutionnel.

<sup>752</sup> Thewes, G. (2008), *op. cit.*, p. 204.

<sup>753</sup> CdD, Session ordinaire de la Chambre des Députés (Compte rendu des séances publiques), March 23, 1988, 35° séance Discussion Générale sur Projet de loi 3172 relatif aux organismes de placement collectif, Intervention of Fernand Rau (CSV). Original in French, translation of the author.

<sup>754</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>755</sup> CSSF, box C000016745, Comité OPC Documents de Travail I, 1984-1987.

<sup>756</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>757</sup> Jeanne Chèvremont, interview with the author, November 23, 2022; Claude Kremer, interview with the author, January 11, 2023.

the provisory versions of the projects of the law by several Luxembourgish institutional bodies, including the CCB/IML, the State Council, the Chamber of Commerce, the AED, and the public prosecutor's office of the district courts of Luxembourg and Diekirch.<sup>758</sup> The Comité OPC were organized on the initiative of the CCB/IML,<sup>759</sup> led at the time by Pierre Jaans (first, as commissaire of the CCB until 1983 and then, as general director of the IML<sup>760</sup>), and held under the supervision of Jean-Nicolas Schaus and Jean Guill,<sup>761</sup> who were directors at the CCB/IML during the overall period of the formulation of the laws – “the regulator was preparing the meetings [...] and had the last word on them”.<sup>762</sup> As seen, the drafting work in Luxembourg was based on the concurrent composition of the UCITS directive at the Council. The IML directly participated to the debate in Europe with its emissaries already from the first phases of the discussion in 1973, immediately after the IOS scandal.<sup>763</sup> Among them, it has been possible to identify Charles Kieffer, who was going to become director in the CSSF once Schaus would have become its general director in 1999,<sup>764</sup> and the responsible for the department “Investment Activities (other professionals of the financial sector, stock exchange activities, securities markets)”.<sup>765</sup> Kieffer is mentioned as one of the regulatory experts and member of the “committee of permanent representants”, tasked to advise the Council on the objections raised by national delegations and on the state of the works on the proposals for the Council UCITS directive.<sup>766</sup>

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<sup>758</sup> See e.g., *Projet De Loi relatif aux organismes de placement collectif* (N.2366-1,2, 3), 1980.

<sup>759</sup> See Jeanne Chèvremont, interview with the author, November 23, 2022; see also interview of Pierre Jaans with Moyses et al. (Moyes et al. (2014), op. cit., p. 71.

<sup>760</sup> *Ibid.* p. 68

<sup>761</sup> See e.g., CSSF, box C000016745, Comité OPC Documents de Travail I, 1984-1987, *Les situations mensuelles et les rapports financiers des organismes de placement collectif soumis a la surveillance de l'Institut Monétaire Luxembourgeois*, 1984

<sup>762</sup> *Ibid.* p. 71. See also <https://paperjam.lu/article/news-le-parcours-de-jean-nicolas-schaus>

<sup>763</sup> Jeanne Chèvremont, interview with the author, November 23, 2022

<sup>764</sup> See <https://paperjam.lu/article/news-le-parcours-de-jean-nicolas-schaus>

<sup>765</sup> CSSF, CIRCULAR CSSF 99/1 on the establishment of the Commission de Surveillance du Secteur Financier, January 12, 1999, p. 2

<sup>766</sup> See e.g., Council of the European Union Archives, 9738/85, *Rapport du Groupe des questions économiques (Etablissement et Services) au Comité des représentants permanents sur la proposition de directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant les organismes de placement collectif en valeurs mobilières, Problèmes sur lesquels le comité est appelé a se prononcer*, October 22, 1985.

Besides the national regulator, at the round tables of the Comité OPC sat at the same time institutional and entrepreneurial actors involved in the fund industry in Luxembourg so “to improve the regulation and adapt it to the needs of the business”.<sup>767</sup> Among the participants there were therefore, in the first place, representatives of the main Luxembourgish law firms with a business interest in the fund market. Unsurprisingly, the “patriarch”<sup>768</sup> of Luxembourg’s fund industry, André Elvinger, “was always present to the meetings” and “was probably the main pusher for the creation of the 1983 fund law”.<sup>769</sup> Jean Hoss, the other senior partner of the law firm Elvinger and Hoss, highly specialized since the 1960s (see chapter 3) in the fund business, “helped in the revision process”<sup>770</sup> of the drafts. Yet, also Jean-Claude Wolter of Loesch and Wolter, regularly attended the meetings, as a representant of a firm whose role in the formulation of the drafts “needs to be mentioned at the same level as that of Elvinger and Hoss”.<sup>771</sup> Jacques Delvaux a lawyer and a notary – and the son of Bernard Delvaux, who, as seen, had been the main architect of the juridical framework around the inclusion in the H29 framework of open-end funds in the late 1950s in Luxembourg (see chapter 3) – as well as the liquidator in charge of the long-lasting liquidation process of the I.I.T. fund (see chapter 4) – “very often referred to IOS [...] by saying ‘We shouldn’t do this: because of IOS’”.<sup>772</sup> Second, there were then high-ranking representatives (the “equivalent of nowadays CEOs”<sup>773</sup>) of the main banking financial intermediaries that, as seen, were operating in the market of the fund’s shares as intermediaries or as custodian for Luxembourg-domiciled funds, such as BIL, KBL,<sup>774</sup> and BGL. Third, there were representatives of some of the international financial auditing firms that had been interested in Luxembourg’s fund market. At the Comité OPC meetings there were the Compagnie Fiduciaire (the future Deloitte<sup>775</sup>),

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<sup>767</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>768</sup> Sorlut, P. (6 May, 2022). *L’adieu du patriarche. d’Lëtzebuurger Land*. Retrieved online 17 February 2023 from <https://www.land.lu/page/article/200/339200/DEU/index.html>

<sup>769</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>770</sup> *Ibid.*; see also Jacques Santer, interview with the author, October 1, 2021.

<sup>771</sup> Claude Kremer, interview with the author, January 11, 2023.

<sup>772</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>773</sup> *Ibid.*

<sup>774</sup> For example, in 1984 the representant for KBL in 1984 was Damien Wigny, administrateur-directeur of Luxembourg KBL (see CSSF, box C000016745, Comité OPC Documents de Travail I, 1984-1987, Letter of Damien Wigny to Edmond Jungers, secretary of the Comité “Valeurs Mobilières”, IML, December 7, 1984.

<sup>775</sup> <https://www2.deloitte.com/lu/en/pages/about-deloitte/articles/history.html>

which was represented by its founding member Jean Hamilius – who had been also MP and minister for the agriculture and for public works in Thorn’s government of 1974-1979<sup>776</sup> – and Coopers and Lybrand (at the time not yet merged with Price Waterhouse, to form the current “big four” PwC), which was represented by French economist Jeanne Chèvremont. She had begun to work on Luxembourg’s financial market for Coopers and Lybrand already from the second half of the 1970s to then become a partner in 1987<sup>777</sup>. Coopers and Lybrand had been “approached” in the early 1980s and invited to attend the meeting of the Comité OPC, most likely due to the auditing services that the firm had previously realized for a group of Luxembourg-domiciled funds, including the USTIF fund,<sup>778</sup> which as seen in chapter 3 was the first closed-end fund with a buyout company created by the Elvinger and Hoss firm. The involvement of these auditing firms increased<sup>779</sup> then in the context of the drafting work for the law of 1988 – Chèvremont, for example, wrote “ [herself] an article of the law because they have difficulties to write it [...] and so [she] made the proposition which was discussed and so it was really a working together in fact”.<sup>780</sup>

Among the attendants to the Comité OPC meetings, there was also Luxembourgish economist Yves Mersch,<sup>781</sup> who at the time, after working at the Ministry of Finance led by Jacques Santer in the early 1980s, had become a member of the Council of the IML (between 1983 and 1999) and had been appointed as Government Commissioner at the Luxembourg Stock Market (between 1985 and 1989),<sup>782</sup> for which he was the representant at the meetings. Whereas several sources

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<sup>776</sup> Thewes, G. (2006), *op. cit.*, p. 183.

<sup>777</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>778</sup> *Ibid.*

<sup>779</sup> Also considering that Coopers and Lybrand contributed to advertise at the international level the features of the fund law of 1988, already from April 1988, through a translation in English, since “[...] it was not possible to market the US products in Europe, but as I said managers, they were looking for location to create their product and and we knew through the contact we had with our partners in the in the US that this could be a of interest to to to the US fund manager and to the UK fund managers as well. [for example] [...] through meetings in London [...] and Boston in May” see also Jeanne Chèvremont, interview with the author, November 23, 2022).

<sup>780</sup> *Ibid.*

<sup>781</sup> *Ibid.*

<sup>782</sup> See <https://www.eca.europa.eu/sites/FinancialGovernanceEU/Documents/Yves-Mersch.pdf> Consulted on May 20, 2023.

converge in excluding a direct involvement of the government,<sup>783</sup> it should be nevertheless considered that on the one hand, “there were lawyers that had political responsibilities and probably this has an effect on how the laws come through”; on the other hand, that “might have been lobbying at the government level”<sup>784</sup> through the LuxSE representatives. According to the reconstruction of Jacques Santer in this regard, indeed, a parallel debating work on the drafting of the laws was ongoing within his “team” at the Ministry of Finance. Mersch, together with his “main financial advisor” Raymond Kirsch, Romain Bausch,<sup>785</sup> and also Edmond Israel were discussing the drafts already in the context of the law of 1983, so to address “[...] the [difficult economic] situation at the time [by] find[ing] a new niche market” in a period “not very good for making affairs” and of “‘starving’ of the iron and steel sector”.<sup>786</sup>

Ultimately, it is therefore possible to argue that while the technical work on the formulation of the 1980s’ code of capital for investment funds in Luxembourg should be attributed in the first place to the main local law firms that had accumulated a broad experience in the fund market during the previous two decades – yet with the active contribution, more pronounced during the preparatory works on the law of 1988, also of other private actors, such as the main Luxembourg-based banks and the international auditing firms involved in the fund industry in Luxembourg – a parallel debate on the drafts of the law had been likely ongoing also at the government level and among some of the main personalities of the *place financière*, such as Edmond Israel. The overlapping of the two discussion processes likely resulted thus in a further work of concertation among the instances of all the parts involved at the government and entrepreneurial levels towards the creation of a stable and predictable juridical framework on investment funds.

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<sup>783</sup> Jeanne Chèvremont, interview with the author, November 23, 2022; Claude Kremer, interview with the author, January 11, 2023; see also Moyses et al. (2014), *op. cit.*

<sup>784</sup> Jeanne Chèvremont, interview with the author, November 23, 2022.

<sup>785</sup> Jacques Santer, interview with the author, October 1, 2021.

<sup>786</sup> *Ibid.*

## 6. Conclusions

This research aimed to individuate and analyse through a *longue durée* approach the main trends and cycles characterising the history of Luxembourg's investment fund industry, together with its long-run determinants. What are the factors behind the extraordinary success of Luxembourg's fund industry, which has been able to reach an aggregate size of up to more than 6 trillion euros at the beginning of the 2020s?<sup>787</sup> And what are the historical processes behind their emergence?

It has been recently argued in the literature that the performance of Luxembourg's fund industry needs to be rooted in the legislative choices of Luxembourg's policymakers in the second half of the 1980s, in the context of the harmonisation regulation for the fund industry (which was ongoing at the time at the European level). This historical interpretation, advocated with different gradations among the others by scholars such as Dörry, Wojcik et al., and Weeks,<sup>788</sup> has the merit of acknowledging on the one hand, the nodal importance for the development of Luxembourg's investment fund industry of the legislative intuitions and far-sighted choices of the Grand Duchy's governing class. On the other, by highlighting the relationship between Luxembourg-domiciled funds and the dynamics of the European capital markets, it contributes to emphasize the need for a historical analysis able to transcend the national borders of the Grand Duchy. Furthermore, these scholarly works can be considered as valid cross-discipline contributions to a surprisingly under-researched topic in the literature, namely the history of investment funds.

Yet, the central argument of the present thesis is that the above-mentioned interpretation of the events occurring around the fund market in Luxembourg and in Europe in the late 1980s tells only part of the story. First, it is somehow overlooked a rich and dense history of juridical innovations, political debates, entrepreneurial alliances, and last but not least, large-scale capital transfers (typically involving managers and investors from abroad) characterising the fund industry domiciled in the Grand Duchy in the previous fifty years. Second, the above-mentioned

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<sup>787</sup> <https://www.cssf.lu/fr/organismes-de-placement-collectif/> Consulted on October 4, 2023.

<sup>788</sup> See Dörry, S. (2016), *art. cit.*; Wójcik, D. et al. (2022), *art. cit.*; Dörry, S. (2022), *art. cit.*; Weeks, S. (2023), *art. cit.*; see also Hazenberg, J. J. (2012), *op.cit.*; Pauly, M., (2013), *op.cit.*

interpretation does not delve enough into an examination of the often-overlapping motives and interests guiding not only the institutional actors but also non-institutional ones (such as external and local financial intermediaries, in particular, business lawyers and banks) in the adoption of an internationally competitive code of capital for investment funds. Third, and in relation to the previous two, it only partially disentangles the composite reality of interconnected factors contributing to the steep take-off of Luxembourg's fund platform from the end of the twentieth century.

The present thesis aimed, therefore, to disentangle and analyse these factors through a historical lens. It eventually argues that these determinants were not conjunctural but became structural by progressively emerging in a time span ranging from 1929, the year of the promulgation of the so-called Holding Act, and 1988, the year of the promulgation in Luxembourg of a national law for investment funds fully embodying the legal principles introduced in 1985 on the harmonisation of the European fund market by the Council of the European Communities.

The use of the dates of promulgation of these two laws as cornerstones for the periodisation used in the thesis speaks volumes on how decisive the code of capital on investment funds adopted in Luxembourg during these sixty years was for the future success of the related national industry. At the same time, it gives a first glimpse of one of the main original findings presented in these pages and corroborated by a varied group of documental evidence (ranging from parliamentary acts to the interviews to some of the involved actors). Namely, the presence of a strong continuity throughout the overall considered period, from the 1920s to the late 1980s, in the action of both policymakers and entrepreneurial actors in the formulation and subsequent interpretations of the legislative framework regulating the fund industry in Luxembourg.

The policymakers of 1929 conceived the Holding Act plan – with its race to the bottom against the other nascent European offshore centres, namely Switzerland and Liechtenstein (whose early embryonal offshore phases have been effectively described by scholars such as Farquet, Guex, and Eichenberger<sup>789</sup>) – in a context in which Luxembourg's national economy was facing a structural transformation. For years, the Grand Duchy had heavily relied on agriculture and steel exportation. Moreover, it had been part of the German customs union (Zollverein) since 1842, economically

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<sup>789</sup> Farquet, C. (2016), *op. cit.*; Guex, S. (2022), *art. cit.*; Eichenberger, P. (2022), *art. cit.*

and monetarily tied to the confederation of German states. Yet, WWI changed the picture, eventually resulting in sudden economic isolation with the dissolution of the Zollverein, increasing difficulty in exporting raw steel and agricultural products in shrinking international markets, and local and international monetary issues. As stated multiple times by minister for finances Dupong in his speeches at the Chamber, in the budget laws acts, and to local newspapers,<sup>790</sup> the state's resources were being drained at this point by a "fiscal haemorrhage" due to the interwar years' depression, immediately followed by the "Great Depression" of the 1930s. The capital taxation of holding companies which moved their domicile to the Grand Duchy offered, in this scenario, an alternative source of state's fiscal income, whose growing importance fostered moreover a sort of reconciliation with the socialists – while this group, during the Chamber's debate on the promulgation of the law and in the first years of its existence had been a fierce opponent of this project of "capitalist neo-feudalism", as in the definition of one of its members.

The genesis of the fund laws of the 1980s has so much in common with that of the Holding Act to ultimately call for a long-run pattern in Luxembourg's policymaking and exercise of "state power" in this domain.<sup>791</sup> In the early 1980s, Luxembourg had been hit by an economic crisis originating in the critical downsizing of the national steel industry (the CCB called it "the most difficult situation in forty years"). In this context, Luxembourg's policymakers decided to ramp up legislation concerning the fund industry. Former prime minister Jacques Santer, in the interview which he granted to the author of this thesis, argued that the cabinet in which he was Minister of Finance (in Pierre Werner's government of 1979-1984) decided to turn its attention to the "niche market" of investment funds, once again, as a possible alternative source of state income.

This pattern not only refers to the action of the institutional actors involved in the process of promulgation of the laws but also to that of non-institutional actors, who became involved in the preparation phases of the laws, by contributing to their drafting. The drafts of the fund laws of 1983 and 1988, for example, were the result of the combined work of a table of advisors including eminent specialists of the fund sector, such as the business lawyers André Elvinger and Jacques Delvaux – who was the commissary tasked with the liquidation of IOS's I.I.T. fund and the son of Bernard Delvaux, first architect in the late 1950s of an interpretation of the Holding Act favourable

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<sup>790</sup> See also Calabrese, M., and Majerus, B. (2023), *art. cit.*

<sup>791</sup> Binder, A. (2023). *Offshore finance and state power*. Oxford: Oxford University Press, p. 17



to the inclusion of mutual funds under its purview. Together with them, there were representatives of the main Luxembourg banks and of two of the “big eight” auditing firms of the time: Compagnie Fiduciaire (the future Deloitte) and Brussels-based agency of Coopers and Lybrand (at the time not yet merged with Price Waterhouse, to form the current “big four” PwC). Between 1928 and 1929 something similar happened also in the context of the elaboration and drafting of the Holding Act of 1929. This thesis brings indeed evidence corroborating the argument of the effective participation of employees of ARBED, the main steel conglomerate in Luxembourg during the interwar years, to the drafting of the Holding Act.

One could see this as a form of legal yet hidden lobbying pressure of private entrepreneurial actors (with strong commercial interests in the matter discussed) on the institutional bodies of the state, which were in turn tasked with the processes of drafting and promulgation of the laws. The boundaries of this action stay however rather blurred. First, as famously stated by former prime minister Gaston Thorn, Luxembourg “is run by a football team”, an allusion to the fact that the decisional power in Luxembourg is traditionally in the hands of a small group of highly interconnected individuals, able to conjugate the instances coming from different spheres of the community. In this way, they become central nodes facilitating that process of “coordination in transition”<sup>792</sup> – in particular among political factions with contrasting ideological views – and bringing several parts of the society to collude on matters pertaining to a greater *raison d'état* in the fight for the survival of small states once facing a world open economy scenario. As argued by Jugl, in particular for Luxembourg, an administration system where “everybody know everybody” can result in efficient practice at the local level.<sup>793</sup> Second, the contribution of the most competent and involved juridical experts (Pistor evocatively defines them as “code masters”) on the matter undoubtedly represented an extraordinary tool towards the formulation of a code of capital with a very high degree of competitiveness at the international level. In this regard, the present thesis comes to in part criticize the affirmation of Pistor around the fact that

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<sup>792</sup> See e.g., Touwen, J. (2014), *op. cit.*

<sup>793</sup> Jugl, M. (2022). *Country size and public administration*. Cambridge: Cambridge University Press.

“[...] not every state, however, is equally accommodating for coding capital. Two legal systems dominate the world of global capital: English common law and the laws of New York State”.<sup>794</sup>

While this statement is essentially true once the world of global capital is looked at through an aggregate perspective lens, a focus on financial industries, as the one pursued in this thesis for investment funds, tells once again a different story. A peripheral code of capital, that of Luxembourg for investment funds, emerged as competitive against the other two and eventually dominant at the world level while foundational to the global machinery of capitalism<sup>795</sup> through its “global wealth chains”.<sup>796</sup>

The analysis of the processes shaping, in the long run, the international vocation of Luxembourg’s fund industry is in effect another of the original contributions of this thesis. Data evidence, presented throughout the above chapters, unambiguously shows that Luxembourg’s fund industry mainly relied from its early days in the 1930s to 1989 on capital investment of managers and investors from abroad. Already in 1930, indeed, the stakeholders of investment trusts such as the Union Internationale de Placements trust (which was listed in Luxembourg’s national Business Register in that year) appear to have been in large part from abroad and interested in using Luxembourg as a platform to pursue tax neutrality “asset strategies” – to be intended here in the wide sense given to this expression by Seabrooke and Wigan, namely “[...] the overarching plans used by firms, elites, and professionals to create and protect wealth [...] that] engage a range of tactics and often rely on power structures in the world economy, including the replication of social and economic networks that can realize asset strategies”<sup>797</sup> – in the same way of many others Luxembourg-domiciled holding companies’ stakeholders, as argued by Calabrese and Majerus.<sup>798</sup> Scholars such as Farquet, and Zucman<sup>799</sup> for example, have convincingly pointed out at the

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<sup>794</sup> Pistor, K. (2019), *op. cit.*, p. 8.

<sup>795</sup> Eichenberger, P. (2022), *art. cit.*

<sup>796</sup> Seabrooke, L., and Wigan, D. (2022). *Global wealth chains: asset strategies in the world economy*. Oxford: Oxford University Press.

<sup>797</sup> Seabrooke, L., and Wigan, D. (2022), *op. cit.* p. 279.

<sup>798</sup> Calabrese, M., and Majerus, B. (2023), *art. cit.*

<sup>799</sup> Farquet, C. (2012), *art. cit.*; Zucman, G. (2015), *op. cit.*

relationship between the expansion of taxation regimes in Europe, both in the reconstruction and debt payment phase after WWI and the “Keynesian” phase in the aftermath of WWII, and the increasing use and success of offshore platforms. Calabrese and Majerus have shown how Luxembourg emerged as one of those, with its capital code for holding companies during the interwar years. This thesis, additionally, brings evidence on how Luxembourg’s investment fund industry, from 1959 on, responded to the growing request of European (and extra-European) taxpayers for financial tools able to reduce the amount of taxes on capital revenues that they would have paid in their home countries – in this regard, a hint for an interesting avenue of research has been recently suggested by Schönhärl et al., who have been asking themselves whether the practice of “not paying taxes [can be seen as] a phenomenon reflecting a lack of consensus within society”.<sup>800</sup>

Moreover, Scott has argued in his study on tax avoidance and evasion in Interwar Britain that already from the 1930s tax avoidance was becoming more and more “a mainstream upper-middle-class practice”.<sup>801</sup> This process of “democratization of tax avoidance”, as in the definition of Zucman, becomes then even more evident during the so-called “*Trente Glorieuses*” – which is how French historiography defines the period of strong economic growth for the Western world between 1945 and 1975. The presence of this type of investor remains typically silent in the archives. Rigid rules on the protection of nominative data of investors enacted by financial institutions such as the CSSF or Belgium National Bank, whose archives have been consulted for this thesis, hinder a quantitative assessment for this type of investors.<sup>802</sup> Yet, it is possible to indirectly hear their voices through other sources. The narration of the investors’ sentiment, as it emerges from the analyses of financial journalists in the newspapers of the time from several

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<sup>800</sup> Schönhärl, K., Hürlimann, G., and Rohde, D. (2023). *Histories of Tax Evasion, Avoidance and Resistance*. New York, NY: Routledge, *The Ability and Intention of Not Paying Taxes in History. Some Introductory Observations*.

<sup>801</sup> Scott, P. (2022). A Fiscal Constitutional Crisis: Tax Avoidance and Evasion in Inter-war Britain. *The English Historical Review*, 137, 584, 170–97.

<sup>802</sup> This is not always the case for this type of institution in other world contexts. For example, it is possible to retrieve from the public archives of the national financial surveillance institution the exact percentage of retail investors in mutual funds domiciled in Taiwan from 1983 – accounting for more than 90 per cent of the total (see Calabrese, M. (2022). *History of mutual funds in Taiwan (1983-2014) Research Report for S.T.R.A. fellowship*).

countries – for example, neighbour Belgium –; the direct witness of business lawyers involved in the mutual fund business at the time; the commentaries to legislative acts of Luxembourg’s parliament and Council, describing a reality of a high number of retail investors investing in mutual funds; the rhetoric of “people’s capitalism” during the 1960s and early 1970s of a major mutual fund manager such as Bernard Cornfeld; or even the anonymous letter sent by one of these retail investors to the national financial surveillance body in Luxembourg (the CCB at the time), demanding a higher leeway of legal protection for small investors scammed by fraudster fund managers such as Cornfeld. All these sources converge on identifying the presence of a core group of retail investors among Luxembourg-domiciled funds’ investors.

However, what the data consulted for this thesis indicate with certainty is that the investors of any type investing in Luxembourg-domiciled investment funds were for the most part non-resident in Luxembourg. The Grand Duchy, through a process that Palan has defined as “bifurcation of the sovereign space”<sup>803</sup> and Zucman – more starkly – “commercialization of the sovereignty”,<sup>804</sup> allowed non-resident investors in investment trusts and mutual funds to benefit from a withholding tax-free environment on revenues and interest from their investment in funds’ shares, held through bearer certificates. The counterpart for this set of what is recognized in the literature as “offshore services”<sup>805</sup> was then the (minimal) tax on capital paid to the state by the fund management companies. This system – besides benefitting from a cross-fertilization process with the organizational system characterizing the market of Eurobonds, listed in the Luxembourg Stock Exchange and sold by Luxembourg-domiciled financial intermediaries – became eventually fully-fledged with the introduction in 1981 of a “banking secrecy” juridical framework, which ensured full protection on banking information for investors depositing their revenues from funds’ shares in Luxembourg-domiciled banks and, at the same time, to Luxembourg-domiciled banking operators, which were involved in the market of sales and refunds of fund shares.

Ultimately, what the long-run approach used in this thesis clearly reveals is that not one, but many factors concurred to ensure the take-off in the 1990s of Luxembourg’s fund industry. The quality of the code of capital on funds which was progressively introduced in the Grand Duchy

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<sup>803</sup> Palan, R. (1998), *art. cit.*

<sup>804</sup> Zucman, G. (2015), *op. cit.*

<sup>805</sup> Binder, A. (2023), *op. cit.*, p. 3.

from the late 1920s. The competitiveness of this code in an open-economy scenario, and in particular, at the European Community level – where Luxembourg in fact “moved first”, but in a context where the legislative structure of European institutions showed a somehow inherent weakness in providing an efficient framework against abiding forms of fiscal imbalances between its member states. The long-term international experience of local financial intermediators (business lawyers, notaries, banks) in this sector, built through decades of consistent opening-up of Luxembourg financial structures to external capital markets. The “coding artistry” of these intermediaries who, when involved in the drafting of the capital code of funds, were able to elaborate a juridical framework with a high degree of flexibility for the assimilation of future financial vehicles under the same regulation established at the European level.

All these factors together should be seen, this thesis argues, as a case of a whole being greater than the sum of its parts.

One of these elements missing would indeed result in the loss of confidence of both investment funds’ investors and managers. Already in the 1930s, Leon Metzler – probably one of the ghostwriters of the Holding Act of 1929<sup>806</sup> – commented on the character of “stability and predictability” of the Holding Act within Luxembourg’s legislative and political framework as the key element for its success among holding companies’ stakeholders. Metzler’s analysis gives a valuable lens through which looking for example at two completely different crises resulting in a strong decline of the fund industry in Luxembourg: the flight of capitals started at the dawn of the nazi invasion in Luxembourg in 1940 and the IOS financial scandal in the early 1970s. In their work, Calabrese and Majerus have raised the question of why many stakeholders of holding companies and investment trusts (such as the above-mentioned Union Internationale de Placements trust) moved the domiciliation of their companies although the nazi occupier had left untouched the Holding Act regime. An exhaustive explanation, taking into account the many possible reasons – ranging from the presence of persecuted Jewish administrators and stakeholders to their nationality (whether or not they were allies of the Nazi occupier) – should in effect refer to the general climate of distrust of investors and managers towards a political and legislative framework deemed as indeed not fully “predictable” even in the short run. In a completely different scenario, that of Luxembourg in the 1970s, this thesis has shown that the national fund industry

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<sup>806</sup> Calabrese, M., and Majerus, B. (2023), *art. cit.*; Barthel, C. (2006), *op. cit.*

shrank – besides a negative international conjuncture – also for the uncertainties perceived by the fund investors towards Luxembourg’s legislative framework: it appeared not stable enough in a context, in the aftermath of the IOS scandal, in which Luxembourg did not have a *de jure* framework on funds and the boundaries of the European level harmonisation of fund fiscal matters were still not clearly defined.

The two conceptual figures presented in Metzler’s commentary in the 1930s are therefore still relevant and can be inevitably assessed only through a transnational (or even intertemporal) approach. Future research should therefore thrive from overarching analyses able to individuate for different national fund markets all the underlying factors at stake and determine the competitiveness of the local financial and juridical infrastructure. Eventually, these works, together with the present thesis, would be considered as mutual contributions to the understanding of this industry in history. For example, one avenue of research could be represented by a more thorough study of the failed attempt of the Principality of Monaco to compete with Luxembourg’s Holding Act. Monaco’s local legislation on holding companies was promulgated in 1935, yet, despite an even lighter taxation regime, resulted eventually as less attractive than Luxembourg’s one to managers and investors. This failure can be once again seen as further proof therefore that the success of Luxembourg’s holding industry was not simply rooted in its low taxation charges, but most likely in the more encompassing character of “stability and predictability” of its political and juridical landscape as it was perceived by international investors and managers. In the same way, one could wonder for more recent years (so outside the temporal range presented in this thesis) why Ireland’s fund industry, although providing similar taxation benefits as Luxembourg, in particular in terms of neutrality areas for withholding taxation on revenues of investment funds’ shares to non-resident investors, was nevertheless not able to undermine Luxembourg’s second position in the global list of fund platforms issuing this financial instrument.

In conclusion, the present thesis represents the first attempt to elaborate a long-run view through a historical perspective of the main determinants, events, and people shaping the investment fund industry in Luxembourg, from the introduction of the Holding Act of 1929 to the harmonisation law on funds of 1988. It highlights the path towards an international dimension of this financial industry, which grew much bigger than the domestic market of a “small state” such as Luxembourg; and benefitted from a light taxation environment together with a progressive

specialization of Luxembourg, by means of its fund industry, into a node within the global chain of tax avoidance. At the same time, it argues that Luxembourg's code of capital for investment funds emerged as dominant at the world level also thanks to the cooperation of institutional and non-institutional actors in its drafting processes and, eventually, to the weakness of the European Community's regulators in removing capital market imbalances among its member states.

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**Table 7.1. Archives consulted for the thesis and overview of their data**

Archive Name and Location	Data
Archives Nationales de Luxembourg, Luxembourg (ANL) – Bibliothèque Nationale Luxembourg (BnL)	Chamber’s debates, preparatory documents for laws, Luxembourgish laws
Archives de la CSSF (Commission de Surveillance du Secteur Financier), Luxembourg	Dossiers on funds (such as Eurunion fund and liquidation of IIT fund), aggregate data on sales and redemptions of funds (1968-1977)
Archives Générales du Royaume (ARB), <i>Fonds Banque Lambert</i> , Belgium	Dossiers and confidential documents on Eurosyndicat, Eurunion fund, Finance-Union fund, Patrimonial fund
Archives de la Banque Nationale de Belgique (ABNB), Belgium	Statistics on Luxembourg-domiciled funds, reports of analysts on characteristics of Luxembourg’s market, proceedings of conferences on the subject, advertising pamphlets for Luxembourg-domiciled funds
Archives of the European Parliament, Luxembourg	Collection of questions and answers of European Parliament’s members on status of regulation of EEC fund market
Archives of the Council, Bruxelles (online)	Collection of preparatory documents for the UCITS directive of 1985, transcripts of

	Council delegations' remarks, final text of the directive
EUI Historical Archives of the European Union, Firenze (Italy) (online)	Preparatory documents for other directives' projects on the regulation on fiscality of securities' investment within EEC
Archives of Graduate Institute of International and Development Studies, Geneva, Switzerland	Collection of publications of Luxembourg Stock Exchange between 1931 and 1988
FINLUX archive (curated by Matteo Calabrese, Alexander Davidov, Othmane Djebbar, Benoît Majerus, Christelle Timis and Luca Uhrig), C2DH, Luxembourg University, Luxembourg	Data on more than 4600 Luxembourg-domiciled holding companies, banks, and insurance firms, law firms, with information on more than 15800 individuals and firms involved as stakeholders, board members, notaries, lawyers, etc.
Luxembourg Fund Data Repository (LFDR)	Database of investment funds available for academic research created at the Department of Finance of the University of Luxembourg. LFDR observations range from March 1988 to October 2016 (see also Skoura, A., Presber, J., and Schiltz, J. (2020). Luxembourg Fund Data Repository. <i>Data</i> , 5(3), 62. MDPI AG.).

## 8. Appendix: data, statistics, and interviews

**Table 8.1. Harmonised series (euros) for Luxembourg-domiciled OPCs and their Net Asset Value (billion €) per year**

	<b>Net Assets Value</b>	<b>Number of OPC</b>
1967	0.6	24
1968	1.4	40
1969	2.4	91
1970	2.0	102
1971	2.0	94
1972	2.8	95
1973	2.5	94
1974	2.0	95
1975	2.4	97
1976	2.2	92
1977	2.1	82
1978	2.1	71
1979	2.1	74

1980	2.9	76
1981	4.2	81
1982	4.7	87
1983	7.5	99
1984	9.9	132
1985	15.7	177
1986	24.9	261
1987	28.1	405
1988	53.0	525
1989	73.5	651
1990	72.2	805
1991	103.0	898
1992	167.4	1,041
1993	247.1	1,175
1994	247.5	1,283
1995	261.8	1,329
1996	308.6	1,384
1997	391.8	1,426
1998	486.8	1,521



1999	734.5	1,630
2000	874.6	1,785
2001	928.4	1,908
2002	844.5	1,941
2003	953.3	1,870
2004	1,106.3	1,971
2005	1,527.7	2,107
2006	1,856.4	2,353
2007	2,076.8	3,050
2008	1,576.5	3,592
2009	1,858.4	3,699
2010	2,220.4	3,914
2011	2,120.0	4,121
2012	2,413.7	4,117
2013	2,645.7	4,181
2014	3,127.7	4,193
2015	3,543.6	4,160
2016	3,741.3	4,144
2017	4,159.6	4,044

2018	4,064.6	3,908
2019	4,718.9	3,746

Note: Source: <https://lustrat.statec.lu>

**Table 8.2 Total Net Asset Value, NAV adjusted for inflation, and number of total shares in circulation for the fund *Eurunion*, February 1959 – March 1978**

<b>Date</b>	<b>Net Asset Value in LUF</b>	<b>Net Asset Value in LUF (adjusted for inflation). Ref year: 1978</b>	<b>Number of total shares in circulation</b>
28 February 1959	-	-	-
31 December 1960	958,226,614	2,097,576,092	614,564
31 December 1961	1,352,600,982	2,946,138,314	756,511
31 December 1962	1,778,890,467	3,840,090,638	920,029
31 December 1963	1,777,313,348	3,728,557,931	1,011,628
31 December 1964	1,769,000,068	3,599,532,316	983,938
31 December 1965	1,521,541,917	2,997,104,095	880,804

31 December 1966	1,295,545,454	2,487,271,536	821,629
31 December 1967	1,119,058,841	2,102,192,934	781,765
31 December 1968	1,201,277,000	2,199,456,872	656,020
31 December 1969	1,173,860,182	2,100,936,983	622,038
31 December 1970	1,053,000,000	1,801,745,066	594,993
31 December 1971	950,000,000	1,552,536,767	541,113
31 December 1972	1,032,000,000	1,603,179,851	508,834
31 December 1973	549,000,000	803,821,298	<sup>807</sup>
31 December 1974	528,469,825	706,631,901	396,135
31 December 1975	642,823,447	776,456,507	368,958
31 December 1976	501,768,566	551,984,058	337,318
31 December 1977	442,347,164	456,059,926	299,742

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<sup>807</sup> Number of shares for 1973 proxied in Figure 3 by number of shares in 1974

28 February 1978	409,123,161	409,123,161	279,805
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Note : Source : CSSF Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L and I

**Table 8.3. Eurunion fund's portfolio composition**

<b>Total Assets</b>	Dec 1964	Dec 1965	Dec 1966	Dec 1967	Dec 1968	Dec 1974	Dec 1975	dec 1976	Dec 1977	Feb 1978
Chemicals, pharmaceutics, photographics	13.80	16.08%	17.00%	16.64%	20.28	7.14 %	8.42 %	8.65 %	6.77%	7.04
Oil industry	11.25	10.28%	11.59%	12.88%	13.22	6.93 %	10.5 4%	12.7 2%	12.04 %	13.05
Financial firms	13.23	11.10%	8.36%	8.71%	8.00	16.4 1%	15.6 5%	14.7 6%	11.10 %	11.86
Commodity goods	8.13	8.59%	8.85%	10.33%	11.34	9.69 %	11.4 0%	7.20 %	9.69%	10.12
Electric and electronics	9.40	8.87%	6.69%	9.22%	11.38	7.38 %	6.38 %	6.37 %	7.48%	7.56

Constructions firms	6.66	8.53%	6.83%	6.52%		3.01 %	4.20 %	4.02 %	-	4.11
Public services (incl Transports)	7.06	6.02%	5.98%	7.26%	4.97	5.48 %	5.95 %	8.50 %	11.60 %	12.97
Vehicles and tyres	3.11	4.28%	4.61%	6.56%	6.80	1.86 %	3.20 %	3.16 %	3.18%	3.14
Real Estate	2.00	2.36%	2.74%	2.44%	2.35	1.35 %	1.03 %	2.11 %	2.49%	2.75
Mechanical construction and steel	3.95	2.92	1.56	3.68%	2.66	2.66 %	3.53 %	3.06 %	2.34%	1.90
Non-iron metals	5.19	3.20%	2.03%	2.42	1.56	3.00 %	4.02 %	5.24 %	3.17%	3.31
Paper and packaging	2.88	2.04	0.72	0.62%	-	-	-	-		
Equity securities	11.40	8.99	14.85	8.92%	9.64	21.9 9%	11.5 2%	13.0 1%	14.73 %	13.61
	With cash incl									
International Institutions	0.97	-	-	-		-	0.77 %	0.95 %	-	1.24

	As Divers									
Liquidity		6.74	8.19	3.83%	6.71	12.2 8%	13.3 9%	10.2 5%	8.64%	7.34

Note : Source : CSSF Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L and I

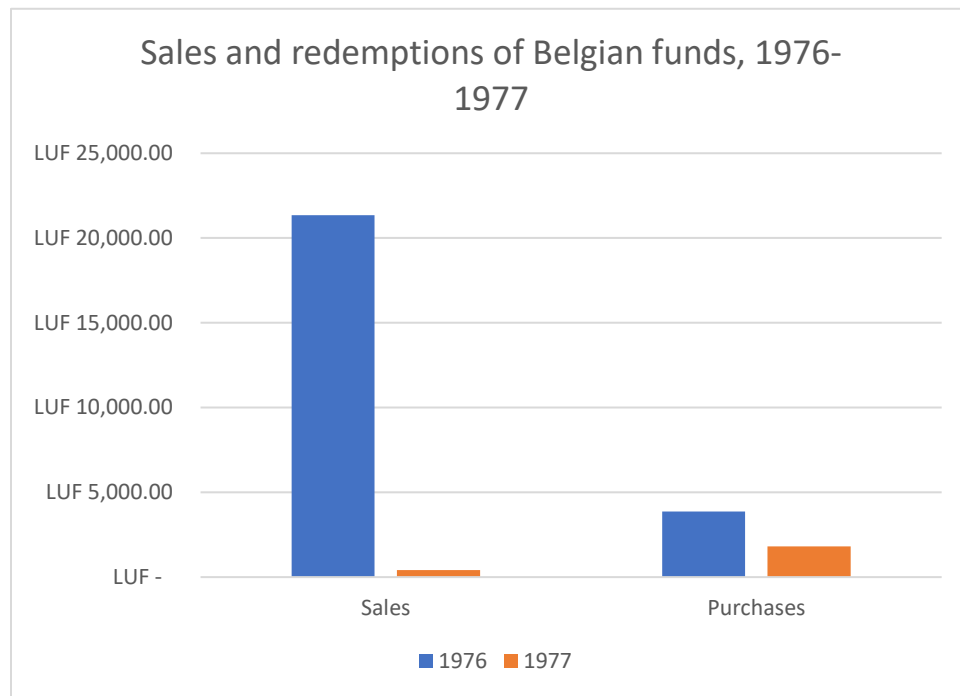
**Table 8.4. Eurunion fund's revenues per single share**

Year	Revenues per single share in LUF	Revenues per single share adjusted per inflation (ref year 1978)	Total revenues in LUF Rev bet + plus value	Total revenues adjusted per inflation (ref year 1978)
1959	30	66		
1960	40	87		
1961	46	100		
1962	47.50	102		
1963	50	104	52.341.777	
1964	52.50	106	52.590.831	
1965	57	112	51.950.283	
1966	57	109	45.015.231	

1967	57	107		
1968	59	108	40.556.482	
1969	60	107		
1970	47			
1971	70			
1972	70	108		
1973	72	105		
1974	90	120	3.927.613 + 2.730.823	
1975	85	102	2.520.993 + 12.583.600	
1976	90	99	3.206.315 + 3.434.387	
1977	90	92	2.761.660 + 2.840.345	
1978 (feb)	90	90	4.571.057 + 5.940.890	

Note : Source : CSSF Fonds Liquidé Eurunion, Fusion avec Finance Union 1966-1978 II Anc. L and I

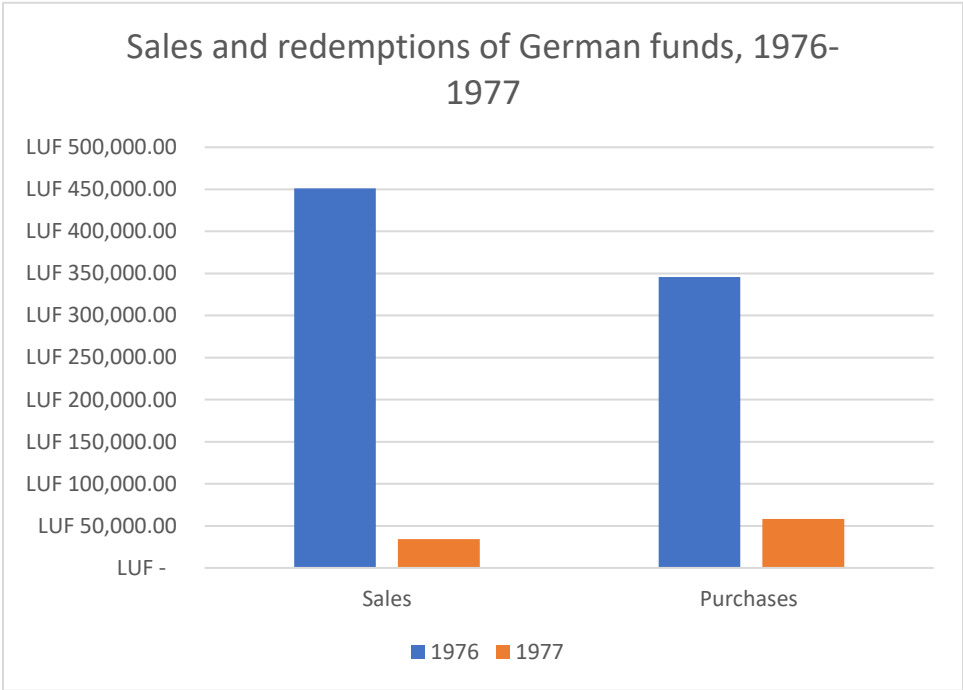
**Figure 8.1a. Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from Belgium, 1976-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

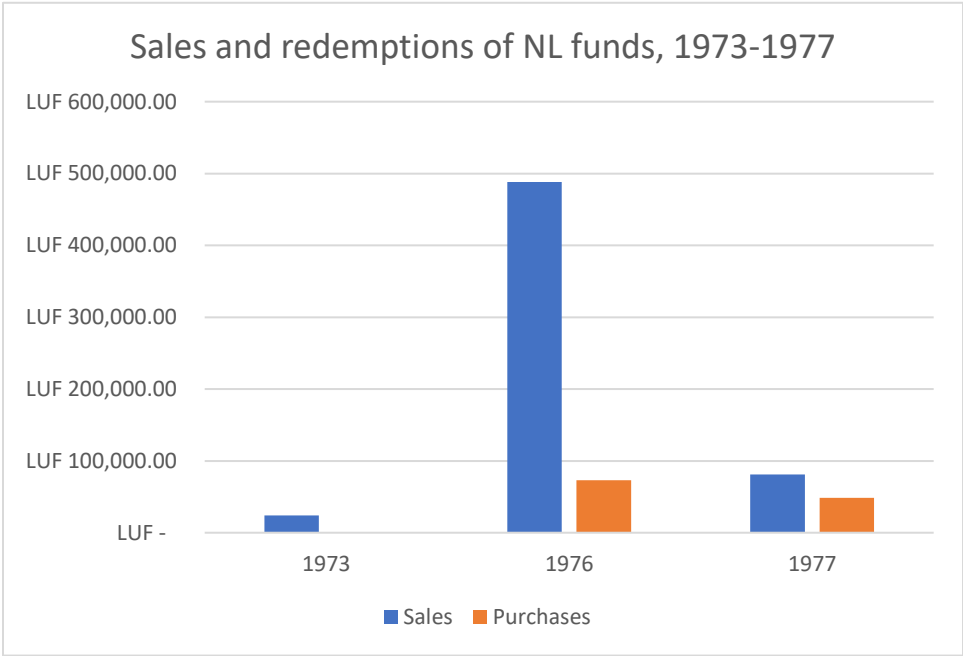


**Figure 8.1b. Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from Germany, 1976-1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

**Figure 8.1c. Total sales and redemptions through Luxembourg-based financial operators (thousand LUF) by investors resident and non-resident in Luxembourg of investment fund's shares from the Netherland, 1973, 1976, 1977**



*Note:* Source: CSSF, box 9816, Informations sur les ventes et rachats de parts de fonds d'investissement au Grand-Duché de Luxembourg. Calculations of the author.

### 8.1. Interviews with the author

- Jeanne Chèvremont, Interview with the author, November 23, 2022

0:0:36.460 --> 0:0:46.180

Matteo CALABRESE

Nice to meet you. Thank you so much for accepting this invitation for this interview.

0:0:50.580 --> 0:0:51.830

Marie-Jeanne Chèvremont

OK. Yep.

0:0:47.160 --> 0:1:18.460

Matteo CALABRESE

Uh, so a short introduction of myself, so I'm Matteo Calabrese. I am PhD researcher at the C2DH at University of Luxembourg with Benoît MAJERUS. I am interested in the history of holdings and investment funds in Luxembourg from 1929 until 1989. You can guess the reason of these two dates.. We are interested in the quantitative aspect or even economic history aspects of this history. But we are trying to go a bit beyond. So we are trying to do some social history of yeah, this is our innovation our novelty in the approach.

0:1:52.830 --> 0:1:53.120

Marie-Jeanne Chèvremont

Yep.

0:1:41.400 --> 0:1:59.780

Matteo CALABRESE

Like for example we are interested in individuating and analyzing the motives of the people behind the industry. This is what I mean. So like we're focusing on these aspects. I'm not a professional journalist..

0:2:4.180 --> 0:2:4.870

Marie-Jeanne Chèvremont

It's OK.

0:1:59.850 --> 0:2:29.870

Matteo CALABRESE

.. and therefore I apologize if my interview will be a bit slower. I am more an university researcher than that [ a journalist] , but I will try to have an open-end approach in this interview. So you will have all the time to and all the space to answer the question. So that's it. This is the introduction. OK. So I would like to ask you first a short introduction of yourself and then I would like to focus on the 80s.

0:2:30.110 --> 0:2:45.270

Matteo CALABRESE

so, the period we are interested in is the 1980s. I would like to ask something to you about, I don't know your memories from this decade, like, for example, what was your occupation at a time; where did you live?

0:2:45.850 --> 0:2:49.580

Marie-Jeanne Chèvremont

OK. So OK, I can put that in context, no problem.

0:2:49.880 --> 0:2:50.460

Marie-Jeanne Chèvremont

Uh.

0:2:49.940 --> 0:2:50.680

Matteo CALABRESE

Thank you so much.

0:2:50.770 --> 0:2:51.250

Matteo CALABRESE

Yes.

0:2:51.710 --> 0:2:55.50

Marie-Jeanne Chèvremont

So thank you for this interview. It's an interesting subject indeed.

0:2:56.550 --> 0:3:1.610

Marie-Jeanne Chèvremont

So maybe I put my career in context so that you understand where I'm coming from.

0:3:3.180 --> 0:3:6.540

Marie-Jeanne Chèvremont

I I started my career in Luxembourg in 1975.

0:3:7.800 --> 0:3:8.640

Marie-Jeanne Chèvremont

I'm French.

0:3:10.140 --> 0:3:18.190

Marie-Jeanne Chèvremont

Coming, just from the boarder of Luxembourg, a small village on the border in Luxembourg. But I studied in the French Business School.

0:3:18.720 --> 0:3:24.120

Marie-Jeanne Chèvremont

Uh-huh. And when I was studying there in my last year. Umm, we had some companies who came to the school. I explained all this so that you explain, you understand why I am in Luxembourg as it's more social then..

0:3:38.830 --> 0:3:40.780

Marie-Jeanne Chèvremont

And so during this, so we had the Coopers and Lybrand among others who came to the school to interview the students for their first job. At that time the big eight, they were eight at the time were very small compared to what the profession is today.

0:4:0.480 --> 0:4:19.140

Marie-Jeanne Chèvremont

Uh, and the guy in charge of recruitment that the human resource level was in charge of the Benelux and France. Just to tell you the size of this firms because you had one guy in charge of the recruitment for all these areas, so.

0:4:20.870 --> 0:4:33.510

Marie-Jeanne Chèvremont

And the guy when he. So I went to this interview, just to get familiar with the techniques of interview. It was my first interview with a company.

0:4:35.140 --> 0:4:53.750

Marie-Jeanne Chèvremont

Oh my. And the guy? The guy when he looked at my civil said: Ohh, I see you come from the border of Luxembourg. So he had some sense of geography which was not bad. And he said, would you be interested in starting in Luxembourg? And by the way, I asked me: “Are you familiar with the country, etcetera?” And I said: “My parents at home, they spoke Luxembourgish, so I said Ohh understand, Luxembourgish and I'll be very happy to be back at home.

0:5:4.550 --> 0:5:31.180

Marie-Jeanne Chèvremont

And so he said: Ohh cool. You could be interesting because we are we have a very small office in Luxembourg, 3 people and we are looking for staff assistant and said there would you be interested in such a job? Of course, first interview you say yes to everybody. To everything. And one month later I received the letter from a Belgian partner. But he was in Paris because Luxembourg was part of the Belgian area for the firms, and asked me to come to Paris for a second interview. And so that's where I got the job as a staff assistant in auditing in Luxembourg. Once I had my first job, it was in June for September. So well, I'm not going on holiday. I'm not going to look for another. I wanted to do marketing. But anyway I said well and my parents were very happy. Good because I had my field trip. So that's how I arrived in Luxembourg in September 1975.

0:6:4.190 --> 0:6:6.450

Marie-Jeanne Chèvremont

Uh at that time the activity was well not like it is today and I was in the network, Cooper and Lybrand, which was the number 8 in financial service. So, this was not at global level, this financial service, banks, etc was not the major industry of the of the firm. So other firms were much better placed.

0:6:36.860 --> 0:6:40.490

Marie-Jeanne Chèvremont

And so I arrived in Luxembourg in this very small office, four people.

0:6:41.930 --> 0:6:45.110

Marie-Jeanne Chèvremont

And I started to understand.

0:6:46.80 --> 0:7:3.150

Marie-Jeanne Chèvremont

What was going there? Of course we didn't have a like, if you look at today, the juniors when they start in the audit firm, they have a lot of training et cetera, et cetera. Well, we had to just train ourselves so.

0:7:4.390 --> 0:7:9.120

Marie-Jeanne Chèvremont

I first started to understand the legal environment.

Read the law of 1915, the law of 1929 and the standing all. What this was about.

0:7:21.190 --> 0:7:30.420

Matteo CALABRESE

So if I interrupt you, so already from the beginning your domain was investment funds?

0:7:28.840 --> 0:7:43.850

Marie-Jeanne Chèvremont

No, no, my domain was I was in a big four or in a big eight, four people. So we just were... we were not that we were not very busy at that time. But I can remember we had the.. and the the subsidiary of a large factory ...Uh, it was part of the Balamundi group and we had a bank as a client and we had the two or three small funds..

0:8:8.500 --> 0:8:10.320

Marie-Jeanne Chèvremont

If I remember well, we had a US investment fund, USTIF was that called.

0:8:17.250 --> 0:8:17.440

Matteo CALABRESE

Yeah.

0:8:17.600 --> 0:8:20.360

Marie-Jeanne Chèvremont

Uh, we had another one with which was...Selected Risk Investment Fund.

0:8:25.820 --> 0:8:38.30

Marie-Jeanne Chèvremont

And we had a fidelity fund, I think it was... from memory.. the Fidelity Fund and this one was

created in Luxembourg..to be sold in Japan. So at that time this fund manager use Luxembourg for distribution in Japan, which was..

0:8:50.480 --> 0:9:7.520

Marie-Jeanne Chèvremont

Well, so we had the three or four of these small funds. Of course I started then to auditing them. We had one of our partner who was based in Brussels and came over while once every two weeks. Just to because we had no partners based here.

0:9:12.380 --> 0:9:12.940

0:9:14.470 --> 0:9:18.320

Marie-Jeanne Chèvremont

And he was a very much interested in the holding companies...in fact that was one of the reason why Coopers and Lybrand Belgium started their operation here in 74 because they had some groups which, who had the holding companies based here so they had to have a office here. First they did the work from Brussels but then decided to open the office here to serve these clients. And most of the Big Four came during this period between the 1972-73 and 1980. The big eight I should say...

0:9:58.940 --> 0:10:11.710

Marie-Jeanne Chèvremont

That's when I started to become familiar with the holding companies and investment funds organized on the basis of the holding company law.

0:10:19.830 --> 0:10:22.950

Marie-Jeanne Chèvremont

I became a manager in 1980.

0:10:23.390 --> 0:10:31.180

Marie-Jeanne Chèvremont

Then in the late 1970s, early 1980s,... from memory, the CSSF, if I remember how it was called, probably *Commissariat au Contrôle des Banques* or IML but.

0:10:46.600 --> 0:10:49.310

Marie-Jeanne Chèvremont

They had working groups.



0:10:51.370 --> 0:10:59.30

Marie-Jeanne Chèvremont

Working with with them in order to working on the regulation...It was really in order to improve regulation to make it adapted to the needs of the business. And so our partner at that time who was based in the Brussels was approached to become part of this working group.

0:11:20.690 --> 0:11:23.260

Marie-Jeanne Chèvremont

And because they had a lot of meetings...well, at the time there was a meeting every week or every two week.. So he said: Well, I cannot come to Luxembourg for each meeting and he proposed that I became, I became a Member of this working group. It was the *Comité des valeurs mobilières*.

0:11:46.750 --> 0:12:12.150

Marie-Jeanne Chèvremont

I was fairly young then, particularly compared to all the other members. I was not yet a partner. So in this working group you had André Elvinger, a prominent lawyer at that time, and Jean-Claude Wolter, for the legal side.

0:12:13.530 --> 0:12:19.720

Marie-Jeanne Chèvremont

And then from our profession, we had Jean Hamelius, who was from the company Compagnie Fiduciaire

0:12:20.700 --> 0:12:31.130

Marie-Jeanne Chèvremont

And we had the main banks representatives, well not the representative but the CEOs.. you didn't call them CEO but directors generals. From the BIL, Credit bank, BGL..

0:12:42.140 --> 0:12:46.970

Marie-Jeanne Chèvremont

These were the three largest banks.... from memory uh.

0:12:47.890 --> 0:12:51.420

Marie-Jeanne Chèvremont

Uh, I think we also had somebody from the Stock Exchange. So these were the participants to this working group, in the early 1980s.

Matteo CALABRESE

Uh, OK. So I I want you to ask it. So each bank, uh, sent a representative. So BGL, KBL...

0:13:24.140 --> 0:13:24.590

Marie-Jeanne Chèvremont

Yes. In fact, the representative was the Managing Director. It was the number one of the bank, it it was at a very high level..

0:13:39.440 --> 0:13:48.50

Matteo CALABRESE

Ok. And I want you to ask, uh, you, uh, I missed this, which year did you join this committee, do you remember?

0:13:50.360 --> 0:14:5.650

Marie-Jeanne Chèvremont

I would say... I don't exactly remember. I probably....I don't remember. I don't know if I was already there when we finished the law of 19883.

0:14:5.770 --> 0:14:8.360

Matteo CALABRESE

OK. Yeah, that's what's the reason of the question.

0:14:7.530 --> 0:14:11.0

Marie-Jeanne Chèvremont

Yes. So uh, I I think it was well....At probably at around that time, 1982- 1983, I would say.

0:14:16.930 --> 0:14:17.330

Matteo CALABRESE

OK.

0:14:20.290 --> 0:14:25.410

Matteo CALABRESE

OK. I will ask you more about this. I just want to ask you first a couple of questions more about the general economic life in Luxembourg at the time. So when when you just joined, when you just arrived, in Luxembourg, do you remember more or less, how was the feeling of the economic life at the time? Were you feeling like a crisis moment, like, you know, because there was a downsizing of the steel industry at the time also, you know there was the famous

unilateral devaluation of the Frank Belge, you know in 1982 and I wanted to ask you like how these events, major events were affecting your work at the time in Luxembourg?

0:15:9.160 --> 0:15:13.850

Marie-Jeanne Chèvremont

Uh, affecting my work at that time...just just an example. I remember we had a client at the time in Boulevard Royal.

0:15:26.340 --> 0:15:52.110

Marie-Jeanne Chèvremont

I was able to park in front of my client in Boulevard royal. I very often tell this story because it's just unbelievable today. So that's that gives you just a sense of that time as well. And also when I join, when I I came to Luxembourg in 1975 my parents and my environment, they were very surprised, well they were very happy because I came back, but for us, Luxemburg was still a steel industry country and the people, the French people who came to work to Luxembourg, were mainly... the men came to work at the ARBED in Esch and the women... they came to be cleaning ladies, huh. That was the image we had of the labor market in the late 1970s. So...you came to Luxembourg? Well, for the steel industry, but after a Business School coming to Luxembourg that was very will surprise, right?

0:16:45.160 --> 0:16:46.170

0:16:50.690 --> 0:17:0.710

Matteo CALABRESE

And when you arrived in Luxembourg at the time, did you have this feeling as well that you were going to a country that was not so financial sector oriented?

0:17:1.640 --> 0:17:18.430

Marie-Jeanne Chèvremont

Well, I didn't think about it. Is it financial sector or not? It's just a well, it was my first job. It was my first job working in an audit firm. But at that time also... when you were a student...a lot of people,, that's the reason why I joined the firm. I didn't know exactly what I wanted to do for my work and so joining an audit firm, you knew that you were touching a lot of different kind of companies. But I didn't come here because it was a financial centre. I just came here because I got the possibility to have my first job and.. Well, that's it. Yeah. And in

fact, I was here for two years but because the office was so small I asked to work in Brussels for 2 years to get the larger experience. And then I came back here as a manager in charge of the office. And that was in 1980.

0:18:4.150 --> 0:18:9.270

Marie-Jeanne Chèvremont

And in 1980, at Coopers, we were six people in the office.

0:18:10.530 --> 0:18:11.890

Matteo CALABRESE

Yeah, still quite small.

0:18:12.150 --> 0:18:15.780

Marie-Jeanne Chèvremont

Very small. Yes, very small. It's still the number 8.

0:18:28.710 --> 0:18:28.980

0:18:16.560 --> 0:18:37.130

Matteo CALABRESE

And, you know, I was asking this question about, like, the crisis now, you know, because the middle 70s, for us that we are studying now this subject. You know we have like these years between 1971 to 1973 that years of scandals in Luxembourg because there was this big scandal of the IOS and I was wondering if there was still some trace of this scandal when you arrived.

0:18:50.20 --> 0:18:50.750

Marie-Jeanne Chèvremont

Well, I think this probably, uh, was pushing the regulator to start having a good regulation in relation to funds marketed to the public. I think this had an impact on having a law under the control of the regulator. So that's probably and in fact yeah, I forgot... one person in the working group at the IML was Jacques Delvaux. He was a notary.

0:19:34.400 --> 0:19:42.110

Marie-Jeanne Chèvremont

Uh, I think before being a notary, he was a lawyer and he was in charge of the liquidation of IOS. And I remember that because, uh, when I was in this working group very often he referred to IOS. "We shouldn't do this because of IOS"..

0:20:1.660 --> 0:20:9.950

Marie-Jeanne Chèvremont

However, I'm not sure that we had... I don't remember whether the [IOS] legal fund was a Luxembourg based fund.

0:20:12.920 --> 0:20:13.150

Matteo CALABRESE

Yes.

0:20:10.760 --> 0:20:24.800

Marie-Jeanne Chèvremont

I don't remember anyway, because we had another scandal in the late 1970s, early 1980s. That was the bankruptcy of the Herstatt bank.

Matteo CALABRESE

And yeah, like, yeah, there was also in terms of banking scandals also the Banco Ambrosiano one.

0:20:35.120 --> 0:20:39.570

Marie-Jeanne Chèvremont

But that's that was a little bit later...

0:20:36.390 --> 0:20:38.290

Matteo CALABRESE

It 82, yeah, and Herstatt like in 1974...you just mentioned Jacques Delvaux and it is a bit funny since I'm just reading some documents from him, because I'm checking like these documents from the liquidators of IOS and it's funny that they mention how many hours they worked on the liquidation and it is really a huge amount of hours.

0:21:9.690 --> 0:21:13.420

Marie-Jeanne Chèvremont

Uhhh.. what was the name of the guy who was in charge of the IOS...I don't remember the name.

0:21:12.860 --> 0:21:14.200

Matteo CALABRESE

Yeah, Bernard Cornfeld.

0:21:18.310 --> 0:21:29.930

Marie-Jeanne Chèvremont

Cornfeld. In fact I have just a small funny story. He had... how to say that... a parrot... and the name of his parrot was Cornfeld.

0:21:37.710 --> 0:21:40.270

Matteo CALABRESE

This is quite a funny story.

0:21:40.940 --> 0:21:52.440

Marie-Jeanne Chèvremont

I don't remember whether it was Bernie or Cornfeld, but you should find it out with his daughter, if you have in contact with his daughter, she probably can tell you. But I remember that.

0:21:51.570 --> 0:21:54.510

Matteo CALABRESE

That's it. That's really a funny story. Thanks for it.

0:21:53.560 --> 0:21:57.450

Marie-Jeanne Chèvremont

But yeah, it's if you're looking for funny stories, that's a funny one, so.

0:21:59.470 --> 0:22:14.990

Matteo CALABRESE

OK. And but well, since we're reached already like the step of my next question.. which is about the 1983 law, the 25 August 1983 law. So like please tell me... everything you know about that, what was your role there and you know, I'm really interested in two things. One is the determinants. So why Luxembourg government and then Parliament approved this law, why they were interested in this law. And second one is like who were the people behind the creation, who were the architects of this law?

0:22:43.730 --> 0:23:7.960

Marie-Jeanne Chèvremont

OK, in fact, the law of 83 because... before that, we didn't have a law on investment fund. So the funds were created on the basis of the company law of 1915 and the holding company law and 1929 probably you know the structure was functioning because you needed two

companies to make the fund. So there were some thoughts about having a law specific to this kind of vehicles. I think the main pusher of this was... but I was not there when the discussion started... but I think the main pusher was André Elvinger, because he really was very instrumental to have a law

0:23:39.760 --> 0:23:49.790

Marie-Jeanne Chèvremont

And maybe also a Jean Claude Wolter at that time maybe, but probably more André Elvinger.

0:23:49.870 --> 0:24:5.110

Marie-Jeanne Chèvremont

Yeah. And they had the, full support of the Director of IML. I think that even in 80s- 1983 .. but I don't remember. I don't think there was Jean Nicholas Schaus... there was another guy at the start. I think he was still young... Who was there? But I don't remember exactly who ..because I came in 82-83.

0:24:21.980 --> 0:24:23.270

Matteo CALABRESE

OK, we'll check this.

0:24:22.290 --> 0:24:30.120

Marie-Jeanne Chèvremont

I was. I was there. But I did not work as such on the 1983 law. I don't remember having been working a lot on the 83 law. I worked a lot on that of the 88, yes, but the 83 was based on the directive because the directive already existed and so they were, have been very clever to take the directive and have the law, which was fitting with the directive. So we, which made life much easier when we had to work then on the 88 law.

0:25:1.640 --> 0:25:25.370

Matteo CALABRESE

OK, I will arrive soon at the 1988 law, but just a couple of questions. More like a even if you didn't work directly on the creation of the 1983 law, I would like to ask you do what is your opinion, if you have to summarize, what were the reasons for implementing this law, so one was of course creating a de jure law, no? Because before was a de facto legislation. What you were saying. So based on 1915, 1929, 1972 the *arrêté grand-ducal*, and so finally there was

something like written on the law paper. So OK and what could be other reasons for implementing this law at that time?

0:25:54.590 --> 0:25:56.380

Marie-Jeanne Chèvremont

But at the time, I think it was...uh, really, to have a law. Because if you look... as you said, we had the IOS, because we had a lot of funds. Well.. a lot.. only 7. Before IOS, I think that we had about 100 funds or something like that. And then because of IOS, suddenly there was a..because the there was a...the market lost confidence in this kind of product and so I think it was the IOS scandal that pushed the lawyers and the bankers to propose to have a law which is totally adapted to this business and because the directive was already there...

0:26:59.740 --> 0:27:3.550

Matteo CALABRESE

What do you mean? Which directive, like the European Union one?

0:27:2.950 --> 0:27:13.240

Marie-Jeanne Chèvremont

The 85 directive... because in fact the directive on UCITS which is 1985 was in discussion, I think during ten years, huh?

0:27:18.950 --> 0:27:20.30

Matteo CALABRESE

OK. OK. OK.

0:27:20.90 --> 0:27:41.710

Marie-Jeanne Chèvremont

..at the European level, so you had this guy from the guys from the regulator. They were participating to this discussion at European level. So I think they had discussion probably starting, but I was not in this circle, but probably starting with IOS.. there was this discussion at the European level to have a law on..like on savings products, which could be controlled and regulated and sold throughout Europe. And so, the directive, I think they have been discussing that for well 8 to 10 years which is the normal.

0:27:59.240 --> 0:28:27.690

Matteo CALABRESE

Well, let me go then to my second question, which is about this directive at the European



Council level, so if you know... so exactly this question: who were the people behind that directive and ...OK, you just answered more or less from when they were thinking about this directive..so you said ten years before... and who were the people, you know that we're working on it, more active behind the scenes...

0:28:33.670 --> 0:28:36.690

Marie-Jeanne Chèvremont

Uhm... In Luxembourg, probably the regulator of that time. They were part of it, of course, because there was a working group at the European level....and...the lawyers... I don't know exactly. Honestly, that's probably it's a question... I don't know whether you have interviews with André Elvinger, whether he's still gives interviews.

0:28:57.740 --> 0:29:26.840

Matteo CALABRESE

This part on the European side is still a bit blurred and it is not so clear what was happening. I checked some documents and I've seen that there were many politicians, congressmen and women at the European level that we're trying to push toward the harmonisation of the regulation. This from exactly from the years of the IOS scandal, but yeah...it's not clear yet who were the main architects , the drafters of the 1985 directive...

0:29:43.130 --> 0:29:53.900

Matteo CALABRESE

OK, OK. And I would like to ask something about the again, maybe last question about the 1983 law. So you say André Elvinger was there no, so it was there, in the *Comité des valeurs mobilières*... So for me it's still a bit weird that a person that was OK, a private part.... essentially someone that was representing a company involved privately in the business was also in the *Comité* that was drafting the law.

0:30:33.630 --> 0:30:34.0

Marie-Jeanne Chèvremont

Yes.

0:30:34.320 --> 0:30:41.220

Matteo CALABRESE

So yeah, I would like just to ask your thoughts about this. Like uh, so the role of Elviinger do you think was a super partes role?

0:30:45.910 --> 0:30:54.360

Marie-Jeanne Chèvremont

But well, in fact, that was the role of the *Comité* because the way we were working, I remember more after 83 but it before 83 probably was like that as well. The guys from the regulator – Commissariat, IML, I don't remember how it was called – they were preparing the meetings and we as professionals were contributing so.....but they were the guys who had the last word..

0:31:31.860 --> 0:31:35.20

Matteo CALABRESE

The guys from the IML, no?

0:31:34.840 --> 0:31:55.690

Marie-Jeanne Chèvremont

IML, yeah. But we of course we were very active, very proactive. I can even remember myself. I have myself written an article of the law because they have difficulties to write it. And so I made the proposition which was discussed and so it was really working together in fact.

0:31:56.10 --> 0:32:11.50

Marie-Jeanne Chèvremont

Uh.. And because at that time the IML, they were not of the size they are today. They didn't have all the specialties, and the people of the industry that knew how it was working and they had the practice of this industry much more than the guys who were at the level of the the IML. Yeah, so it was really working together.

0:32:30.990 --> 0:32:35.600

Matteo CALABRESE

And let me ask also, still talking about the law of 1983..the role of the government. Do you think that the government, maybe through the IML, they were pushing for a new law.. was somehow the government of Luxembourg ...

0:32:58.80 --> 0:33:8.370

Marie-Jeanne Chèvremont

No, I don't think so. I think it was the regulator who was pushing for that law because it was a need for the industry.

0:33:9.570 --> 0:33:40.300

Matteo CALABRESE

OK, so uh... because, you know... this is just something that I'm researching. This is something, let me say in this way, something new that I'm trying to bring to this research in general on Luxembourg. So I researched extensively the law of 1929. No. So I know as a fact, because I studied documents, private letters from the government of the time – at the time there was Pierre Dupong – and these people at the government, they were interested in having a holding law. And clearly this is written in documents, because they wanted a source of fiscal revenues for the state. No. So the main target of the law from the side of the government – besides, there were also like, private interests. But I'm not going to talk about this – so, the government wanted that law because they were saying: OK, we are in a bit difficult situation, in terms of money for the state. So we will put in place this law and we will attract more holding companies in Luxembourg and we will have a flow of money. Do you think that there was something like that for the law 1983?

Marie-Jeanne Chèvremont

Well, there was probably an interest to see that this law could facilitate the creation of new funds... now ...did they think through on the level of money which they could attract?

0:34:49.230 --> 0:34:49.910

Marie-Jeanne Chèvremont

I don't know.

0:34:53.790 --> 0:34:59.940

Marie-Jeanne Chèvremont

Maybe well...an interesting angle in fact in in Luxembourg, at at the political level, during these years...I'm not sure it's still today like that, but there were a lot of lawyers who had political responsibility.

0:35:13.480 --> 0:35:23.700

Marie-Jeanne Chèvremont

And so, uh, this probably has an effect on the way the, the law, the laws apply through because they understand probably better than the economist the importance of having a good legal

background to push a business. Maybe that's an angle which could be interesting to look at, the influence of lawyers on the political scene.

0:35:40.420 --> 0:35:58.870

Matteo CALABRESE

Yeah, I think, uh, Professor MAJERUS is doing something about that. No, you know, about this, I interviewed previously, Jacques Santer, the former Minister of Finance at the time... And it was saying that there was some push from the government for this reason because like there was a difficult economic situation and so the government, the Ministry of Finance was looking for revenues and they thought "OK investment funds would be a great source of revenues"

0:36:50.770 --> 0:37:2.820

Matteo CALABRESE

I've some technical questions.. but I think it's better to go to the law of 1988. I would like to know all your story. Really curious to hear... so... please.

0:37:7.150 --> 0:37:22.320

Marie-Jeanne Chèvremont

So yes, I worked quite a lot on .... So of course our basis was the law of 83, that was the our basic document on which we worked together and so we wanted to have...very quickly, we arrived at the proposition to have Part1 and Part 2 of the law. Part 1 being fully aligned to the UCITS directive and Part 2 being the funds, the UCI which you could create and which was more flexible but not with product not marketable in in the European Union. And so very quickly we had these two, these two parts on which we were working a lot.

0:38:4.250 --> 0:38:10.860

Marie-Jeanne Chèvremont

And the idea here was really to have a product which would be marketable everywhere in Europe. And also at the start it was clear that we wanted to have, for the UCITS, a law, fully adapted to the directive, but not more than the directive. We wanted this to be as flexible as possible and that respected the requirement of the directive. So we didn't add anything in fact.

0:38:44.420 --> 0:38:46.30

Marie-Jeanne Chèvremont

And we took our basic law of 1915.. because the sociétés commercial is still applicable and

make sure that we could have something very, very flexible conform to the directive. And the Part 2, we also wanted to be as open as possible. To leave the room for enough creativity to create new products. Even if not marketed in the Union. So that was the basic principle on which we worked.

0:39:25.990 --> 0:39:29.560

Marie-Jeanne Chèvremont

Uhhh and I remember...we worked very hard to get our final draft, because we were really working on the lot of drafts.

0:39:39.180 --> 0:39:55.400

Marie-Jeanne Chèvremont

It was the end of March... because we wanted to be... to have our law... because we knew that the UK was working on the law as well and we saw the UK as a one of our main competitors on the product side.

0:39:57.700 --> 0:39:59.980

Marie-Jeanne Chèvremont

But we wanted to have our law ready before the UK and at a certain point we got the information that the UK could be ready by April. And so we wanted to have it in March.

0:40:15.380 --> 0:40:22.170

Marie-Jeanne Chèvremont

But finally I think it took a little bit longer in the UK from memory. So I was working. in this group...I was working behind the scene with one of my partners. I became a partner in Coopers and Lybrand in 1987. So until 87, anyway, I always had to go through a partner to confirm my ideas because at the end it was the responsibility of the firm, of Coopers and Lybrand. So I worked with one of my partner who was based in Brussels, but came to Luxembourg quite often

0:41:2.930 --> 0:41:19.440

Marie-Jeanne Chèvremont

And he was English by background. So English speaking. And so I was in this Committee working on the law in French and he was at the same time translating the law in English, translating the law in English...

0:41:20.640 --> 0:41:23.570

Marie-Jeanne Chèvremont

So yes, just a little story here..so when the law came out – was it voted on March 1988? Published one week later...the law: we had it in English. Because the public, of course, only discovered it when was made public, the first week of April and we had it immediately in English and we knew that this was a law which was of interest for the Anglo Saxon fund managers, particularly the US fund manager, who were looking for a gateway to Europe with some of their products.

0:42:19.550 --> 0:42:50.200

Marie-Jeanne Chèvremont

Of course it was not possible to market the US products in Europe, but as I said managers, they were looking for location to create their product and we knew through the contact we had with our partners in the in the US that this could be a of interest to the US fund manager and to the UK fund managers as well. And so with our law ready in English, one week later of course we had a marketing tool. Next one, I started to travel around.

0:42:50.320 --> 0:42:59.780

Marie-Jeanne Chèvremont

I remember my first conference, I think was in May in London and then in the autumn I went to Boston, NY with my presentation. I remember the first presentations, so my, partners were there. They organized a lot of meetings with clients and my first slide was because at that time we had – I don't know if you remember....we had what we called the retro-projecteur. So we had the transparent, we had the transparent sheets.. you put on the board.. So my first transparent sheets was a map with Luxembourg explaining where Luxembourg was, because of course, when you go to Boston and New York, .... So I've to explain where is Luxembourg where....where is Luxemburg? Ohh you are not part of Germany. Ohh you are not part of France and so. So that were my ... and I remember a time. So when we came out with the our translation in English a couple of days later after the publication, Jean Hamelius was also part of this working group, and he was a partner in a competitor firm to Coopers and Lybrand....and he called me and said uh Marie-Jeanne....It's so nice that you have the translation. Could you send me a copy of the translation? And I said Jean... I'm happy to sell you the translation! And he qualified me. You are a nasty business woman.

0:44:35.840 --> 0:44:37.50

Matteo CALABRESE

Ah funny funny.

0:44:36.490 --> 0:44:40.130

Marie-Jeanne Chèvremont

You are just a nasty business woman. That's it. Business is business.

0:44:43.510 --> 0:44:48.580

Marie-Jeanne Chèvremont

So but so, we really as a firm, we took a bigger advantage of that.

0:44:50.30 --> 0:44:57.320

Marie-Jeanne Chèvremont

Of this translation and we did a lot... we were in fact the first one traveling around the world ...but then after that a lot of...factors are understood that there was quite an interesting market here.

0:45:14.190 --> 0:45:25.410

Matteo CALABRESE

Just a couple of questions on your story. Like first one, how long did preparatory works last for how long did you work on the preparation?

0:45:25.730 --> 0:45:32.810

Marie-Jeanne Chèvremont

As I started the just after the the publication of the law of 83.

0:45:33.700 --> 0:45:35.950

Matteo CALABRESE

So, OK, kinda long...

0:45:35.440 --> 0:45:40.170

Marie-Jeanne Chèvremont

Yes, but but of course we, we we spend a lot of time the two last years, huh?

0:45:41.350 --> 0:45:42.340

Matteo CALABRESE

OK, OK.

0:45:42.150 --> 0:45:58.650

Marie-Jeanne Chèvremont

Because in fact, we worked, we were working for Memorial, we were working on the law, but we were also working on the circulars because there were a lot of circulars to implement to , for the interpretation and..But but we also had them been working on the document, which will which was making the reference.

0:46:21.260 --> 0:46:27.570

Marie-Jeanne Chèvremont

The reference of the law to the circular to ensure that we were fully aligned.

0:46:30.140 --> 0:46:35.980

Marie-Jeanne Chèvremont

There was a document like that. That's in our working group.

0:46:36.670 --> 0:46:45.600

Marie-Jeanne Chèvremont

So because we really wanted to be fully aligned with the circular and we had such a document, the law compared to the circular for each article.

0:46:46.220 --> 0:47:0.570

Matteo CALABRESE

And about the *Comité des valeurs mobilières* more or less... How many times a year on average did you meet? Did you actually meet like a in a room? I don't know. In an office?

0:47:0.480 --> 0:47:5.480

Marie-Jeanne Chèvremont

It was. It was always for two hours meetings

0:47:6.920 --> 0:47:11.0

Marie-Jeanne Chèvremont

Prepare the documents... were prepared by the regulators.

0:47:12.380 --> 0:47:14.190

Marie-Jeanne Chèvremont

We met quite often... I don't have my agenda but ....Uh, I would say during the last year, probably every two weeks or something like that really it was a....It was really a working together.



0:47:32.470 --> 0:47:35.790

Marie-Jeanne Chèvremont

Because we went... we went article by article you see.

0:47:37.870 --> 0:47:51.240

Matteo CALABRESE

I see. I see. Yes. And then the people were like these people that you mentioned before, like. So, Elvinger, Hamelius the banks representatives. So more or less how many people you say were at each meeting? 10 people?

0:47:53.960 --> 0:47:59.650

Marie-Jeanne Chèvremont

Yeah. Yes, maximum maximum people, but honestly.... most of the people were always present. So it was a....

0:48:5.940 --> 0:48:9.10

Matteo CALABRESE

For example, Elvinger was, uh, always present?

0:48:9.0 --> 0:48:10.590

Marie-Jeanne Chèvremont

Uh, yes, yes, he was always there.

0:48:10.210 --> 0:48:15.680

Matteo CALABRESE

OK. And then his partner in the law firm, Jean Hoss?

0:48:15.960 --> 0:48:25.510

Marie-Jeanne Chèvremont

No, there was one representative, ..well probably Jean says. Well, I think probably Jean House has been working at behind the scene.

0:48:26.540 --> 0:48:27.140

Matteo CALABRESE

OK, OK.

0:48:25.600 --> 0:48:32.20

Marie-Jeanne Chèvremont

Uh, like I did it behind the scene, I worked with one of my partner to prepare the meetings, so.

0:48:32.100 --> 0:48:39.530

Marie-Jeanne Chèvremont

No.. behind the scenes, there were probably more than 10 people involved, but in the meetings you couldn't be replaced.

0:48:42.570 --> 0:48:47.360

Marie-Jeanne Chèvremont

But yeah...I can't remember..in 1986, I was pregnant in 86, so that's...And I remember going to these meetings, ... I was the only woman there... Of course, in the room and most of the the guys, there were much older than I was.

0:49:15.400 --> 0:49:41.450

Marie-Jeanne Chèvremont

But they were always very nice to me and ...during one or two months I could not go to the the meetings because there was a maternity leave and my assistant in the office he brought at my home all the documents I worked on the documents and I send my documents with my comments. So I wanted to make sure that I didn't miss.

0:49:43.130 --> 0:49:50.20

Marie-Jeanne Chèvremont

And that was in 86, so 86 was already a very active and I think that and after 83, we were also working on a lot of these circulars, which then have been adapted after 88.

0:50:13.880 --> 0:50:23.870

Matteo CALABRESE

I would like to still cross-check some information with a previous interview with Jacques Santer...

0:50:22.110 --> 0:50:27.60

Marie-Jeanne Chèvremont

When was je, when was he, Prime Minister Jacques Santer?

Matteo CALABRESE

So ... like from 84 to 95

0:50:50.280 --> 0:50:51.480

Marie-Jeanne Chèvremont

Yeah. OK.

0:50:51.620 --> 0:50:59.150

Matteo CALABRESE

And then before, so during in in 1983, he was the Minister of Finance in the Government of Werner

Matteo CALABRESE

About the the law of 1983, but it could be also 1988, he said. Like the people that were behind the law in his reconstruction, in his memory are: so Raymond Kirsch, Yves Mersch, Romain Bausch and Edmond, Israel and behind the scenes, Jean Hoss. What these names tell you?

0:52:0.170 --> 0:52:4.550

Marie-Jeanne Chèvremont

There, there were probably lobbying at government level. I see it now...

0:52:11.150 --> 0:52:12.500

Marie-Jeanne Chèvremont

Edmond Israel...I don't know whether he was in the working group or not.

0:52:18.800 --> 0:52:19.370

Marie-Jeanne Chèvremont

But...Yves Mersh was in the working group.

Marie-Jeanne Chèvremont

Yes, yes. In the *Comité*

0:52:32.190 --> 0:52:32.540

Marie-Jeanne Chèvremont

Uh.

0:52:27.310 --> 0:52:33.620

Matteo CALABRESE

And qualified as what. Was he like a representative of the government or what?

0:52:33.80 --> 0:52:36.50

Marie-Jeanne Chèvremont

I see he was at the Stock Exchange. I see so, but you have to check but.

0:52:39.140 --> 0:52:39.970

Matteo CALABRESE

OK, OK.

0:52:39.960 --> 0:52:43.170

Marie-Jeanne Chèvremont

He might have been at the Stock Exchange and Edmond Israel as well, huh?

0:52:44.0 --> 0:52:44.410

Matteo CALABRESE

OK.

0:52:44.540 --> 0:52:47.100

Marie-Jeanne Chèvremont

There were, at the Stock Exchange, probably at that time.

0:52:48.440 --> 0:52:54.250

Marie-Jeanne Chèvremont

Uh Kirsch. Yes, he was the chairman of the *Caisse d'Epargne*

0:52:55.220 --> 0:52:56.410

Marie-Jeanne Chèvremont

I don't remember him.

0:52:59.870 --> 0:53:3.260

Marie-Jeanne Chèvremont

But it might have been lobbying at the government level.

0:53:6.240 --> 0:53:23.350

Marie-Jeanne Chèvremont

I even don't remember whether there was somebody....There was somebody from a, but you probably could find that the composition of the *Comité des valeurs mobilières* at the IML they probably have the all the history of who was the member.

Matteo CALABRESE

Yeah, the last one was Romain Bausch

0:54:15.930 --> 0:54:20.280

Marie-Jeanne Chèvremont

Uh, he was not there.

1:1:47.490 --> 1:1:54.220

Matteo CALABRESE

So the question about the main motives behind the 1988 law...

1:1:54.290 --> 1:2:5.30

Matteo CALABRESE

Ohm essentially, if you have to answer this question: the 1988 law was promulgated so to answer the directive of 1985, no? The 1983 law for funds was not enough then?

1:2:22.70 --> 1:2:26.700

Marie-Jeanne Chèvremont

No, it was a good basis but it was not enough.

1:2:27.710 --> 1:2:29.240

Marie-Jeanne Chèvremont

For the '88 law, we had the law clearly in two parts, the part one which was relating to the UCITS funds and the part two which was the UCI as we call them, which you could not market in Europe or you could market but on a country by country basis.

1:2:54.570 --> 1:2:55.120

Matteo CALABRESE

OK.

1:2:55.890 --> 1:2:59.800

Matteo CALABRESE

And, Umm, let me take back my notes about this.

1:3:4.50 --> 1:3:4.420

Marie-Jeanne Chèvremont

Yes.

1:3:1.140 --> 1:3:5.470

Matteo CALABRESE

You mentioned before like the UK as a potential competitor.

1:3:5.750 --> 1:3:6.20

Marie-Jeanne Chèvremont

Yep.

1:3:7.40 --> 1:3:8.160

Matteo CALABRESE

What about Ireland?

1:3:9.240 --> 1:3:12.770

Marie-Jeanne Chèvremont

Ireland was not in the game at that time in '88.

1:3:12.680 --> 1:3:13.120

Matteo CALABRESE

OK.

1:3:13.740 --> 1:3:16.170

Marie-Jeanne Chèvremont

Ireland, they came in later.

1:3:16.830 --> 1:3:17.240

Matteo CALABRESE

OK.

1:3:17.690 --> 1:3:23.180

Marie-Jeanne Chèvremont

In fact, if you want a little story about Ireland in fact... We were part of the Coopers & Lybrand network and one day of my partner in the Dublin called me and said I want to understand a little bit more.. and that was probably in the '90s. You have to check. I don't remember when the Irish came out with their law..

1:3:48.660 --> 1:3:58.510

Marie-Jeanne Chèvremont

And so he came to Luxembourg to understand what we were doing, how we adapted our law blah blah blah and I remember that time giving him a quite a lot of advice.

1:4:9.880 --> 1:4:32.280

Marie-Jeanne Chèvremont

And some people told me, well, you're helping the Irish guys to develop their fund industry. And I said, well, anyway, they are going to do it with us or without us. So I prefer to be with them and help them rather than having our competitor doing it. And in fact, our firm, our firm in Dublin was really also very pointing on this law.

1:4:38.320 --> 1:4:49.50

Marie-Jeanne Chèvremont

Uh, and I remember that we had developed a specific brochure for the funds and they almost copied our all over.

1:4:50.290 --> 1:4:56.20

Marie-Jeanne Chèvremont

But as I always say, uh, that was probably in the mid 90s.

1:4:56.100 --> 1:5:13.260

Marie-Jeanne Chèvremont

No, because we were with this law, suddenly we really had a real success in Luxembourg with all these fund managers coming to Luxembourg and developing funds, and we had every week a new client.

1:5:14.600 --> 1:5:43.90

Marie-Jeanne Chèvremont

And so we started to become, well, the place started to become very complacent because we had no competition... and suddenly we had a competitor. And I will say that's the best thing which has happened to Luxembourg... to have a real competitor! Because it obliges us to rethink the model, to rethink the whole thing, to become more performant, etcetera, etcetera. So honestly, it was a good thing to have Ireland at the certain point, yes.

1:5:51.50 --> 1:6:2.310

Matteo CALABRESE

And indeed, my next question could be, let's say in 1988, what was the position of Luxembourg at the world level, so in the funds industry?

1:6:12.180 --> 1:6:14.610

Matteo CALABRESE

Which one was first? I guess US first.

1:6:11.370 --> 1:6:15.170

Marie-Jeanne Chèvremont

Uh, probably, you had the US. The US...France: they were really in Europe, probably the largest.

1:6:24.160 --> 1:6:26.160

Marie-Jeanne Chèvremont

Uh, probably the UK.

1:6:27.320 --> 1:6:27.680

Matteo CALABRESE

OK.

1:6:28.0 --> 1:6:41.530

Marie-Jeanne Chèvremont

Uh. And then you had the well for me, myriads of countries, but the French were very strong, but the French were for the French market and had absolutely no international expertise.

1:6:42.790 --> 1:6:43.800

Matteo CALABRESE

OK, OK.

1:6:45.590 --> 1:6:48.50

Marie-Jeanne Chèvremont

The French had at that time. The opportunity to become the leading market in Europe.

And because honestly, we copied a lot of, for example the SICAV... So in the '80s we copied the SICAV.

1:7:8.0 --> 1:7:11.790

Marie-Jeanne Chèvremont

And from the SICAV we made the umbrella fund, which the French didn't.

1:7:10.490 --> 1:7:13.660

Matteo CALABRESE

And then in in this list of countries, so you say US, France, the UK and then you say like many other countries... Luxembourg was really down in this list at the time, then you say?.

1:7:24.80 --> 1:7:43.990

Marie-Jeanne Chèvremont

Well, it was down... Well, ummmm... the difference with the other countries is that the products we had were not for our local market because there was almost no local market. So the products we had were for international distribution.



1:7:45.100 --> 1:7:45.520

Matteo CALABRESE

OK.

1:7:45.200 --> 1:7:57.560

Marie-Jeanne Chèvremont

For international or I would say very often they were made for one particular country. So as I told you at the start we had some of the US fund managers like Fidelity, they had Luxembourg products to be distributed in Japan.

1:8:10.30 --> 1:8:17.520

Marie-Jeanne Chèvremont

We had the then the German banks starting to create German funds, but for their German clients so...it was more a wide-country-based distribution.

1:8:27.970 --> 1:8:30.170

Matteo CALABRESE

And indeed my my next question is: What were and are for you the reasons of the success of Luxembourg fund industry? Well, this part of the international perspective of the market is really clear. What else?

1:8:53.10 --> 1:9:1.70

Matteo CALABRESE

Why this product was so convenient? Why there was this explosion when the market went up?

1:9:0.90 --> 1:9:11.860

Marie-Jeanne Chèvremont

It was a product which was very flexible compared to if you compare to what the French did with the directive.

1:9:13.300 --> 1:9:41.350

Marie-Jeanne Chèvremont

I remember we had so many discussion with the investment policies in Luxembourg. We took the investment policies as described in the directive, the French, they added another layer, be more restrictive in terms of investment policies for the funds. So we didn't do that, we just took that...and then after that there were some interpretations I remember.

1:9:43.550 --> 1:10:4.920

Marie-Jeanne Chèvremont

Some of the instruments, uh, are they considered as transferable securities or liquid assets? So.. because liquid assets, you can only have on an [incompr.] basis. So it was important to understand whether it was liquid asset or transferable security. So in Luxembourg, we always took the most flexible approach. On this topic for example, the French would have said: oh this asset is not a transferable security, it is liquid asset. So you have more restrictions.

1:10:23.370 --> 1:10:23.690

Matteo CALABRESE

Yeah.

1:10:23.750 --> 1:10:26.320

Marie-Jeanne Chèvremont

Yeah. We always conform to the directive, because we didn't want to be...caught not obeying the directive, but always in the most flexible way, and adapted to the client needs.

1:10:42.790 --> 1:10:44.860

Marie-Jeanne Chèvremont

That that was really one of the success factors. The flexibility and the fact that the regulator was working with the market to, for example, the circulars..

1:11:1.950 --> 1:11:9.570

Marie-Jeanne Chèvremont

All the circulars issued after the directive, were always discussed with the market to make sure that we respect the directive, the law, but it's adapted to the market.

1:11:16.210 --> 1:11:28.800

Marie-Jeanne Chèvremont

And that's something. And I have to say now, because I've sometimes spoken about the way the regulator is acting these days, that's something which is very different today the regulator is no longer working for the industry.

1:11:39.690 --> 1:11:52.530

Marie-Jeanne Chèvremont

So the regulator needs to stay your regulator, but the regulations have to be there for the

industry and of course to protect investor, blah blah blah. But today it's not really working like that.

1:11:53.990 --> 1:12:0.690

Marie-Jeanne Chèvremont

If you have a an issue, a question to the regulator very often now they hide before..

1:12:1.400 --> 1:12:22.840

Marie-Jeanne Chèvremont

Uh, we have to ask ESMA, huh? That's that's ... Who is ESMA? ESMA is all the countries in the fund industry and Luxembourg is the biggest one, so they should be the guys who are leading or not leading. And giving the impulse in ESMA and working in with the industry. But that's not how they operate these days.

1:12:24.430 --> 1:12:24.790

Matteo CALABRESE

Clear.

Matteo CALABRESE

What about some kind of fiscal advantage in investing in a fund in Luxembourg..

1:12:40.40 --> 1:12:49.190

Marie-Jeanne Chèvremont

Uh, yeah, yes, of course, because from a tax point of view, it was a neutral product, almost a neutral product. You had you had the tax about [capital]..Well, but which was small .06%.. we had no longer... because at the start of the industry we had the capital tax of 1%, but which had already been abolished in '83, I think or even before.

1:13:3.590 --> 1:13:11.720

Marie-Jeanne Chèvremont

Uh, so it was, it was almost tax neutral, which was not necessarily the case in the other countries.

1:13:12.550 --> 1:13:17.960

Matteo CALABRESE

Exactly. And do you think that from a fiscal point of view, Luxembourg was the most convenient? At a time.. or one of the most convenient?

1:13:22.970 --> 1:13:23.760

Marie-Jeanne Chèvremont

Uh.

1:13:24.600 --> 1:13:29.610

Matteo CALABRESE

Because I see that the reasons of the success of Luxembourg [are many]. So it's not just one factor..

1:13:28.810 --> 1:13:32.400

Marie-Jeanne Chèvremont

You cannot say that the tax has driven the success of this product.

1:13:36.600 --> 1:13:38.840

Matteo CALABRESE

Yeah, indeed. It's really clear what you said it.

1:13:37.710 --> 1:13:43.970

Marie-Jeanne Chèvremont

It is really the flexibility of the vehicle and the fact that it was aligned to the needs of different markets or that it could be aligned to the needs of different markets. This was not really because of.. for example: I think, from a purely tax point of view, the French product for the French investor was probably more efficient than the Luxembourg product for a French investor.

1:14:14.860 --> 1:14:21.630

Marie-Jeanne Chèvremont

Because we had... the resulting taxes on the investment could not necessarily be *recupérés*..

1:14:25.680 --> 1:14:41.560

Marie-Jeanne Chèvremont.

So from a tax point of view, this was not the best.. the flexibility was. And so because the product could be easily marketed in different countries, the asset manager could also create products with a certain size.

1:15:8.140 --> 1:15:19.470

Marie-Jeanne Chèvremont

You see, because they were touching different markets with the same product, so there was an

economy of scale here. And also because we had the flexibility we added, which was not in the directive but which was not forbidden by the directive, was the umbrella fund.

1:15:30.320 --> 1:15:44.930

Marie-Jeanne Chèvremont

Uh, which was honestly... we in fact we invented the umbrella fund. So the umbrella fund has permitted to create this large pool of assets in the same vehicle.

1:15:46.20 --> 1:15:49.390

Marie-Jeanne Chèvremont

And make it more efficient in terms of management, et cetera, et cetera.

1:15:50.150 --> 1:16:0.470

Matteo CALABRESE

I really agree with your analysis. It really describes well the reasons of this success, but just wanted to ask like about.. again the fiscal point of view, just to, because for me..it was not easy to compare all the legislations at a time.. this is just out of curiosity: so if you want to do again this list of countries based on which one is the most convenient from a fiscal point of view for investment funds, for the year 1988, so before the implementation of your law, which position would you place Luxembourg?

1:16:31.330 --> 1:16:36.110

Matteo CALABRESE

So in this scale of most convenient from a taxation point of view for investment funds in general.

1:16:41.570 --> 1:16:43.290

Marie-Jeanne Chèvremont

Honestly, it's uh..Difficult. It's a difficult question because that's not the way we looked at the things and the fund managers did not look at the things like that.

1:17:0.640 --> 1:17:3.890

Marie-Jeanne Chèvremont

As the product was tax neutral..Uh, and then each investor paid the tax in its home country, so this was not.. and in fact, you could even say that because of the taxes that we know, it was not the best vehicle from a purely tax point of view because of the tax d'abonnement. But it was so small that it was not, it's not really relevant, you see.

1:17:30.860 --> 1:17:38.560

Matteo CALABRESE

Yeah, I see. I see. Yeah. I was thinking like, yeah, for example, I know that in the 60s, compared to Italy..like the legislation in Italy on investment funds was totally archaic. No, like was it was impossible even to play something.. You cannot even ask the question which one is most more fiscal convenient because in Italy there is a 0. So it doesn't apply to the zero. I mean like 0 legislative framework. So, OK and compared to France.. like that one was indeed a bit weird. Hard for me to understand, like from a fiscal point of view because yeah, it appears like that also in in France was really convenient from a fiscal point of view. So yeah, I totally agree with your analysis that there are other important factors that have to be checked, like OK and let me see...I am almost finishing my questions I think. But I had some other important questions.

1:18:39.310 --> 1:18:52.840

Matteo CALABRESE

Were you surprised for the skyrocketing growth after your law? Because like actually one of the characteristics of this success in Luxembourg is that was really quick, you know... from that country that was known in the '70s just for ARBED and.. it went up so fast!

1:19:0.990 --> 1:19:1.450

Marie-Jeanne Chèvremont

Yes.

1:19:2.520 --> 1:19:3.260

Matteo CALABRESE

How do you see that?

1:19:3.230 --> 1:19:13.640

Marie-Jeanne Chèvremont

Yes. In fact I, maybe I will come back then to the firm. I was managing Coopers & Lybrand. I became a partner in '87, I said. So in the '84-'85 my partners were based in Belgium and they asked me to make a proposition on how I see the development. How I can develop the office in Luxembourg because we were..So in '87, when I became a partner, we were 16 in the office, still a small firm and..this document is somewhere in my archives as well...

1:19:48.910 --> 1:20:17.730

Marie-Jeanne Chèvremont

And then because, as I told you, we were the last firm in financial service. So we had difficulties to enter the banking market and I made a strategic recommendation. I said we need to specialize in investment funds because with investments funds we will touch the asset manager and we will touch at that time the service provider who are the banks. So this will give us an entry in the banks and so we put all our efforts on investment funds.

1:20:26.650 --> 1:20:45.430

Marie-Jeanne Chèvremont

But honestly, we were surprised by the success, but we put all our thoughts on investment funds and that's also one of the reason why I had this marketing plan just after the law of '88 was promulgated. I have this marketing plan to go and explain to the fund managers... This directive and how it will impact the fund industry in Europe, how they can use it and our target was more on the Anglo-Saxon to use Luxembourg as the gateway to Europe.

1:21:1.910 --> 1:21:16.100

Marie-Jeanne Chèvremont

But of course, so they very quickly ...for the Americans - these were the US fund managers and US service providers – this was a quite important event I would say, the '88 directive. Because after that they all started to think about entering Europe through Luxembourg. But honestly: we were surprised by the speed and the size.

1:21:37.870 --> 1:22:6.300

Matteo CALABRESE

My question, which is a bit general now like so, but why all these things happened in Luxembourg for you? So it was something that grew up like somehow like randomly, by chance or there were people... because you're saying you were also a bit surprised about the speed of the growth. I mean why this happened in Luxembourg and there weren't people like you were like in in France for example or whatever.

1:22:8.240 --> 1:22:15.300

Marie-Jeanne Chèvremont

That, you see, even if at the time we were small, we already were international.

1:22:15.750 --> 1:22:17.560

Matteo CALABRESE

That's the key. OK. OK, yeah.

1:22:17.40 --> 1:22:29.30

Marie-Jeanne Chèvremont

So we already had here in Luxembourg. You already had the banks from West German banks, but that's another story. The reason why we had the US banks, German banks, we had banks from different origin. And these banks came here, and I don't know who wrote that, but very often there is a different reason why the US were here compared to why the Germans were here. And very often these banks were created here because of errors made in the legislation of the country of origin.

1:22:56.70 --> 1:23:7.710

Marie-Jeanne Chèvremont

I thought that even in banks, we have always been very flexible and so we had this internationalization of the business here.

1:23:8.460 --> 1:23:16.490

Marie-Jeanne Chèvremont

And that was one of the, I think, very important factors, the fact that you had already international players here.

1:23:17.280 --> 1:23:46.160

Matteo CALABRESE

It's really interesting this point that actually this is like the main ..uh, let's say.. the umbrella subject that we are studying here. So because as you said, like there were kinda mistakes in their home countries could be the ratio de solvabilité in Germany or like the tax interest law in the US and so the Euromarkets.. Yet, at same time Luxemburg was ready to welcome these banks. It means that somehow ..there were people that were farsighted. I suppose... Do you think that there were always people more farsighted than other countries, like someone could be Edmond Israel, I don't know, or even like you were having like an idea on how to...

1:24:13.130 --> 1:24:13.950

Marie-Jeanne Chèvremont

I don't see....I don't know who could claim that expected the growth to be what it is becoming.



1:24:29.560 --> 1:24:36.980

Marie-Jeanne Chèvremont

It's probably each of us had a certain idea of, well, this is going to bring new business, that's for sure. But the size and the speed.. if somebody tells you that was a I expected that.. well...

1:24:47.300 --> 1:24:47.630

Matteo CALABRESE

Yeah... This answer is my question.

1:24:47.880 --> 1:25:13.230

Marie-Jeanne Chèvremont

I I see we have a lot of actors like ourselves. We made... we see the opportunity as I told you I visited the US etcetera ..because I saw the opportunity to have new business for my business and of course more work in the same time but I went there for first for my business because I wanted to have more banks as class...So that was our perspective.

1:25:18.790 --> 1:25:40.270

Marie-Jeanne Chèvremont

And so, I was not the only one doing that. So the banks went also doing their tour and they wanted to attract the fund managers to do the fund admin etcetera. So we had a lot of different actors making working to attract business to Luxembourg.

1:25:41.530 --> 1:25:50.160

Marie-Jeanne Chèvremont

But nobody could claim... maybe it's the effort of all these different actors that has made it such a success.

1:25:50.700 --> 1:26:3.910

Marie-Jeanne Chèvremont

At the start, we didn't have an agency to help us. I mean, well, we did a lot of efforts on our own or sometimes we had missions together... but organized...

1:26:5.150 --> 1:26:14.100

Marie-Jeanne Chèvremont

At the beginning, on an informal basis, and then we had the government sometimes organizing a mission in the different countries where we all went together and.... I think that's maybe also a quite an interesting element of the success is the working together of the different actors,

even competitors. We were working together when we were abroad to position the business of Luxembourg.

1:26:38.220 --> 1:26:46.240

Matteo CALABRESE

And I have a question about this. This is really an interesting perspective: also the cooperation of competitors.. firms that are competitors. This is really something interesting ..and the government at the same time. But do you think that government and firms were just like incidentally working on the same plan or somehow like all these firms, including yours, were somehow... yeah, let me use this word: lobbying on the government for this market legislation?

1:27:21.660 --> 1:27:37.430

Marie-Jeanne Chèvremont

We were, I think at the start we were not lobbying because we were just doing our work and and each of us having a sense to where it should go to attract more business. We probably have been lobbying a little bit later.

1:27:37.730 --> 1:27:38.80

Matteo CALABRESE

When?

1:27:38.160 --> 1:28:1.960

Marie-Jeanne Chèvremont

Uh. When Ireland started to come on the market. Because they started very strongly with.. I don't remember how they called their agency... They had.. the government has put the money in a structure to help. I don't remember how it was called. It is still called. What the development agency of Ireland to attract new business... So suddenly we saw the Irish, the structure financed by the government. And I think that at that time we probably started to lobby the government so that we also have this kind of vehicle here in Luxembourg to help the industry continue to grow. But at the start, it was more business-driven and... facilitated by the government without any exceptional things, but..It was not lobbying as such.

1:28:42.260 --> 1:28:59.270

Matteo CALABRESE

And the about the cooperation between firms that were competitors, do you think that there

was this really favorable situation because the market was still small? Why there is this case that you were cooperating?

1:29:1.50 --> 1:29:3.60

Matteo CALABRESE

There was enough space for all of you?

1:29:2.860 --> 1:29:9.490

Marie-Jeanne Chèvremont

Yes, at the time there was enough space for.. there was space. Honestly..

1:29:9.150 --> 1:29:18.410

Matteo CALABRESE

And this cooperation was still at stake, was still working, or there was a moment when the cooperation between firms stopped?

1:29:18.280 --> 1:29:23.70

Marie-Jeanne Chèvremont

I see. I see it's still working today. Yeah, I'm no longer in all this..

1:29:27.100 --> 1:29:29.270

Matteo CALABRESE

And this is really an interesting stuff.

1:29:26.910 --> 1:29:31.380

Marie-Jeanne Chèvremont

Ohh I see, I will give you a clear example.

1:29:31.780 --> 1:29:44.370

Marie-Jeanne Chèvremont

Uh, we were competing, Coopers & Lybrand, we were competing with PW Pricewaterhouse - it happened that we merged later on. So we were competing, but the both firms together, we created a conference, European US conference, in Luxembourg with the US association. It was Nixa so PW and Coopers & Lybrand were instrumental in having this conference in September in Luxembourg with the US and the two firms together, we were sponsoring the cocktail and inviting our clients. And we were competing, real competitors because we were chasing all the PW clients.

1:30:25.980 --> 1:30:28.480

Marie-Jeanne Chèvremont

Well, it happens that the merger between Coopers & Lybrand and PW was announced in the '98, just the day before this conference took place here in Luxembourg, which was just extraordinary. So, the two firms competing on the same market, suddenly we are merging in front almost all their main clients. So that was just if you were... like the little stories.

1:30:58.150 --> 1:31:3.310

Matteo CALABRESE

Yeah., I like it.. really interesting this perspective.

1:31:0.810 --> 1:31:7.120

Marie-Jeanne Chèvremont

So, but that's just the way we were. We were working together because the US, the both firms, we were very strong in the US and we saw that it was very important for Luxembourg to have this US conference here in Luxembourg.

1:31:20.200 --> 1:31:22.490

Marie-Jeanne Chèvremont

So we were competitors, but working together.

1:31:31.740 --> 1:31:57.410

Matteo CALABRESE

Yeah. OK. I think you really answered all my questions...a really precious witness... because there were so many interesting insights in your work. Thank you!

[Greetings]

- Claude Kremer, interview with the author, January 11, 2023

[Initial greetings]

0:14:26.760 --> 0:14:31.240

Claude Kremer

One of the main pioneers [in the investment fund industry] was André Elvinger, he passed away six months ago and but he, he was clearly the man who brought this up to speed between the early '59-'60, and then Jean Hoss who was ten years younger. He was the second man in that firm to do investment funds. The third one was Prussen. That's the man who came again 10 years later and I knew them well just because we know each other here in Luxembourg anyway, but because I did my pupilship at the Elvinger firm between '81 and '85.

0:15:26.240 --> 0:15:36.0

Matteo CALABRESE

OK, since we are talking about this.. how was the environment there? After so many years, like was a good work environment?

0:15:37.840 --> 0:15:54.720

Claude Kremer

Oh yes, that is where I learned all the things which you know, you need to know and which you can only learn from people who have ethical behaviour and good standing and approach to business, which they had over these years. A first-class firm with first class people. We did a hell of a lot of work and we succeeded.. because they had the right field of opportunities. They were committed to get it done and they had the commercial approach to things to, you know, to become successful...

0:16:35.110 --> 0:16:38.710

Matteo CALABRESE

We can say that they were the best firm at the time..

Claude Kremer

Definitely yes. There was a second one, which went by the name of Loesch & Wolter. Jean-Claude Wolter was the equivalent of Jean Hoss in the Loesch & Wolter firm. I think they were...that was so [incompr.], because in those years you didn't have any real partnerships...you know, that was that was either so traditional or family businesses in the broader sense and so multifamily businesses. So the Elvinger family and then Jean Hoss ten years later came and joined and so that was three families and their children joined the firm afterwards.

0:17:22.960 --> 0:17:42.240

Matteo CALABRESE

Yeah. And Paul Elvinger before..

Claude Kremer

Yeah and Paul Elvinger before, who was a cousin of André and who started the business. He was a former minister, as you know, and today, well, it's André Elvinger and John Hoss' children and children in laws who took over (not everything) but who are sticking in the leading positions and that is great. It's still, you know, the same quality and the same ethical behaviour which you had from from the outset.

Matteo CALABRESE

As a foreigner, to me, this is a bit a peculiar characteristic here in Luxembourg.. I was thinking also of this Delvaux dynasty. Even Pierre Dupong, Lambert, Jeand Dupong. This law firms, that are family firms...and I mean, they are all top level lawyers...

Claude Kremer

Yes. But in the investment fund business, it was clearly Elvinger who was dominant because he was very, very active from the outset. He invented, you know this kind of vehicles in Luxembourg, bringing it from the US to Luxembourg with the..

Matteo Calabrese

I heard someone defining him as the genius of investment fund. Yeah this is too much?

Claude Kremer

Well, I'm not sure you know, genius is the is the right way. But he had understood from the very early days onwards that this could become a big business and then if I'm not mistaken the first big American fund, the United States Investment Fund that was the first one in the early 60s, and I think they wanted to create an investment company and not an investment fund. So there was a problem, that the company could not repurchase, could not redeem its own shares easily. And so they had the great idea to create the repurchase company next to the investment companies, which would do the purchases and that was really I think was a great invention. To do that, that it was just the way to convey the comfort of overseas clients.. that Luxembourg would be a good jurisdiction, so you needed good laws. You needed to have a safe environment, you needed to have all these things and that was not the work of one single man. That was the work of the government at the time, you know. There was in Luxembourg, one of the Prime ministers, by the name of Gaston Thorn who was Prime Minister and then he became president of the European Commission and then he came back to run companies, to become [incompr.] of companies. But he once said that Luxembourg is run by a football team. Which is I think, a meaningful statement. I'm sure you can trace that somewhere. But he used to say that Luxembourg is run by a football team, meaning that you've got a handful of people, maybe eleven. Well, it could be fifteen. But these people were very much aligned and they were, you know, they knew each other. They regularly met formally or informally. They were close to the government, they were close to the other bodies in Luxembourg, like, the *Conseil d'État*, like, you know, other lawmaking bodies and to the politicians. And so whenever something was needed, these people, I suppose, set together in one form or the other, and then say, well, this is what we need, and if they were in agreement, that is what the country would need, then this was put into motion and that is one of the great things of Luxembourg that you know, because we are small because we do not have any language issues. We do not have any regional issues. We do not have any serious political controversies between the parties. You know, we can act in favour of the business and most people would agree that this is what we need to do. And so when you say 1929, you mentioned 1929, one of the worst years in the world, financially spoken, because of that technical crisis which we had. In that year, Luxembourg created the holding company legislation [incompr.]. You know, I was not there

obviously, but I think that during that time already you had very smart people in this country who were, you know, anticipating, smelling a bit, things which would be good for the country. And so that was the generation before the André Elvinger's – even maybe a bit more than the next immediate generation – but you know, these people have already had that spirit of developing that country as being in a team. As a team. And that is that is crucial. And so in the 1960s, when the financial, when the steel industry became less relevant and you know was, you know, facing the crisis of the 1970s., or, you know, approaching its end – a stop beyond the top – and then the financial industry was the next pillar of activities. And then you know the 1960s, you know the professionals, and the bankers, and whoever was the politicians, they set the scene for a good financial centre, with the Eurobond issues, with the capital markets development. And they were able, with the holding companies, that large groups, large international groups use taxable to set up their headquarters for the holding companies. And all that was a whole, you see? And the investment funds was one bit, one tiny bit of a much broader conviction that Luxembourg could be an equipped financial centre, in the world sense. And then you know these investment funds developed because there was a need to make a cross-border. You know, the US wanted to have a presence in Europe. And they couldn't sell their own funds into Europe, so they needed to come to Europe. And so they set up the first funds and then the first funds brought the next generation and so forth. So it was a full evolution, which is, you know, quite interesting to know and to study. You're right. And the number of people working that piece was extremely low. So, I'm coming back to all the Elvings and Jean Hoss ten years later. In the Loesch & Wolter firm, you had Jacques Loesch, who was not an investment fund expert by himself, but who brought in Jean Claude Wolter, a very well-known and knowledgeable person, which I will definitely characterise as an equivalent of Jean Hoss in the investment funds. He needs to be mentioned at the same level, I'm pretty sure because that man has done exactly the same things as Jean Hoss did, but maybe because the firm as a whole was less, you know, leading in that business he was perhaps ranked wrongfully in another league, which he definitely was not at all. So don't miss it, in terms of knowledge and development, Jean-Jacques Wolter, when you look at it... Those times he had very important American and English clients as well, and it was not only the Elvinger firm. So don't make that error. Jean Claude then decided at the age of 55, to leave the profession and to look at his family interests. And so he left quite early and then in the



Elvinger firm the next generation was Prussen, who again, stepped into that very strongly, whereas [incompr.] Biever, who was the equivalent in Loesch & Wolter firm at that moment to if Prussen was never an investment fund lawyer. And so, the investment funds business it was only Freddy Brausch, who took over from Jean-Claude Wolter, but that is an entire generation..between the two. And so Freddy Brausch and Jean-Claude Wolter, when he retired like what should I say?..in the early 1990s, then Freddy Brausch took over as the lead partner in the investment fund, and did that very well. But that's my generation... that's after your time frame. But in the 1960s and 1970s, Jean-Claude Wolter was at least equivalent with Jean Hoss in the investment fund business. That is absolutely essential not to underestimate. But in terms of numbers, yes, I think in 1983, when the first comprehensive law on investment funds was elected, we had, I think 50 billion, in Luxembourg, under management I think 500 funds. I covered this data in my book. But and then, you know, out of these, the majority was done by the Elvinger firm, the rest was done by the Loesch & Wolter firm, and, which should I say? fifty were without a legal adviser from those two firms.

And, you know, taken just the range of employers or the fund lawyers or whatever. So: this business was spread between 2 firms.

And then your period ends and then my period starts, because in 1988 when UCITS was in act, we had just created Arendt & Medernach. We were six finding partners. At the time, [incompr.] Ernest Arendt was one of the name partners. He was chairman of the State Council, well known person in Luxembourg, [incompr.] a litigator in a well known..., but not in the financial services lawyer. And so we thought that it would be wise to put them as name partners for the firm and then, you know, there were four youngsters from [incompr.]. He was [incompr. myself, Philip, and Paul]. I was doing the fund work.

0:30:21.60 --> 0:30:25.260

Matteo CALABRESE

Philip Dupon(g) is with a "g" or a "t"?

0:30:25.340 -->

Claude Kremer

With a "t". No relationship with the Dupongs from the Dupong firm. That was the team we had and I happened to be in charge of the investment funds, not surprisingly, because I did my pupillage at the Elvinger firm, so I could smell a bit the opportunities which could derive in

'88 with UCITS, from all the funds needed to convert. And there was not enough manpower in the two main firms to do all that work. And the new work could not all be done by these two firms because, you know, they didn't have again the manpower and people... The clients would have to wait too long to get that work done. And so they decided to diversify. And so that is where we stepped in the business. And I spent all my life doing funds. On the basis of the UCITS. So after you stop your period... I would say Jacques Elvinger, Freddy Brausch, and myself... They called us The Three Musketeers. And, you know, we were the next generation of fund lawyers in Luxembourg and bringing it to another level, but that that is not your story. So, I know the history quite well because we've always lived with those other firms and there was only quite friendly competition I must say. I mean we were the youngsters at the time, and so they didn't take us too seriously at the beginning. And you know which, which triggered another energy. I believe.. at this end. To demonstrate that we were able to do it our way. And so you know, overtime, the proportions..and that has shifted. You know, our way and that is, you know, because we were working hard trying to do the same things as they did.in the time. But you know what you should know in your period, the topic has been much less technical. There were no European rules. There was a very liberal and flexible Luxembourg regime. You had no.. the first comprehensive law on investment funds..they expect to 1983, that is still in your period. And I can cover that later, before you had a decree of 1972 which created the.. the supervisory discipline, the *Commissaire au Contrôle des Banques* and that was.. and before we had nothing, you had just the administrative practice from the *Administration de l'Enregistrement* for holding companies and for FCPs there was maybe the Civil Code, but you know the Civil Code did not talk about securitization and *division*. So it was purely, you know, it was all defined by the contracts.

0:34:9.110 --> 0:34:9.310

Matteo CALABRESE

In my thesis, I talk indeed of a *de facto* interpretation, made, in particular, by one person which was Berard Delvaux.

0:34:28.450 --> 0:34:32.130

Claude Kremer

Yeah, that should be. I mean, I forgot to mention Bernard Delvaux. Absolutely, Bernard Delvaux was still senior to all the Elvinger at the time.. He was a lawyer, he was a general

manager at the *Caisse d'Epargne d'Etat* and he was also a writer. And so he wrote the things which then, you know, created the jurisprudence if you if you will.. on that. And he had the son, who was Jacques, and who will become lawyer, then liquidator of IOS and then he became a notary public.. so he's also to be included in the top of the knowledgeable people at that time to help you know the investment funds practice, to become more mature and more developing.

0:35:29.410 --> 0:35:50.650

Matteo CALABRESE

Actually we are going through the whole period. I have a lot of questions on that. What could be the best approach to this? Maybe chronological. I was thinking a chronological approach. So we mentioned the 1929, the H29, like the Holding law. You know, it's really interesting. We needed a lot of research, with so many documents and actually it's striking for – at least for me – that the law was implemented, promulgated before the crisis. Like a couple of months before..because July, the crisis is from October. At the beginning, when I approached this subject, I was like: Oh maybe this was a reaction to the crisis. No. This was even.. even better! They were so far-sighted that they anticipated the crisis. And it's interesting that Pierre Dupong, at the time he was Minister for Finances. And it was, you know, all the documents that we checked back so the budget de l'*exercice*, all his public speeches, he was always saying that the law had been made for getting more fiscal revenues. And yes, we cannot argue against it, because.. I checked the data..like so the money.. and yeah: all the companies were bringing more money to the state and increasing the budget... So was a great move.. One could argue: How bad is to create an offshore core within Europe, but..there was some noble intention behind that which was like you had more money for the state.

0:37:37.620 --> 0:37:38.340

Claude Kremer

Well, it was, as I mentioned, one way to bring this country forward because we had clever people at the time...what should we do become a country which is more important than the size of the present?

0:37:40.950 --> 0:37:53.910

Matteo CALABRESE

You know, I read all the speeches of people like the socialist opposition, so it was this so at

least lawyer. Actually all lawyers, you know, Blum for example...It was like, oh, the speeches were really dense and like with some intellectual contents, really. Something like that had some knowledge weight and I was pretty surprised... ok, not that surprising. It was like it means that Luxembourg today has been really built by some really clever people. It's not like someone would argue, you know there is also this type of interpretation: Luxembourg, la *place financière*..it's because of luck. And in my thesis..

0:38:27.310 --> 0:38:40.590

Claude Kremer

I fully support your statement, which you need to demonstrate, is that this was deliberately built with building blocks, step by step and it was... well, we were lucky because, you know, if investment funds had not become a worldwide success, then Luxembourg would not have been [on, incompr.] the path that worldwide success. But, we were positioning ourselves... Belgium could have done equally well or... France could have done it. And they did not. And that is, you know, and the business is that besides the, I believe the small size that.. it is a big advantage.

0:39:36.650 --> 0:39:45.90

Matteo CALABRESE

Since you just mentioned this, let me ask this big big question because for example, Belgium already in the 1950s was changing its legislation for investment funds and yeah, closed-end open-end [funds] like in in Belgium, so you mentioned.. Luxembourg was able to be more competitive. So the consequent question is why?

0:39:45.250 --> 0:39:49.370

Claude Kremer

Well, because we were...Because we did not have to make any compromises. And why did we not have to make any compromises? Because we...there is no domestic market for financial services or very small even today it's less than 2% less. Five trillion, how much is in hand, in Luxembourg's hands institutionally or privately? Very tiny bit. So Luxembourg could always open its eyes and its ears towards the international community outside Luxembourg. And so whenever there was a need to do something...if you want to do that, we will check whether this is permissible, and if it is not permissible, we will recreate the law to handle it.

0:40:45.730 --> 0:40:54.730

Matteo CALABRESE

It's permissible at what level? At the Luxembourgish level or European level?

0:40:57.50 --> 0:41:2.810

Claude Kremer

But there was no European level at the time. At the time you say, well, we did.. fund to redeem shares. So we said we can't. So the first reaction was we create the purchase companies. And then it's 1983, we said, how the fund [incompr.] could redeem its own shares? It's the company law. And then this was done. But this could maybe have done earlier. But why? There was no need to do it earlier because the practise functioned very well with this redemption companies and then the issues shares with the small limited value and the big premium and the premium could be used to redeem the shares. That for example you cannot redeem shares...you need to leave the nominal value of the shares in the company. Otherwise it is a reduction of capital.. And So what they did is to issue a share with \$1.00 of value and say \$99.00 of share premium and then when they had to redeem shares they could finance the redemption price from the share premiums and leaving the par value of 1 in the share capital of the company. But you you can read that in my book, in the book which I wrote together with Isabelle Lebbe because it is a co-authorship, but that is a very technical point.

0:42:47.70 --> 0:42:53.350

Matteo CALABRESE

This Elvinger's innovation for me is really interesting. Maybe from a technical point of view, to me it's not that clear why....So essentially this type of *société d'investissement avec une société de rachat* looks like a an open-end fund. So it's a *de facto* open-end fund. If you have to explain the reason...Why not just open an open-end fund then?

0:43:28.280 --> 0:43:34.760

Claude Kremer

Because company law in Luxembourg did not permit a company to reedem its own shares. And so it was a related company ...

0:43:36.840 --> 0:44:3.680

Matteo CALABRESE

So this is just like an ex-post to stuff because..there were already these companies and ..

Claude Kremer

The first company which was created not as an FCP but as a *société d'investissement* was the USTIF fund, yes. And they created immediately a repurchase company out of the fund, otherwise the fund would not be open-ended.

0:44:5.50 --> 0:44:6.410

Matteo CALABRESE

I see that OK. But what was the convenience to have a *société d'investissement avec une société de rachat* compared to having like a normal open-end fund.

Claude Kremer

But you couldn't have in [incompr.]an open-end funds, even the case, because the company law didn't permit it. So it was only possible for FCPs.

0:44:29.440 --> 0:45:3.520

Matteo CALABRESE

OK. I was just wondering like that with my limited legal background. Like if they can just create this indivisible portfolio contract...it seems like that there was something hindering the possibility for this type of this *société d'investissement* for this type of people interested in opening, incorporating, a *société d'investissement avec une société de rachat*. So they were forced to have a *société d'investissement* ...and they couldn't create like this indivisible portfolio..

0:45:22.860 --> 0:45:35.260

Claude Kremer

Yes, they could, but some investors prefer to have a company rather than an FCP because the company is a corporation and because they may have had some personal reasons...

0:45:37.780 --> 0:45:39.420

Matteo CALABRESE

Ok! This was indeed my point

0:45:40.420 --> 0:45:46.540

Matteo CALABRESE

Not to invest in an FCP. And to invest in a country. I tell you why was that. An FCP is just, as you said, a portfolio. It's a co-ownership of assets. It does not have.. It is not an entity, the FCP.

0:45:59.460 --> 0:46:5.580

Matteo CALABRESE

It's not a juridical person.

0:46:7.580 --> 0:46:9.860

Claude Kremer

It's not a legal entity. And so from a tax point of view, some tax authorities outside Luxembourg would look into their taxpayers, when they invested into FCPs, they said: well, we consider this to be transparent and so all the income [incompr.] in the FCP was immediately deemed to be taxable in the hands of the investor, even if it hasn't been paid out as a dividend because the transparency would look through.

0:46:33.330 --> 0:46:49.730

Claude Kremer

That is quite a crucial component. [incompr.] prefer to have companies and if they wanted the company they had the problem because the company could not be open as it. And so you need to have this purchase company which was acting on behalf of the investment company to redeem.

0:47:10.220 --> 0:47:12.940

Matteo CALABRESE

If you look at market, Luxembourg investment funds market like in the 1960s... this is striking for me that there is, on the one hand, funds like IOS' I.I.T, that was the largest fund, like also FONDITALIA is another one. These were the two largest open-end funds. And these were... The IOS was based in Panama, but the people were from the US. So it means, like, the US...people from the US.. were interested in opening an open-end fund in Luxembourg. At the same time, there were people from the US, and this is the case of Elvinger's USTIF, who wanted to open a *société d'investissement*... So yeah, you gave me an explanation...

0:48:3.450 --> 0:48:8.290

Claude Kremer

The legal format is for textbooks, is at the level of the investors...

0:48:10.10 --> 0:48:34.210

Matteo CALABRESE

Umm maybe I can follow up with a question like... why for example Bernard Cornfeld was not interested in opening a *société*..

Claude Kremer

Well, but because they saw that as a retail product. To households investors and they didn't care about tax transparency because they were not subject to tax.. they didn't care. I don't know why Bernie Cornfeld decided to have an FCP as opposed to an investment company maybe he was earlier that..

Matteo CALABRESE

Exactly, this is in 1961.

Claude Kremer

Right. So, you see, that at the moment there was not this idea to...

0:48:45.740 --> 0:48:54.260

Matteo CALABRESE

Yeah, it's interesting [incompr.]. We are talking about a huge amount of money...

OK, you answered this. like OK, thank you for this.

[Little break]

0:49:26.520 --> 0:49:36.400

Matteo CALABRESE

Do you have any involvement in the creation of the laws of 1983 and 1988 because there was this *Comité des valeurs mobilières*..?

0:49:39.160 --> 0:49:43.800

Claude Kremer

Yes, I only became a member of the *Comité des valeurs mobilières* in 1991. But that was, you know: I'm the next generation. In 1991, when we had created funds for three years I remember that call from Mr. Schauss who was the head of the CSSF at the time, of the IML, and he called me and said, look, Mr Kremer, you have become an important client of ours. Would you like to become member of the *Comité des valeurs mobilières* ....uuuuufff...I think I jumped to the top of the room and say: YEAH! and then, you know, I came to the meeting where I was invited and you know, we had announced that anywhere. And so Elvinger looked at me..

..I mean don't forget... I think that Elvinger has not invented everything. So that is, you know, the convenient way to say well yes invented yeah..he has been active. But regulators have also



been contributing and so...he was instrumental because he was the main person doing funds at the time. So I'm not saying that to take away his merits, because he's a great man. But you know you need to be a bit neutral to say that, you know that was a number of actors in the place who did that. And there were the bankers also at the time, the depository banks. There was the regulators, that was the tax authorities also who played the game. And he was perhaps initiating a number of things. Maybe he had had that great idea to create a repurchase company, maybe it was to come...maybe it was the client who said: why can't we create a repurchase company and then they said, oh, let's think about.. we could do that. Maybe the repurchase company has existed ...so, but please don't think that I'm trying to minimise his merits.. but you should be careful in not becoming too promotional on something which you know the history needs to evidence on the facts, as you know better than I do.

But so, having said that, Jean-Claude Wolter was also a member of the Comité de Valeurs Mobilières, and I walked into that room and they..uff..you could see that... And from that moment onwards, the competition took another turn in Luxembourg. We need always to be careful because this man is going to, you know, to try and wish...I was the most senior person in young Arendt at the time...So I remember.. why I'm saying this? Because I was not a member before 1991, so I did not help in the elaboration of these laws, even the 1988 law a bit but not very much, but I remember, you know, there were lots of discussions which I followed as a young lawyer that, you know, it was essential to ...the idea was, the Luxembourg idea was, let's create a legislation in 1983 where we will give legal certainty to a number of things which we did not have before, such as creating the SICAV with a "v", such as the permission to create open-ended funds without the purchase companies. Such as creating depository banks with specific rules of supervisory functions, and the like. Such as posing the need for an auditor in every fund in Luxembourg. Such as the need to say that there is no fund in Luxembourg without supervisory.. supervision from the CSSF, etcetera, etcetera, etcetera. And these were the key things which were laid down in that 1983 law, where Luxembourg could say we have an elaborate legislation which is investor protection, which is well-though, through which permits to create funds in a legally well-defined framework. That was the 1983 law and was done. Why was it done? Because, as you may remember, well, as you may have read, the UCITS directive back dated 1985. The initial preparatory works started in 1976.

In 1976, the first Commission or working group was created at the Commission... and the man who did that by the name...hecreated then a commentary of the UCITS law from Brussels and and it *appellé ...le Commentaire...le Rapport...*you find that in my book. That was kind of an interpretation of the provisions underlying the UCITS, but that's 1976. Luxembourg was part of those commissions directly or indirectly, because we were a member of the European Commission at the time. And so Luxembourg said: Ok, we're going to have that UCITS directive anytime soon. We don't know when, but when we have the law, then we can just use that law and transpose the directive into that law..

0:56:9.970 --> 0:56:10.50

Matteo CALABRESE

Who said this? Any politician in particular?

0:56:11.420 --> 0:56:44.60

Claude Kremer

Yes, the regulators and the politicians petitioners, that make us participants[incompr.] that was full of bankers, accountants, lawyers, depository banks, regulators that that handful of people who grouped in that *Comité des valeurs mobilières*.

0:56:44.100 --> 0:56:50.580

Matteo CALABRESE

About the government...I had an interview with Jacques Santer. And Santer said that the government was aiming to use...

0:56:51.570 --> 0:57:20.530

Claude Kremer

The government supported what the industry participants proposed... But you know I think that the group of people I was aiming at were the people who were members of the *Comité des valeurs mobilières* in the 1970s. And that group existed already, I believe in the 1970s. It's a kind of Committee where you had a mix of say 15 people composed of lawyers, auditors, Jean Hamilius, at the time a big auditor, la Compagnie Fiduciaire..So the lawyers, the auditors, the banks.. The depository banks, they were part of those groups and they were having a lot of practise in, in managing..BIL, BGL, KBL, BIL and BGL the most

Then well, there were not other administrative agents because in the early days the banks did

all the administration to be [incompr.] work at the and so..I was like lawyers, auditors and bankers, they said together with the regulators and say, well, what should we do? And then they decided, let's do that well. Also have good tax treatment. That was the tax level .06.

The .06 *taxe d'abonnement*.

Now it's a law. And so that law is really a law and creates legal certainty because the law is much more than administrative.. and then two years later the directive was created and then two years well...December of 85 and then March 1988, so that is 2 years, two years and three months..where a lot of work again was done in that *Comité des valeurs mobilières*. At the time, Marie-Jeanne Chevremont ..

0:59:15.50 --> 0:59:15.330

Matteo CALABRESE

Ah, I had an interview with her..

0:59:16.170 --> 0:59:28.90

Claude Kremer

Marie-Jeanne who is a good friend of mine ...I was a bit too junior to those people at the time and so...They worked day and night to make a flexible transposition of that directive into Luxembourg law. And if we had not had that 1983 law, we would have doubled the exercise for 1988. We would have first to create the law...we could just now use that directive and transpose it to one part of the law and the part 2 funds. All those who were outside the scope of the directive could continue their life and existence under the same law without any impact. We could have another session in the future..

[Final chatting and greetings]

- Jacques Santer. Interview with the author, October 1, 2021.

Interview of M. Calabrese with Mr. Jacques Santer on the history of investment funds in Luxembourg (1929-1989) script

Short Introduction of interviewer

Dear Mr. Santer, I am Matteo Calabrese, a doctoral researcher at the University of Luxembourg, in the department of financial history. My main specialization is the study of the history of investment funds in Luxembourg, in a period that ranges from 1929 to 1989.

Interview broad plan

The interview will be centred on the history of the investment funds in Luxembourg, with your general comments on the subject and with your analysis of the role of Luxembourg's government in the 1980s in addressing the legislation around the national fund industry. For the interview, I would like to follow a chronological approach: from your comments on the law holding of 1929 to the events you lived in person in the 1970s and 1980s.

Interview

The beginning of the fund industry

- I believe that we can agree on the fact that the growth of the fund industry from the 1960s in Luxembourg can be put in connection to the extensive interpretation of the law holding of 1929.
- Do you have any comments about that law? What do you think it represented for the financial history of Luxembourg?
- Do you have any behind-the-scenes late rumors about the formulation and promulgation of the law holding (H29)?
- Who do you think the main actors involved in the formulation of H29 were?

- In some late recollections of the events around H29, it is often mentioned the role of the American company Ford, in a sort of lobbying pressure on CSV and Dupong.
- Nevertheless, in my research, I didn't find anything related to Ford. The names that emerge from the archival research are instead: ARBED, BIL, Levy's brothers, Banque Commerciale, Pierre Braun, Pierre Dupong. Do you have any comments on any of these names?

#### The fund industry between 1959 and 1979

- In 1959, the first mutual fund is established in Luxembourg (first open-end, whereas many closed-end funds existed in Luxembourg from the promulgation of H29, as holding de placement, following the theoretical framework of Delvaux). Do you have any comment on the creation and life of the fund Eurunion, the first mutual fund in Luxembourg?
- Many commentators have talked of an "Age of Innocence" (e.g.: Elvinger) of the fund industry in Luxembourg between 1959 and the second half of the 1970s. Do you agree with this definition?
- What has it been, in your opinion, the role of Pierre Werner for the success of the industry in these years?
- About the end of this Age of Innocence. After years of growth in the number of Luxembourg-resident funds, from the middle 1970s, the number starts to decline and reaches its lowest point in 1978. What are, in your opinion, the causes of this decline?
- Do you think that among the causes there are also the fears somehow raised in the international investors by the presence at the government of a left-wing-center coalition (the Thorn government)?
- In those years (1975-1979) you were a member of the European Parliament. Do you recall any debate, discussion, project of law on investment funds at the European Parliament?

## The fund industry in the 1980s

- I would like to ask first if in your role of Minister of Finance in Werner's government you recall closer international attention between 1979 and 1982 to the financial environment in Luxembourg (in particular after the two financial scandals of IOS and Banco Ambrosiano).
- What are your general comments about the law of 1983 regulating the fund industry in Luxembourg?
- Do you believe that the "weakness" of Luxembourg's financial environment in the early 1980s due to the financial scandals above mentioned but also to the unilateral decision of the Belgian government of devaluating the Belgian Franc (as well as a general economic decline due to the long-term downsizing of the steel industry) has had a role in making more urgent the law on investment funds of 1983?
- About the formulation of the law: some commentators have indicated the "Elvinger & Hoss" law firm as the main architect of the law of 1983. Do you confirm this reconstruction?
- About the "cohabitation" governments in Luxembourg in the 1980s. Do you think that during Werner's government and yours, the party LSAP was aligned on the same positions as CSV and PD about the investment fund industry in Luxembourg?
- What are your comments about the law promulgated by your government on UCITS of 1988, following the European directive of 1985 on the regularization of the European market for investment funds?
  
- Any other comments on this topic?

Extra question about Zucman's critique to European Institutions

From: Zucman, Gabriel. *The Hidden Wealth of Nations* (pp. 89-90). University of Chicago Press.

“[...] Let’s be clear: if Luxembourg is no longer a nation, it no longer has a place in the European Union. At the Council of the European Union (which gathers together the ministers of the member states) and the European Council (where the heads of state and government determine strategic goals), each country, however small, can make its voice heard. But nothing in the treaties, in the spirit of European construction or in democratic reasoning, justifies allowing an offshore platform for the global financial industry to have a voice equal to that of other countries. And this especially since the Grand Duchy, like every member state, has extensive blocking capabilities.

In the Council of the European Union, each country has a right to veto proposals related to taxation, social policy, and foreign affairs. In the European Council, decisions are made unanimously. In both these institutions where most power is exercised, the representative of the 500,000 inhabitants of Luxembourg can impose his will on 500 million Europeans. Will we ever discover all the obstructions and compromises imposed by him? Undoubtedly not, because the deliberations of the European Council (and certain meetings of finance ministers) are held in secret, about which the prime minister from Luxembourg publicly congratulated himself, by the way.”

- What are your comments about these assertions of Gabriel Zucman?

0:0:13.10

Matteo CALABRESE

So, short introduction of myself. I'm a doctoral researcher here at Belval at the university, so my main field of research is investment funds. My main period of interest is between 1929 and 1989 – will tell you why I chose these two dates. I would like to hear your comments, main remarks on several things..

0:0:43.200

Jacques Santer

Of course I made some remarks, because I must tell you that I left my public Office and also my public duties in 2005. In 2005, it’s a long time ago and, as my last job was in the European Parliament after I resigned and then I changed my way of life in 2005, because I

was, of course, in politics and so on in different politics, in European politics, in national politics, I was for 11 1/2 years Prime Minister in Luxembourg in a coalition government, we said with the socialists...and then I left for the Commission as President of the Commission. We are introduced..my main subject was always to introduce the euro because my predecessor Jacques Delors, had little faith in the set stage. So I take up...and we succeeded in the euro. That was my biggest challenge I have to face in at these times and we succeeded in very good way. Even now, because at this time many people say to this this would not last long time, but nevertheless it lasted until now..

So I left in 2005 my public my political life. In the end I turned to the cultural policy. That was then really in the culture that I was the inspirator and also [incompr.] Museum of public art here in Luxembourg. And so and so one was very busy in the cultural affairs. That was a quite different and was very useful for me. It was also I must say the days my wife passed away. Shad cancer and she passed away. So I changed my way of life. And so I was not more focused on the financial situation. Well, I follow it like everybody and so on. And therefore I tell you that you can ask one.. it's not mentioned here because two years ago, there was the 30<sup>th</sup> anniversary... You mentioned it also here.., so the directive, that's the European Union and there was a celebration here in Luxembourg from ALFI. ALFI made a celebration here, and I made an introduction. So I made also ..

0:4:31.0 --> 0:4:38.950

Matteo CALABRESE

Maybe I can find like this document online..

0:4:39.200 --> 0:5:1.70

Jacque Santer

So I made the whole history...because we were in competition there and that was a come back to that, that was the main objective we had in competition with the UK with London and because we won as a we were first. So we had the first step and we became the first in Europe platform for financial funds.

So were the first, and that was my main achievement at this time and it was also perceived [as so] by the banking community and so on. That I tell you, then you can find it in the treatment because I took my my secretary now because I wrote I always wrote my speeches myself, and



we don't find it because it was written that must be at home but not here. So you can find it. ALFI, that was in 2019 in April 2019. So the you have my ideas about the development..that is what I wanted to say to you first and I was not so aware.. because now: 84 years eh! .

0:6:50.790 --> 0:6:52.870

Matteo CALABRESE

My interest here is really hearing your comments even just like some memory even I will say something *de relato*: someone was talking about this like because..I mean: 1929. That was so something that you didn't live personally. But let me try that, to see what happens if I try to follow this pattern here. OK, I think like the first question. Let me think. Let's talk about the law holding in 1929..There is this law in 1929 about holdings in Luxembourg in1929.

0:7:45.10 --> 0:7:46.260

Jacques Santer

Yes, yes, of course. You have to see what are the background of this legislation. That was the first time we spent in.,We were in the common Union with Belgium..and also monetary, the area because the Belgian bank was also the Central Bank and which was then, that was the first time the Belgian devaluated, it's money, in 1925. And we did not follow. We did not follow and then we created, it was in the worldwide crisis at this time in1929, we created, my my predecessor Dupong, and also there was a counselor of Dupong who created the holding legislation in 1929. You ask here who is the founder inspirator, it was, I knew him very well, because he was becoming very old... Mr. big financial lawyer, Delvaux. Bernard Delvaux.

That was the right one. He was not in the government, he was a lawyer.

He was in charge in the government like..the events around H29 is often mentioned [in your script] the American company partner, Ford. Well, I don't think so. I do not remember that for that this time they had any influence here in Luxembourg.

0:10:16.680 --> 0:10:32.150

Matteo CALABRESE

There are several recollections of bankers saying like.. but this was a rumor, and indeed with my researches, I don't confirm this, you know, so I said, you are right

0:10:32.160 --> 0:10:34.480

Jacque Santer

But of course, there was ARBED. ARBED was the main industrial.. in Luxembourg's Steel and Iron sector. Sectoral not in Luxembourg, European-wide.

0:10:48.900 --> 0:10:49.220

Matteo CALABRESE

Right.

0:10:49.960 --> 0:10:51.730

Matteo CALABRESE

Because that was under [incompr.] He was the president, an ARBED had at this time 19 companies in Germany, and several companies in the United States. And an whole empire in Brazil. Even now. So it was really a very strong European company, sieged here in Luxembourg [incompr.]. But it was ARBED. It was not only Luxembourg. The seat was here in Luxembourg, but it was European-wide. Big importance.

0:12:0.710 --> 0:12:5.900

Matteo CALABRESE

And talking about ARBED, why for you they were interested in this law?

0:12:8.210 --> 0:12:16.330

Jacques Santer

You'll see, of course, because there was a financial sector and, also there was an international bank, [incompr.] Banque commercial, yes, that's another bank. Pierre Braun. That was the main...

0:12:33.90 --> 0:12:34.270

Matteo CALABRESE

What do you think about him?

0:12:34.280 --> 0:12:44.780

Jacques Santer

Because Bran was a civil servant of the BIL..

0:12:45.210 --> 0:12:46.880

Matteo CALABRESE

Also a minister in the Eyschen's government, in the Conseil d'Etat..

0:12:53.80 --> 0:12:59.640

Jacques Santer

And Pierre Dupong..

0:13:1.430 --> 0:13:8.620

Matteo CALABRESE

I would like to focus on Pierre Braun, because according to my researches, for what I've seen he is really involved..At the Conseil d'Etat, he wrote the law. The law is written by him. Like you say, Delvaux, but there is no track in the archives of the...

0:13:19.680 --> 0:13:20.960

Jacques Santer

Braun was not in the government.

0:13:21.170 --> 0:13:21.480

Matteo CALABRESE

No. In the Conseil d'Etat.

0:13:32.470 --> 0:13:35.830

Jacques Santer

But of course it was a government of Dupong who was...

0:13:36.280 --> 0:13:37.610

Matteo CALABRESE

And why do you think Dupong approved.. he was interested in pursuing this law? Why?

Why was for? For Luxembourg or for Dupong gov..

0:13:49.780 --> 0:13:57.600

Jacques Santer

He saw an interest for Luxembourg with the holding because it was the first holding in Europe.And then you know, I tell you from my personal view, you must be aware that Luxembourg is a small country and I see always Luxembourg in my view, as I was Prime Minister before, even I was Minister of Finance, I was Minister of the Social Affairs, cultural minister and so on.. it's always as a great laboratory. Yeah you can because you can see what is going on and then you can react and then you can see there are some opportunities and you are going to this and that. We make sure for instance, this has nothing to do with the financial sector, we were the first to have RTL. That was a commercial radio. So, first commercial radio

in Europe, that was like in Luxembourg and ..still now is a big company...now RTL works worldwide even ... But it was the first one, yeah, it's the first television here in Luxembourg. Well, from Europe you always to be the first. So that was always my...to be the first small country and after we had you have to deal with the European Union.

You...that is that you speak about Zucman? Yeah, Zucman does not understand..

0:16:6.90 --> 0:16:9.140

Matteo CALABRESE

Actually I really like that you said this thing, this metaphor of the laboratory, you know, it's it's really something that I see also in the words of Dupong, he says something like that. But you know another actor here like that I didn't mention, LSAP, the Socialist Party at the time, the Socialists. There are politicians like René Blum, Pierre Krier. I just wanted to say that about, like, the loi holding, these two politicians were talking about the international level, that you mentioned. So, like Europe in particular, and these two politicians, especially when they were exiled, during the Second World War, actually they looked a bit ashamed for the loi holding and the do you have any comment on this? What do you think about that?

Actually René Blum said that the loi holding was creating a new feudalism capitalism something that is a...

0:17:52.440 --> 0:18:3.800

Jacques Santer

So that of course, yeah, because if you are in a coalition in a government, you see that now also in Germany.. you always have to deal with the socialists, always. Centrist parties..leftist.. but we have always to compromise. I have no problem is my answer. And my head of the socialist, we had Jacques Pos. He was vice president of the government...

0:18:56.630 --> 0:19:6.730

Matteo CALABRESE

But yeah, we're coming to that like because it it's really..

0:19:7.740 --> 0:19:12.10

Jacques Santer

so I guess I do not know who were the Levy's brothers. I have no memory of that, yeah...Bil, Banque Commerciale, Braun...he was very old..

0:19:33.210 --> 0:19:35.960

Matteo CALABRESE

Have you ever met Pierre Braun?

Jacques Santer

Oh, of course.

0:19:36.490 --> 0:19:38.220

Matteo CALABRESE

What type of person was he?

0:19:38.230 --> 0:19:41.360

Matteo CALABRESE

He was very... how do you call that? He was the *beau-père du fils* de Werner.

0:20:0.70 --> 0:20:0.920

Matteo CALABRESE

Interesting., Would you say that Braun, Dupong, Werner were somehow friends? like kinda circle.

0:20:11.330 --> 0:20:14.530

Jacques Santer

Yeah, Werner he was at this time, we was still lawyer..the government came afterwards.

0:20:24.40 --> 0:20:28.280

Matteo CALABRESE

Since you mentioned also Bernard Delvaux...

0:20:28.730 --> 0:20:31.760

Jacques Santer

Yes he was a lawyer.

0:20:32.200 --> 0:20:40.860

Matteo CALABRESE

And would you say that he was in the same circle of friends with Dupong...

0:20:41.110 --> 0:20:42.70

Jacques Santer

Yes, of course. Delvaux was from the same party. There are different Delvaux here in

Luxembourg..but he was a lawyer. I was lawyer too..young lawyer. But not in this time, afterwords and ..Delvaux [incompr.] He was a good lawyer and ..

0:21:31.280 --> 0:21:31.400

Matteo CALABRESE

.. a really smart person.. how he writes that about this law is really someone with a very, very acute mind on this.

0:21:33.830 --> 0:21:36.970

Jacques Santer

You're right, cannot give you comments about Levy brothers.

0:21:37.540 --> 0:21:40.150

Matteo CALABRESE

It's ok. Now that we're talking about lawyers, you know, there is also this category, in Luxembourg, that was maybe still really important: notaries. Around the 1929 law, you know, there are these two figures... I'm thinking about Paul Kuborn...Have you ever heard of him?

0:21:58.500 --> 0:21:58.840

Jacques Santer

Yes. That was also a name. Kuborn is a name...

0:22:2.450 --> 0:22:9.550

Matteo CALABRESE

Edmond Reiffers? Maybe not.., Altwies?

0:22:21.880 --> 0:22:24.890

Jacques Santer

Ah Altwies. He was president of the parliament.

0:22:24.960 --> 0:22:25.430

Matteo CALABRESE

Yes, and a notary as well.

0:22:25.480 --> 0:22:27.840

Jacques Santer

And then he was not there. He was [just] a member of the party.

That's quite clear.. in the 1930s..these names are well known here in Luxembourg. It's not from my generation..

0:22:56.540 --> 0:22:57.610

Matteo CALABRESE

Let's go indeed to your generation...towards there. And then, you know, in 1959 it was issued like the first, open-end..

0:23:12.640 --> 0:23:13.970

Jacques Santer

Yes, the first mutual fund.

0:23:14.20 --> 0:23:18.430

Matteo CALABRESE

Do you have any comment/recollection about this fund?

0:23:19.370 --> 0:23:20.770

Jacques Santer

No, that was...That was, of course, as you said correctly, on the holding. So the holding [law] gives us the opportunity to have also the legislation for the funds. So the therefore is the holding legislation of '29...very important until now, very important, the impact of the fund industry in Luxembourg because it was the beginning. And then he'd stop it....Of course, it was much more complicated. So we have to have another another legislation...but it was...Yes, you said right [reading the script] ...following the theoretical framework of Delvaux.. that's fine...

0:24:34.620 --> 0:24:37.60

Matteo CALABRESE

And then, you know, we talk about him like Elvinger...you know ...is correct the pronunciation?...the lawyer and the politician...the Elvinger family

0:24:52.170 --> 0:24:52.700

Jacques Santer

Ah Elvinger! Yeah.

0:24:55.350 --> 0:24:56.710

Matteo CALABRESE

OK, let me go talking about Pierre Werner since we are here, so..

0:25:6.660 --> 0:25:10.590

Jacques Santer

What does it say here? [reading the script] I don't understand.."Age of Innocence"..

0:25:12.700 --> 0:25:14.670

Matteo CALABRESE

Ah that's what Elvinger said... it's a kind of definition..I found actually it in a speech he gave to Alfie [actually it's an article] And he talked about an age of innocence, because, like, there wasn't at the time, like, a very clear legislation about funds. I mean between the 1960s and early 1970s. Because they were just referring to the holding law...only in 1972, there was a..

0:25:44.560 --> 0:25:46.880

Jacques Santer

It was not so important at this time, of course.. And then came the period of Werner, yes

0:25:55.830 --> 0:25:56.830

Matteo CALABRESE

Yes, yes. What do you think Pierre Werner did for the industry of..

0:26:0.550 --> 0:26:4.520

Jacques Santer

He was Counselor of the bank..Banque Generale..[incompr.] And he was also.. he was a good friend of.....at this time, it was....It was a German because the German took during the nazi occupation. Took a hand on the financial institution, here in Luxembourg, because we've got occupied by Germany....but Werner, he's he played also a role in the communication in the resistance. In the communication because he was in the bank... not to the BIL..the General Bank And the head of the Banque Generale at this time was a German banker asked up... And therefore we had no problem with the finance as of this time, because he was not a Nazi. He was a normal people... because after WWII he had no problem, he was not...And he was still a big financial in Germany after WWII.

And so also here in Luxembourg and Pierre Werner took also this [incompr.] ..as indication of



what was going in the financial sector. Dupong was outside [incompr.] one was in London, one was in Washington. First [incompr.] he was in Canada...because Portugal was [incompr.] and therefore he cannot stay in Portugal, then in Canada and then in Washington.

And so Werner played a major role in the relation with [incompr.] Dupong

So then after WWII of course Werner became..he had bigger importance here in Luxembourg...he was the 1<sup>st</sup> banking commissioner. Here in Luxembourg was a banking.. and then he became also Counselor, first Counselor of Dupong in the government.

And then, as a Dupong died - unfortunately he had ...a difficult...he failed to have a step in his own home and suddenly he broke his...it was not very early..It was in the beginning of the 1950s-beginning 60s.

And then Werner became a Minister of Finance. And he was really a Minister of Finance.

0:30:34.710 --> 0:30:38.730

Matteo CALABRESE

And then what do you think like in that role as Minister of Finance? And then as a Prime Minister..What do you think he did for the investment fund industry?

0:30:48.310 --> 0:30:49.600

Jacques Santer

Oh yeah, yeah. Then came the time. So meaning you said yes, the age of innocence...

Then he [incompr.] that with the holding legislation, that's not enough and so [incompr.] developed the financial sector. Here...until the 1980s

0:31:19.470 --> 0:31:27.350

Matteo CALABRESE

If I can ask this like so at that point, before the Thorn government. So between 1970 and let's say 1974 ...Do you think that Warner wanted to... give incentives to the investment fund industry because that was good for Luxembourg, somehow, as a state?

0:31:51.360 --> 0:31:51.590

Jacques Santer

Yeah.

0:31:52.700 --> 0:31:59.880

Matteo CALABRESE

Why?

0:32:1.760 --> 0:32:6.250

Jacques Santer

Like that's a good question because you have to see in the 1970s. We have the starving of the iron and steel company. So because that was very important and therefore we have to find a new niche. And Werner was also Prime Minister and so on. He saw the opportunities in the banking sector. Not in the fund sector, but first in the banking sector. And therefore we have, we had at the beginning many banks, .. banks were coming to Luxembourg. Because we have a liberal banking system and we have many German banks coming. I think we have more than 20 German banks. That's the biggest thing here. All the big banks, Deutsche Bank also.. at the beginning here and then after we'll see merge and so on.

And he saw that there could be a new hub for Luxembourg... in the financial sector..and therefore also the investment sectors and fund sectors played a major role of course at this time. But it played a major role, as also other countries developed as a sector. So we were in competition with other countries also in the banking sector. I can tell you that my strategy was always to see what is going on in Switzerland, so that was my target. In Switzerland, and we have very good relation with Switzerland therefore, if Switzerland makes a stake for more liberalizations, and it's the same. And so we are going.

It was not only Luxembourg, who did [incompr.] also in other sectors also. You have many.. even now, even now. For instance, we have Holland, the Holland sector is also very important. There also be the Netherlands Antilles and so, and we had many problems with that at this time, because..so that's what my government did not.. Once the Netherlands Antilles would be also In the same shift,, and then you always ...And so even now we have the Panamas, we have all these.. But my person was always do to lie an eye on Switzerland

0:35:41.780 --> 0:35:43.280

Matteo CALABRESE

How did you have this eye? Like you were personally studying like the laws..or you have some advisors there...

0:35:57.110 --> 0:36:3.610

Jacques Santer

Of course we have my counselors as a duty to supervise..these events in different sectors and we did it and they did it.

0:36:3.870 --> 0:36:9.810

Matteo CALABRESE

And those counselors were lawyers? Tax...

0:36:10.890 --> 0:36:14.270

Jacques Santer

They were [incompr.] in the financial services. My main counselor was at this time there was.. Mr Raymond Kirsch. He became afterwards the head of the Central...he was a member of the Council of State and he was my counselor at this time... he was a socialist...not from my party, but there was an asset, he was in my government. And then Yves Mersch. Also, he stopped, he was at the Monetary Fund in Washington. And then he came to Luxembourg, and after [incompr.], the President of the Banking, but he was also my counselor.

Then Romain Bausch. He was then much more in charge of the satellite system introduced. It was also the first time that we had satellites system. That's also very important for the banking sector..

0:37:34.470 --> 0:37:36.690

Matteo CALABRESE

What type of satellites? How did this satellite system work?

0:37:38.920 --> 0:37:40.770

Jacques Santer

Yeah, now it's the biggest company of satellites, it survived. Romain Bausch was in charge of this and he became president of the [incompr.] afterwards, as I left.

So, we have a small team who was about these..

Well, not very important, but since we have very competent and ...Mersch, you know, he became director of the European Central Bank. It was the same.

And then we worked on the development of the fund sector in the 1980s.

0:38:39.30 --> 0:38:42.460

Matteo CALABRESE

Well, let me just ask one thing more about the 1970s, no? So I checked at the statistics for the investment fund sector in Luxembourg in the 1970s. So this was growing like, numbers, like assets.. growing, growing and then it starts to decline. You know, it started to decline concurrently with the Thorn government?

0:39:5.470 --> 0:39:5.750

Jacques Santer

No.,,

0:39:6.330 --> 0:39:8.680

Matteo CALABRESE

So no, no, it's was not like that it was caused by him, but like he was just at the same time, you know, it was the...

0:39:15.520 --> 0:39:21.670

Jacques Santer

Is that ..It was the Thorn government...you must be aware that also in the Thorn government we have Mr. Elvinger..

0:39:30.320 --> 0:39:33.830

Matteo CALABRESE

..Exactly..Pierre Elvinger

0:39:35.400 --> 0:39:37.610

Jacques Santer

Not Pierre Elvinger...

0:39:41.60 --> 0:39:44.190

Matteo CALABRESE

And Paul, Paul. Yeah.

.

0:39:50.140 --> 0:39:55.30

Jacques Santer

Paul, right. So he was Minister of the economy.

0:40:2.990 --> 0:40:20.60

Matteo CALABRESE

And then now you know, like I'm asking this because the lowest point.. Like in 1978, there was the lowest point.

0:40:26.880 --> 0:40:27.460

Jacques Santer

Yeah, you're right because that was the starting point of the decline of the iron and Steel Company and there was a decline that was the same time.. it started in 1977-1978.

And then came the government of Pierre Werner again. And I was Minister of Finance in this government.

0:40:57.200 --> 0:41:1.80

Matteo CALABRESE

Before, I was just curious like about what you think. Like here, even your personal experience about that time. 1978 ...because this year is kind of important for Italian people because in 1978 Moro, the Prime Minister, was kidnapped and killed by this terrorist group.

So in Italy and I think in Europe, in France, there was some kind of red scare, you know, like people were a bit worried for a possible turn towards like extreme left events, you know, someone said...

0:41:41.960 --> 0:41:42.400

Jacques Santer

Yes, of course there would be a huge.. important movement also from the unions and so on.

0:41:50.440 --> 0:42:0.350

Matteo CALABRESE

And then during those years in Luxembourg, there was like a government with for the first time, like without the CSV, you know, so your party. So they were just like the Democrats and the Socialists. And do you think somehow investors could be a bit scared of this?

So they were investing less in Luxembourg because they were worried like for example, that they could raise the taxes..

0:42:24.160 --> 0:42:31.190

Jacques Santer

I must say, international speaking, it was also a difficult situation, not only Luxembourg but also in other countries..not only in Europe, but also in the United States and so on.

It was a period was not very good for making affairs, I must say .. then therefore we have to

start a new niche and that was the reason why we worked much more on the financial..  
It was because the steel sector was {incompr.} It was sending after the plan of Davignon.  
That was a good plan for the steel sector and coal sector and say, yeah, it could survive our  
sector. Due to the [incompr.] plan and.. but nothing to say about the financial sector, the  
financial sector, of course the investors were much more reluctant, at this time. Not only here,  
but also in the other countries.

0:43:46.830 --> 0:43:49.420

Matteo CALABRESE

Let me ask just last thing about this period. So between 1975 and 1979, you were at the  
European Parliament.

0:43:59.530 --> 0:44:0.160

Jacques Santer

Yeah.

0:44:0.280 --> 0:44:12.500

Matteo CALABRESE

And do you recall any debate, discussion like, I don't know questions about the financial  
situation in Luxembourg at that level?

0:44:12.620 --> 0:44:27.930

Jaques Santer

Well...What was the main discussion we had at this time in the European Parliament was about  
the automobile industry, and so [incompr.] Stevens. and she has as the main industry in the  
European countries. In Germany, for instance, was a also in Italy and so on.

That was very important and but I cannot remember, that we have any attacks from our  
partners in the European Union.

It was much more centred, focused on the industrial sector. Automobile industries.. That was.

0:45:1.790 --> 0:45:4.680

Matteo CALABRESE

Let's stay still at the European level. You know, like in between the 1970s and the 1980s, there  
were these two big financial scandals, you know, the IOS...Cornfeld...

0:45:15.810 --> 0:45:16.760

Jacques Santer

Yeah.

0:45:16.950 --> 0:45:19.830

Matteo CALABRESE

And the Italian one...Banco Ambrosiano..

0:45:20.280 --> 0:45:25.300

Jacques Santer

[incompr.] we developed at this time first we were...you said it rightly, this Ambrosiano bank and so on...with the Vatican we have many problems because it was Vatican who was in..troubles.. big difficulties with the Vatican in Rome at this time. I myself went to the Pope, John Paul the 2nd. That's his time because he wanted to make a visit here in Luxembourg and the main...in my view, the main responsible for the disaster of Ambrosiano was American Cardinal...

0:46:16.810 --> 0:46:18.20

Matteo CALABRESE

Ah Marcinkus?

0:46:18.120 --> 0:46:29.330

Jacques Santer

[nodding].. and so I convinced support..that this cardinal has not to be in the suite of the pope here in Luxembourg..

0:46:29.410 --> 0:46:38.180

Matteo CALABRESE

Ah this is a bit funny..

0:46:39.160 --> 0:46:44.60

Jacques Santer

Ah that's it for the little history. I was there in, along with this official visit with my wife. It's his time to inform the pope that some people were not very welcomed.. And that's was alright. But we had many problems with the bank of Vatican. Therefore with Ambrosiano collapsed. That was \$250,000 at this time and [incompr.] we recovered. So we were clean in this thing, but the consequence was that we created because there was also the evaluation in Belgium.

The IML with Pierre Jaans – he was in charge of that – he a good banker and he was in favour that all these banks, who have sits here Luxembourg, but the operation, outside, came under the control of the banking control in outside...So it's the Arabs..Arabian banks [incompr.] Boulevard Royal.. See, we are no more the eight years [incompr.] But the main operations were in London and in the Arabian countries... We say that's no more our things to go here.. They have to go to the London Bank...Central Bank. So we make some movement here.. So there were some movement of banks became [incompr.] and so were transferred in other countries where the operation process.. and the German banks, here..is in March..some merging..

Well, and then came that was the most important for the for financial sector. That was that, the initiative of Europe, it's the directive for the financial sector, for..how do you call it? There was another name..

0:49:54.690 --> 0:49:57.930

Matteo CALABRESE

UCITS?

Yeah, I just want to ask.. because the directive was from 1985, no? But in 1983 there was the first law for investment funds here...

0:50:13.310 --> 0:50:13.650

Jacques Santer

Yeah... that was here.

0:50:13.830 --> 0:50:16.990

Matteo CALABRESE

Exactly. Do you have any comments , anecdotes about it?

0:50:17.0 --> 0:50:17.530

Jacques Santer

It was due to the situation at this time, but the directive is going much much wider and therefore we said we have to transfer, to modify our legislation to the European..and there we were in competition with London who makes the same and we were the first..

0:50:58.560 --> 0:50:59.700

Matteo CALABRESE

I see you are proud of it..



0:51:1.350 --> 0:51:4.90

Matteo CALABRESE

[incompr.] I am still now proud of it.

0:51:5.460 --> 0:51:10.360

Matteo CALABRESE

This is the 1988 law..but the one before? There was already this regulation for funds here, like in 1983 and then, you know, talking about the Elvinger family...it's not easy to find this clearly so far, but do you think that the main architect behind the law, just like the person that wrote technically the law was Elvinger or someone else?

0:51:47.750 --> 0:51:48.520

Jacques Santer

No, no, no. That was our ..we had a team, as I said, for four- five people. Including also one good counselor for me, for myself, it was Edmond Israel.

0:52:4.240 --> 0:52:4.830

Matteo CALABRESE

OK, OK.

0:52:4.840 --> 0:52:5.340

Jacques Santer

He was a..banking..he introduced those services..how do you call it? [incompr.] He was a banker and a good friend, personal friend of mine, because his wife has the same problems as my wife and so she died also. So we had some common..

0:52:36.80 --> 0:52:37.710

Matteo CALABRESE

The path of life.

0:52:39.510 --> 0:52:40.620

Jacques Santer

It has nothing to do with finance..and he and several from my.. I told you before Kirsch, Mersch and so on...So you think as the main operator and of course we have also some lawyer we have to..

0:53:6.590 --> 0:53:9.940

Matteo CALABRESE

Do you remember any names?

0:53:10.300 --> 0:53:11.400

Jacques Santer

That could be Elvinger and Hoss...and others...that was...umm he was not still inside..it was these companies..

0:53:27.340 --> 0:53:42.710

Matteo CALABRESE

Just because we have mentioned him like Elvinger... what do you think about his family if you have a comment, they were important for the financial history of Luxembourg?

0:53:42.860 --> 0:53:44.30

Jacques Santer

They were lawyers...My son needs now...He's much younger. He's associate with Hoss. Hoss is a good friend of mine because we were in the same school year at the same university. So I know him very well, and he is a good lawyer and, you see, Luxembourg is, as I told you, a small country..that was an [incompr.] For instance, to tell you, all the prime ministers here in Luxembourg – now except the last one Xavier Betterl, he is much younger – so we were in the same *cabinet d'avocats*, double car and from Tony Biever, who was a great patron. So I was there at the same time with Gaston Thorn and Pierre Werner, was the first *stagiaire* in the lawyer.. and came myself and Gaston Thorn.. all the Prime Ministers.. was a signal..[incompr.] That's what you have to know about Luxembourg ..you cannot compare as Zucman said, we can stop saying like...

0:55:31.590 --> 0:55:35.20

Matteo CALABRESE

Ok, I think you answered all my questions. Well what do you think about this Zucman's passage [in the script given to him] What's your..?

0:55:45.820 --> 0:55:47.910

Jacques Santer

It astonishes me.. not very...that's a real about your life... because he has to see... I know what he said and I have...I make some times strong request again this..

0:56:9.960 --> 0:56:10.330

Matteo CALABRESE

His book?

0:56:10.490 --> 0:56:14.250

Jacques Santer

He said that we are..uh, an offshore platform? But what does he say about D[incompr.] in the US then? That's a greater platform than Luxembourg here.

0:56:27.150 --> 0:56:31.830

Matteo CALABRESE

But he is French, he is European, so he's more interested in what's happening here..

0:56:41.190 --> 0:56:41.440

Jacques Santer

Yeah...and then he said...the European..the function of the institutions..also true.

That's how many other countries make it a veto. Luxembourg made once a veto.

0:56:59.900 --> 0:57:0.740

Matteo CALABRESE

What do you think about this?

0:57:2.110 --> 0:57:5.380

Jacques Santer

Once a veto, because that was myself.

0:57:7.90 --> 0:57:26.410

Matteo CALABRESE

And about what?

0:57:27.990 --> 0:57:30.780

Jacques Santer

That was about.. as the European Community wanted to introduce an harmonisation of fiscality.. and there must not success ... as the only one I always..

0:57:30.790 --> 0:57:36.650

Matteo CALABRESE

When that happened?

0:57:37.470 --> 0:57:38.200

Jacques Santer

So it was in 1988 or something like that.. I was always at this time it was Margaret Thatcher, I was the Prime Minister. And she was much more against the fiscal harmonisation as myself.

Our idea was always if all the other platforms..[ring of Santer's phone and call]

[final chatting and greetings]

*The author is responsible for any mistakes in the transcripts of the recorded interview sessions.*