

Whitepaper on fostering the competitiveness of Spanish capital markets

January 2024

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0 Objective of the report

The aim of this whitepaper is to propose **measures to increase the competitiveness of Spain's capital markets** and, consequently, to contribute to **strengthening the growth of the Spanish economy**.

The report illustrates with data a current reality of lack of size and activity deficits that hinder the capacity for growth, investment and innovation of the main agents participating in the Spanish capital market, especially market managers or investment services firms. The conclusion is that **Spain needs to boost its capital markets and align the securities industry to the size and potential of its economy**.

These objectives are, shared within the EU, by means of the Capital Markets Union (CMU) and its successive action plans, which seeks to provide a development framework for European capital markets.

In recent years, the CNMV has introduced a considerable number of measures to facilitate and encourage the use of securities markets by a greater number of participants without neglecting the necessary investors protections. It is fair to recognize this effort, which is in line with the objectives of this report, but it is not enough. It is necessary to take measures that, in many cases, go beyond the powers and tasks of the supervisory body.

In this regard, we welcome the project recently submitted by the CNMV and the Spanish Government to the European Commission entitled "Capital markets for a vibrant and sustainable Spanish economy and corporate sector", which the OECD has already started to implement.

The aim of the project is to strengthen the Spanish capital markets as a means of financing the transition of Spanish companies to a sustainable economy, in addition to boosting the use of green financing instruments. All this with the overall objective of increasing competitiveness and contributing to the achievement of greater growth and resilience of the Spanish economy.

The **value of strong and reputed stock exchanges and financial intermediaries is enhanced with a coherent regulatory and fiscal environment adapted to the competitive requirements of international capital and investors**. The benefits are well known:

- **contributions to the financing** of companies of all kinds.
- more **opportunities for all investors**, including retail investors, and greater economic stability through financial diversification;
- **pressure on public finances reduced** by improving private investment and risk sharing;
- **additional wealth creation for society**, e.g., a complement to public pension systems;
- greater focus in transformational challenges (**sustainability and digitalization** in particular);
- **best practices of companies promoted in terms of governance transparency, equality, respect for the environment and job creation**;

- Wider and **internationally** diverse shareholder base, greater ability to attract management talent and capacity to grow internationally.

There is evidence that **countries with more advanced stock and capital markets manage tend to “generate” bigger and more powerful companies and in turn stronger economies.**

Fostering the activity and size of Spanish capital markets requires strategic actions. In this respect, **this Whitepaper presents an exhaustive set of proposals** of varying depth which, in general, are not complex to implement and in many cases are **already in force in other comparable European markets**, so that their introduction would allow Spanish issuers to compete on a more equal footing with issuers from other European Union countries, reducing possible incentives to relocate companies.

These measures - of both a legal and fiscal nature - are ultimately aimed at **building a more competitive domestic capital market** that more effectively supports the demanding challenges of convergence and transformation that the Spanish economy faces.

Collaborators in the elaboration of the Whitepaper

For the **design, analysis and preparation of this Whitepaper**, BME has counted on the **collaboration of Deloitte Legal and Monitor Deloitte**, who have actively participated in the production of this document.

In addition, during the preparation of this report, **the opinions of the main financial authorities and a large number of participants and players in our capital markets have been sought**, as shown in the following list. Although numerous contributions have been collected, the final drafting has been the responsibility of BME, which is ultimately responsible for its content.

- Abante Asesores
- AEAT
- AEB
- AIREF
- Alantra
- Banco de España
- Bank of America
- Citigroup
- Clifford Chance
- CNMV
- Cuatrecasas
- DG Tesoro
- Emisores Españoles
- FEDEA
- FinReg360
- Garrigues
- Goldman Sachs
- IEA-FEF
- Inverco
- KPMG
- Linklaters
- Morgan Stanley
- Panza Capital
- Pérez-Llorca
- Pontegadea
- Renta 4
- Spain Investors Day
- Uría Menéndez

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1 The importance of capital markets and the competitiveness deficits that limits the convergence of the Spanish economy

Capital markets have developed extraordinarily in Spain since the first Securities Market Law in 1988. Their contribution to economic and social progress as well as to the creation of large multinational groups has been truly relevant, especially until the financial crisis of 2008 and the subsequent debt crisis in the Eurozone.

One of the main contributions of the Spanish Stock Exchange to the growth of the economy has been in the field of the internationalization of businesses and the external competitiveness of the Spanish corporations, whose exports, in nominal terms, have recorded the highest growth between 2012 and 2021 compared to the most powerful economies of the Eurozone (Germany, France, Italy, and the Netherlands). And the data from 2022 and 2023 seem to confirm this positive trend.

Another significant contribution of capital markets to the dynamism of the economy is their ability to provide substantial amounts of diversified financing at all times and for all types of companies. This characteristic has been decisive in solidly driving Spanish growth in times of prosperity and also in financing and restructuring significant parts of the economy in times of crisis, as recorded in the last two decades.

In recent years, there has been a loss of weight and presence of our capital markets on the international scene, with an insufficient contribution to improving the competitiveness of the Spanish economy. This has not been the case in other comparable countries in our environment.

Having strong and attractive capital markets has proven to be a determining factor in accelerating the economic progress of the most advanced countries. In Spain, in recent years, capital markets are weakening compared to those in its surroundings, and this report highlights that many measures can be implemented to reverse this trend.

According to our analysis, we find that there are numerous fiscal and regulatory hurdles or thresholds that affect the current situation and the potential development of our capital markets, which, especially in recent years, have significantly undermined their competitiveness. In some cases, measures have been taken that discriminate against Spanish assets and markets compared to other competitors, favoring regulatory and fiscal arbitrages that, moreover, in a context of European harmonization, make even less sense.

We believe this occurs due to insufficient consideration of the important role that capital markets play in growth, and especially, in doing so more quickly. This valuation of the markets has negative consequences on the way to more effectively take advantage of some significant improvements that are occurring in our economic growth structure, and therefore we understand that it is a good time to act with the right decision and sense.

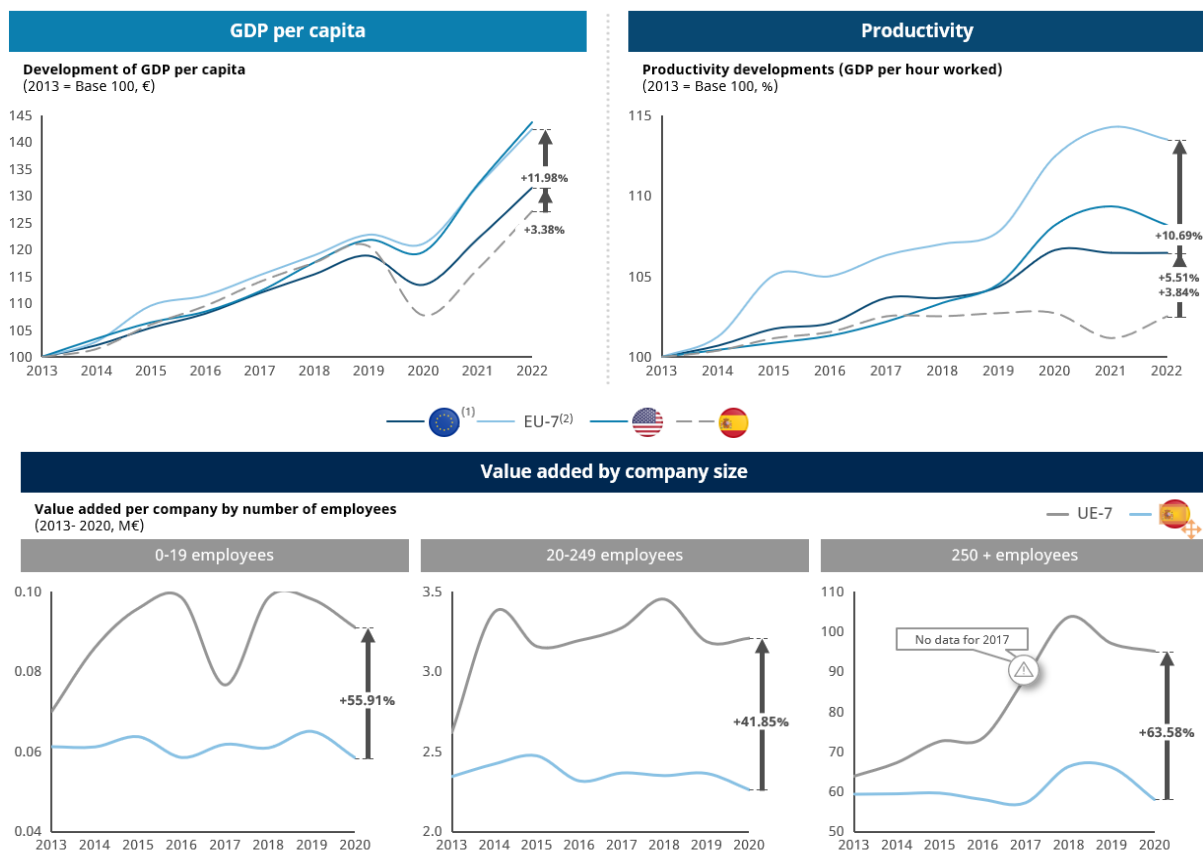
Some notable readings that the data give us about the consequences of this lack of attention to the role of our markets are the loss of interest of national and international capital in our strategic financial assets (our companies); also, in many cases, the scarce or null presence of Spanish capital markets in highly demanded financial products; or, finally, the absence of alternative investment formulas. All these are elements that have allowed other countries in our environment to channel large volumes of investment through their systems, with the positive effects this has on employment, productivity, and, in sum, the internal economic activity of those countries.

Main data from our diagnosis

Despite the economic and social progress of Spain since the last decade of the last century, the levels of convergence with Europe in GDP per capita are below expectations, among other things because our productivity indicators and spending on innovation have a wide margin for improvement compared to the standards of the most advanced countries in Europe.

We need to improve the average size of our business sector and have the necessary investment capacity to successfully complete the process of transformation and reforms demanded by the Spanish economy. In this sense, we believe it is especially important to have the support of a competitive capital market that is attractive for domestic savings and incentivizes the interest of international capital.

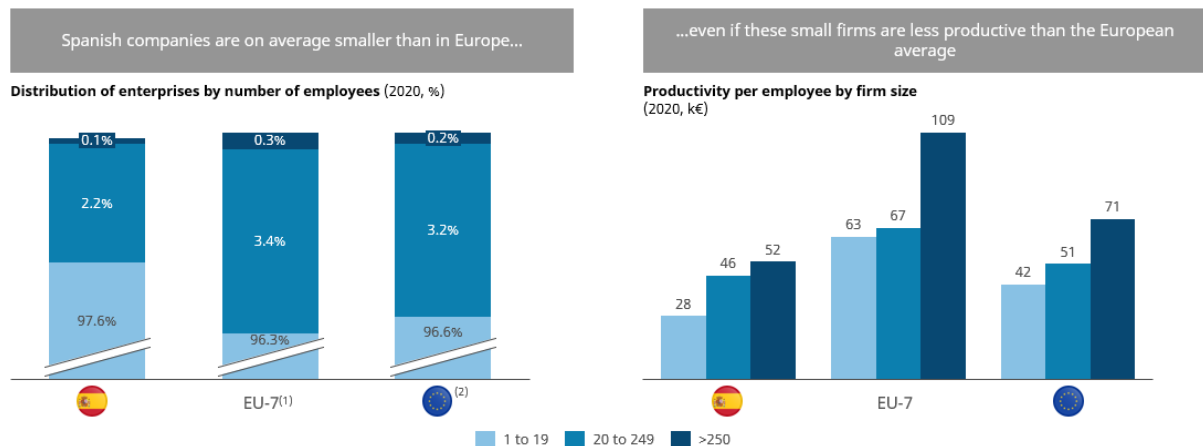
Chart 1 - Macroeconomic convergence indicators



(1) Eurozone; (2) Average of the values for Germany, France, Italy, the Netherlands, Sweden, Ireland and Luxembourg.

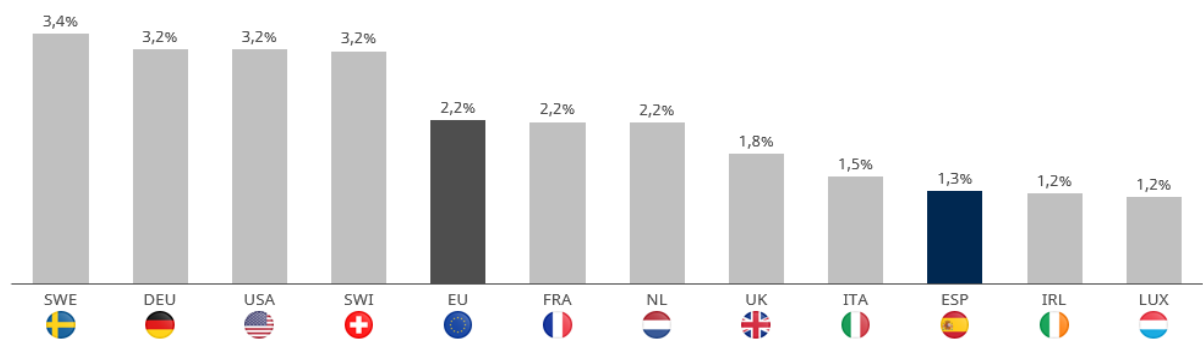
Source: Eurostat, OECD, US Federal Reserve, Swiss National Bank, UK Office for National Statistics

Chart 2 - Company size and productivity



(1) Includes benchmark economies: Germany, France, Italy, the Netherlands, Ireland and Luxembourg; (2) Eurozone.
Source: OECD

Chart 3 - Total R&D investment volume by country



Data as a percentage of GDP (2019)

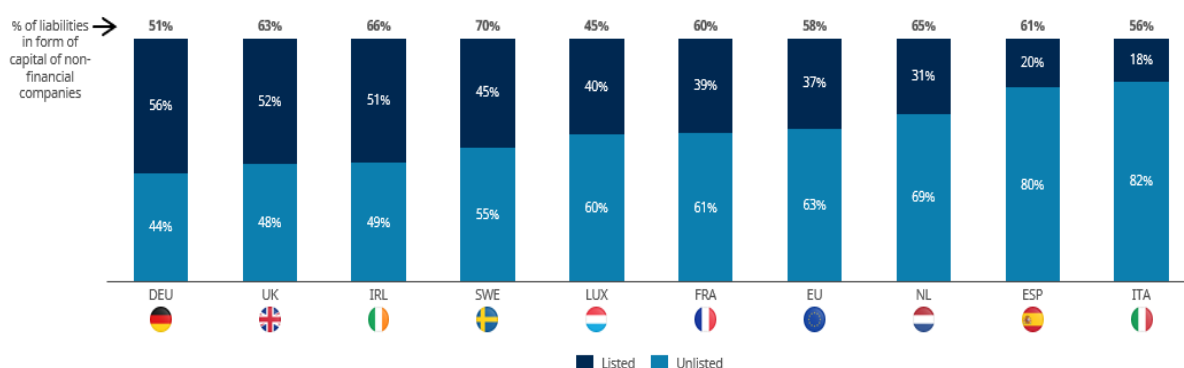
Source: Eurostat (2021), US Bureau of Labor Statistics (2021)

Evidence shows that stock exchanges are the engines of capital funding in the most developed countries. More and larger companies in the public markets are positive differentiating factors for economic growth

In recent years, alternative financing through formulas such as Private Equity have been gaining ground in the country's corporate financing structure. What could be considered a positive element of diversification becomes less so when this growth excludes capital markets.

There are reasons behind this lackluster trend in stock market listings of medium and large companies, such as a high market volatility or the unusually prolonged period. In addition, there are incentives that favor Venture Capital, such as procedures, requirements and administrative deadlines that are less strict, complex and cumbersome than those of any public market transaction. This lack of competitiveness of capital markets should be addressed.

Chart 4 - non-financial corporate financing in the form of listed and unlisted capital



(1) Euro area; (2) Other includes trade finance/suppliers and financial derivatives. Capital structure not available for the United States and Switzerland.

Source: Eurostat, US Federal Reserve, Swiss National Bank, UK Office for National Statistics

The support and reinforcement of capital markets is crucial to accelerate some of Spain's most relevant needs: larger size our companies, higher levels of productivity and a higher international presence and economic influence.

There are recent examples of how the contribution of capital markets to the growth or streamlining of specific industries in Spain has been decisive. And what is more, it has been so in a short time. Among them, three examples stand out: The first is their role in the restructuring and recapitalization of the banking sector; the second is the opening of a market segment such as SOCIMIs, which has revitalized a basic sector of the Spanish economy, the real estate sector; and the third is the rapid development of alternative fixed income and equity markets that have allowed many small companies to undertake their business and expansion plans in a very successful way.

In an environment of unequal competition for capital markets, without having the best possible regulatory framework for our capital markets, there is a risk of falling behind in critical areas for our future economy. This could result in Spain falling behind again in critical areas for the future, such as issues related to sustainability or the digitalization of the economy and missing the opportunity to effectively rely on the markets to achieve more ambitious economic development plans.

This report presents **specific measures that would contribute to reversing the** aforementioned process of **decline in the weight of domestic capital markets**. The set of proposals are grouped into four key categories:

- **Measures to encourage the incorporation of companies into Spanish securities markets:** those that facilitate and promote the participation of Spanish companies in securities markets, including the simplification of admission processes and the extension of tax benefits to companies listed on Multilateral Trading Facilities (MTFs).
- **Measures to enhance the channeling of investment to companies:** aimed at promoting the liquidity of companies and their financing options. Initiatives are proposed to encourage the participation of small investors and the creation of SME investment products or vehicles.

- **Measures to attract the flow of savings and investment in domestic markets, avoiding their relocation:** increase the supply and attractiveness of financial products and services in Spain to strengthen local industry and the local economy. Suggested actions include the implementation of fiscal measures that favor the trading of financial assets in Spanish capital markets under conditions of fair competition.
- **Measures to foster the effective development of new regulated investment and financing ecosystems:** measures and initiatives aimed at implementing new innovative products and markets based on established trends such as sustainability and the development of digital assets, from the outset and under conditions of full competition. Also, flexible financial investment formulas geared towards the long term and a large-scale plan to increase financial education for households.

2 Main observations from the analysis of capital markets in Spain and other comparable economies

2.1 Indicators of size and evolution

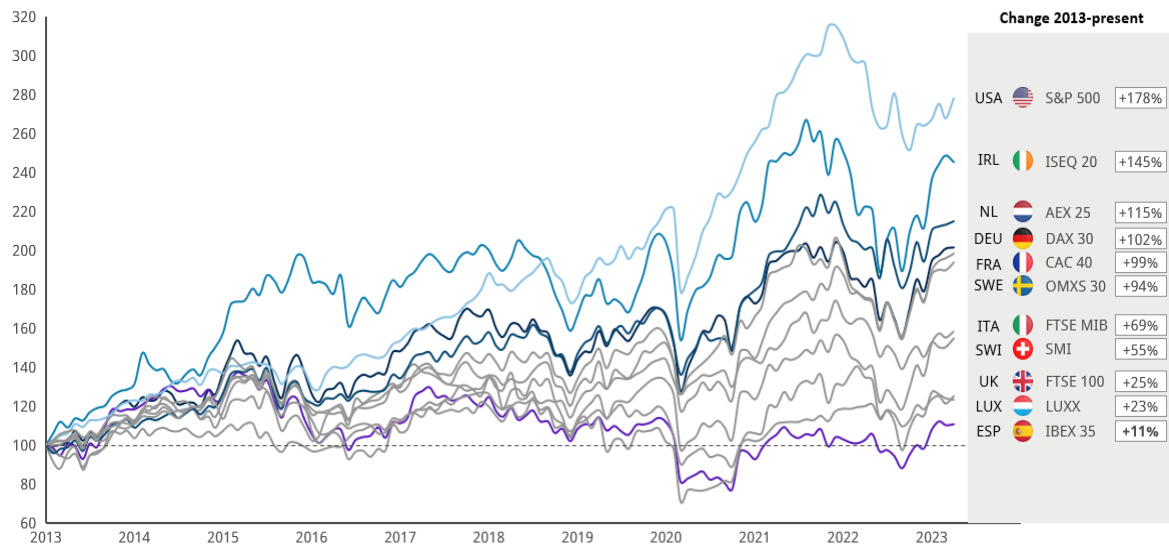
In recent years, Spanish capital markets have been losing relevance and competitiveness at European and global level. The analysis carried out in this section has three main objectives:

- Obtain an objective diagnosis of the current situation of the competitiveness of Spanish capital markets within the European and global environment.
- Identify, as appropriate, the root causes of the loss or lack of competitiveness of capital markets in Spain with respect to the more developed international capital markets.
- Identify the benchmark countries for each market and/or financial product as a guide to highlight the practices that can best bring Spain closer to the objective stated in this report.

For the purposes of the document, seven of the main European markets (**Germany, France, Italy, the Netherlands, Sweden, Ireland and Luxembourg**) and three markets in the rest of the international sphere (the **United States, the United Kingdom and Switzerland**) have been taken as reference points.

Since 2013, the growth of the Spanish IBEX 35® stock market index has been the lowest (+11%) among the benchmark indices of comparable economies.

Chart 5 - Evolution of the main stock market indices

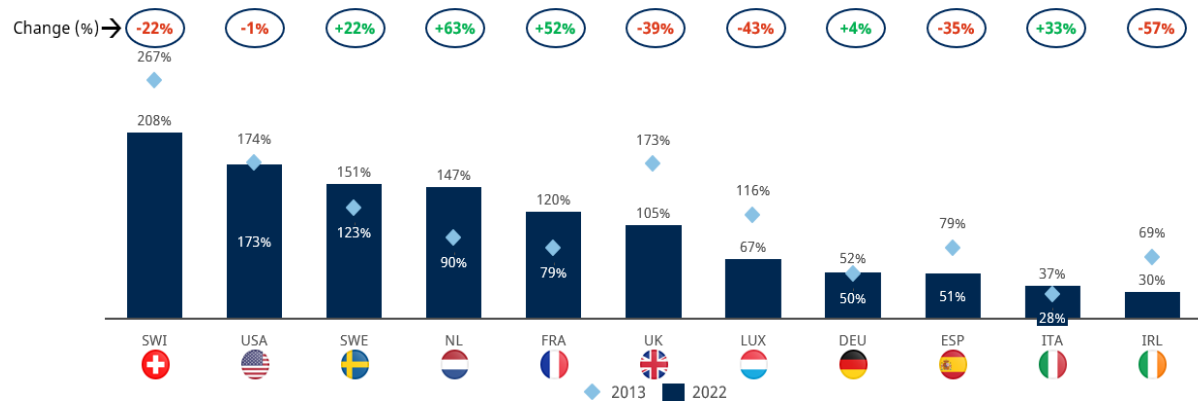


Data from January 2013 to May 2023

Source: Refinitiv Workspace

Spain is one of the countries whose companies are least represented on the stock market in relation to GDP. The stock market capitalization of these companies today amounts to only 51% of national GDP, and over the last decade their representation has fallen by 35%. Moreover, this sharp decline is taking place in a context where GDP has not grown particularly strongly in recent years.

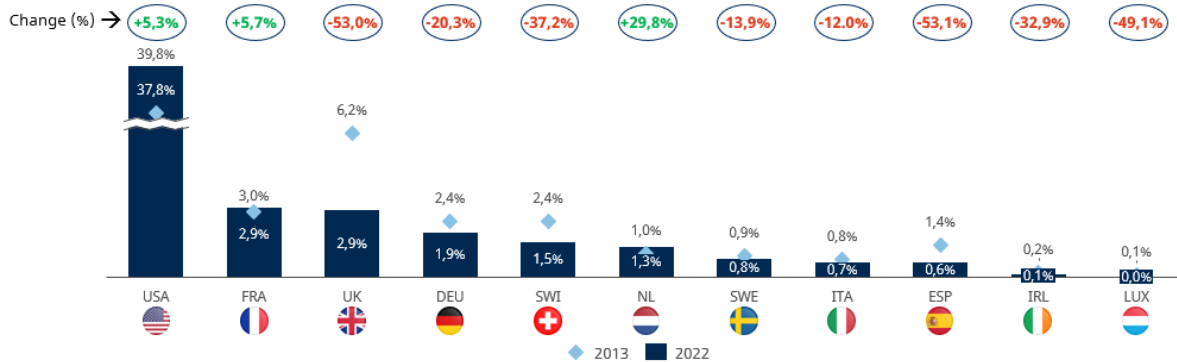
Chart 6 - Evolution of market capitalization as a percentage of GDP



Source: WFE, BME, Euronext, Borsa Italiana, Nasdaq Nordic

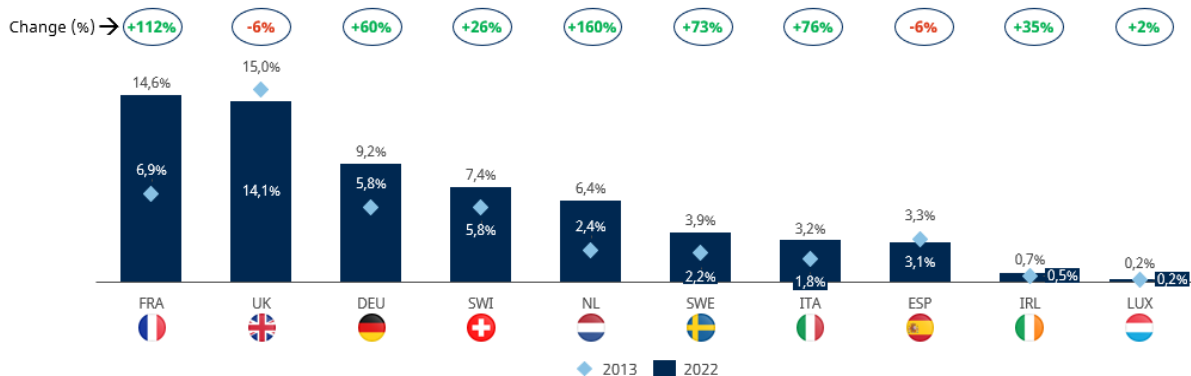
Between 2013 and 2022, the Spanish stock market measured by the capitalization of its listed companies has lost relevance in the world (from 1.4% to 0.6% of the total) and also in Europe, its economic area of reference (from 3.3% to 3.1%), where the main comparable markets of the Eurozone have gained weight.

Chart 7 - Evolution of national stock market capitalization over total world capitalization



Source: WFE, BME, Euronext, Borsa Italiana, Nasdaq Nordic

Chart 8 - Evolution of domestic market capitalization over total EMEA countries' market capitalization

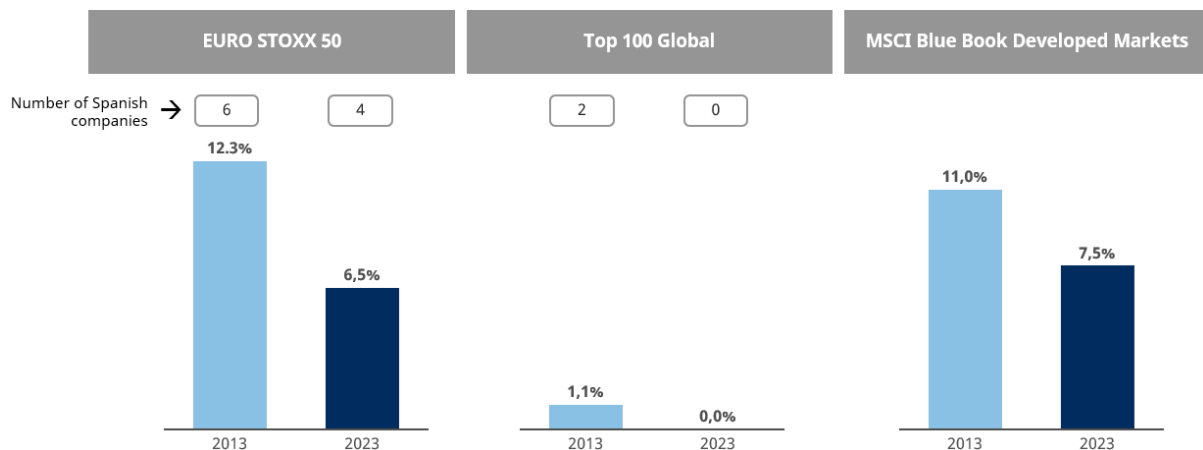


Note: EMEA is the acronym used by different institutions to group Europe, the Middle East and Africa. In the case of stock exchanges, the European area accounts for around 90-95% of the value of listed companies.

Source: WFE, BME, Euronext, Borsa Italiana, Nasdaq Nordic

The **weight of Spanish listed companies in the European benchmark EURO STOXX 50 index has almost halved since 2013, from 12.3% to 6.5%**. The Spanish presence in the Top 100 Global ranking was lost in 2018. In addition, Spain has been the economy that has lost the most weight in the MSCI Blue Book Developed Markets index in the last decade.

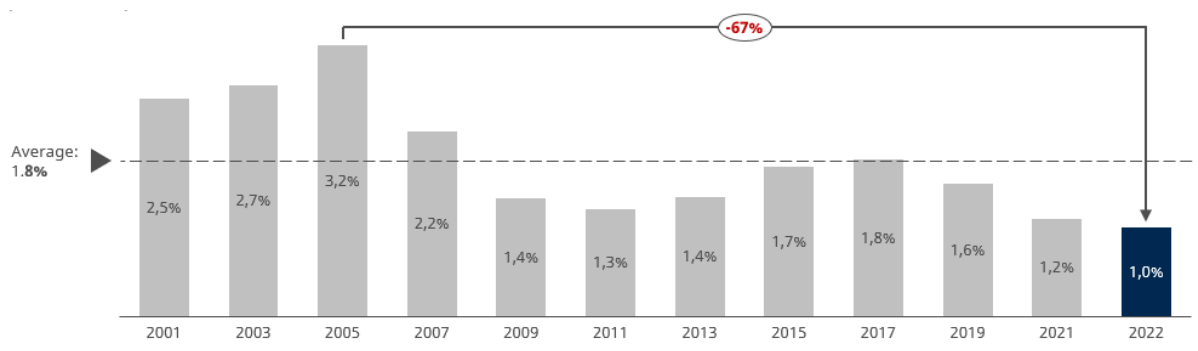
Chart 9 - Relative weight of Spanish market capitalization in different equity benchmark indices



Source: Refintiv Workspace, MSCI Blue Developed Markets

In parallel to these trends, the **weight of listed shares of Spanish issuers in the composition of Spanish funds and SICAVs has decreased by 67%** since 2005, reaching its lowest level so far this century. This data also seems to suggest a lack of incentives to invest in shares of Spanish companies and that the eligible universe has been progressively reduced significantly in recent years.

Chart 10 - Weight of the Spanish equity portfolio of the Funds and SICAVs



Source: CNMV and BME

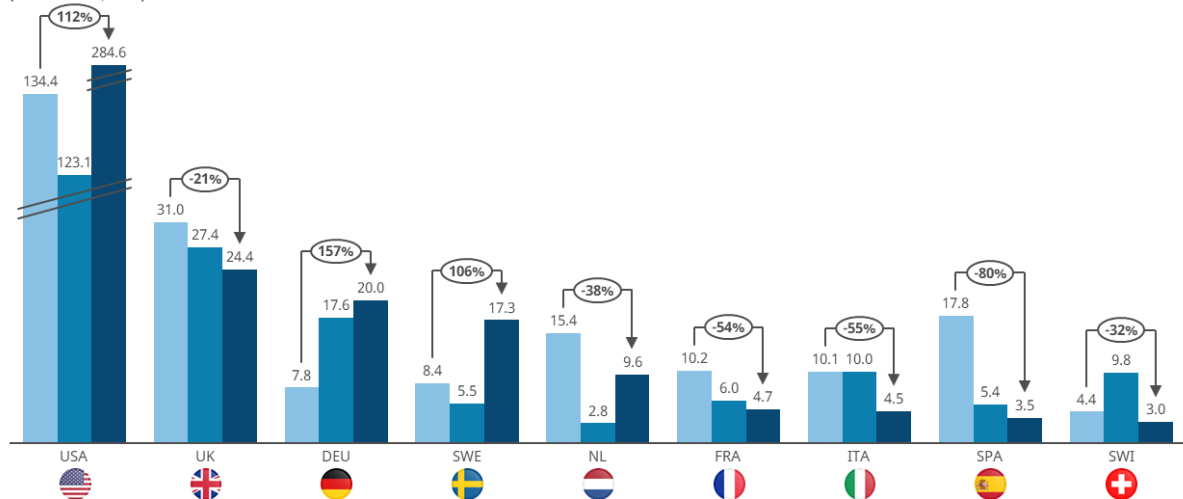
The **total capital raised through IPOs in Spain between 2020 and 2022 has fallen to a fifth of that recorded between 2014 and 2016**, mainly due to the scarcity of medium and large companies joining the Spanish public securities markets. This phenomenon is not exclusive to Spain but is more intense for reasons that point mainly to the small average size of its business infrastructure and, in parallel to the complexity and requirements of the IPO processes compared to financing alternatives such as Venture Capital with far fewer

regulatory controls. In recent years, the Capital Markets Union in Europe (CMU) has denounced and tried to alleviate the problem for European competitiveness and the European economy caused by this worrying decline in the number of companies on the stock market, although with little success to date.

Chart 11 - Capital raised through IPOs in each market

Capital amounts raised through IPO in each market
(2014 - 2022; Bn€)

2014-2016 2017-2019 2020-2022



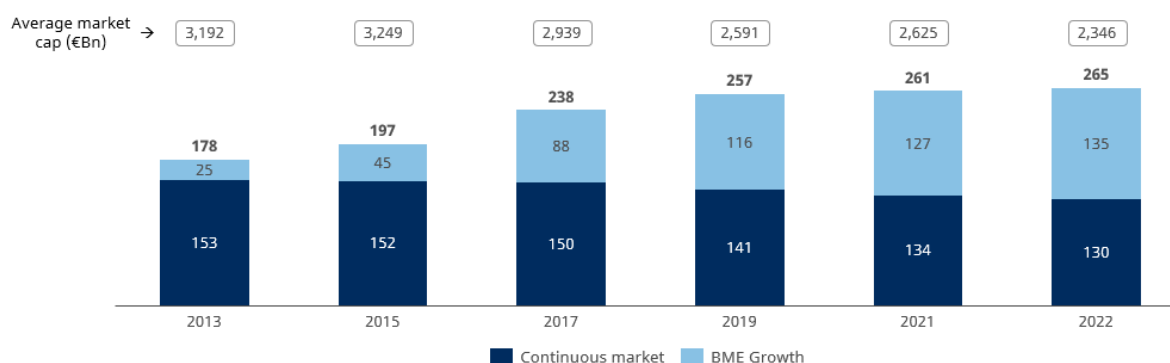
IPOs are counted on Nasdaq Stockholm and on the Nordic Growth Market for Sweden. Luxembourg and Ireland are not shown in the analysis due to the low volume in number of IPOs and capital raised compared to the other markets.

Figures in millions of euros

Source: WFE, BME, Euronext, Borsa Italiana, Deutsche Börse, LSE, Nasdaq Nordic & Nordics

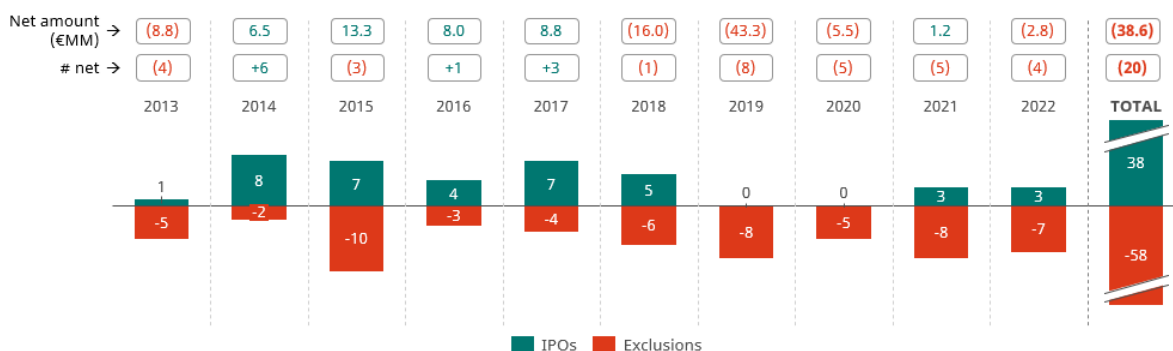
The launch and momentum shown in this decade by the BME Growth stock market segment for small companies has demonstrated the important value of public stock markets as accelerators of business growth but, unfortunately, due to their size, it remains a quantitatively scarce contribution to the needs for productivity convergence and growth that the Spanish economy urgently requires. In the main segment of the Spanish stock market, the net result between delisting's and new incorporations has been persistently negative for five years.

Chart 12 - Evolution of the number of companies listed on BME (Regulated Market and BME Growth)



Source: BME

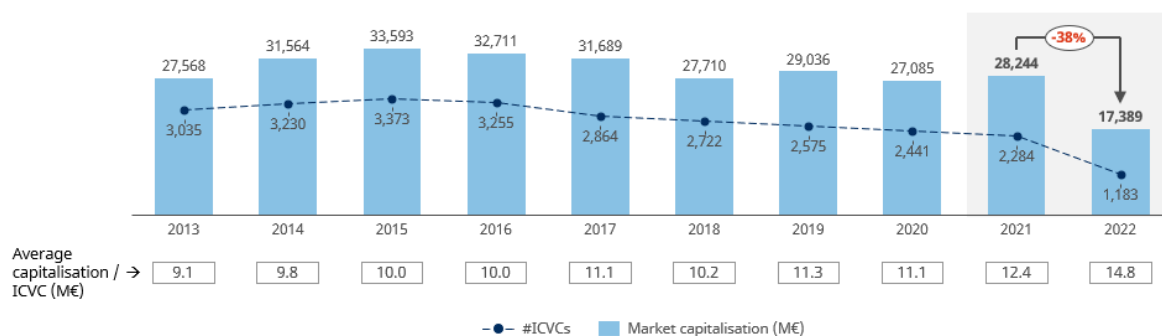
Chart 13 - BME's IPOs and delistings from the Regulated Continuous Market



Source: BME

Some measures have accelerated this loss of competitiveness, such as the legislative amendment L11/2021 which has led to **a significant reduction in the number of Spanish SICAVs (-50%) and their market capitalization (-38%) between 2021 and 2022**. This has led to cases of relocation of these vehicles to countries with more favorable regulations and taxation, such as Luxembourg.

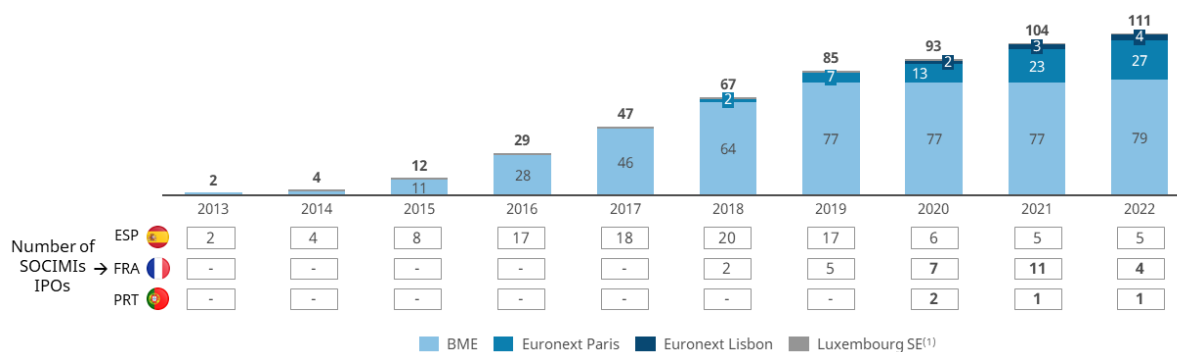
Chart 14 - Evolution of the number of SICAVs in Spain and total market capitalization



Figures in millions of euros
Source: BME

In the case of Spanish SOCIMIs, after growing steadily in number on the Spanish stock markets since 2013, since 2020 fewer seem to join and many of those that do so prefer to be listed on Euronext Paris and Lisbon, mainly due to the greater admission facilities on these markets.

Chart 15 - Number of SOCIMIs domiciled in Spain according to their market of listing

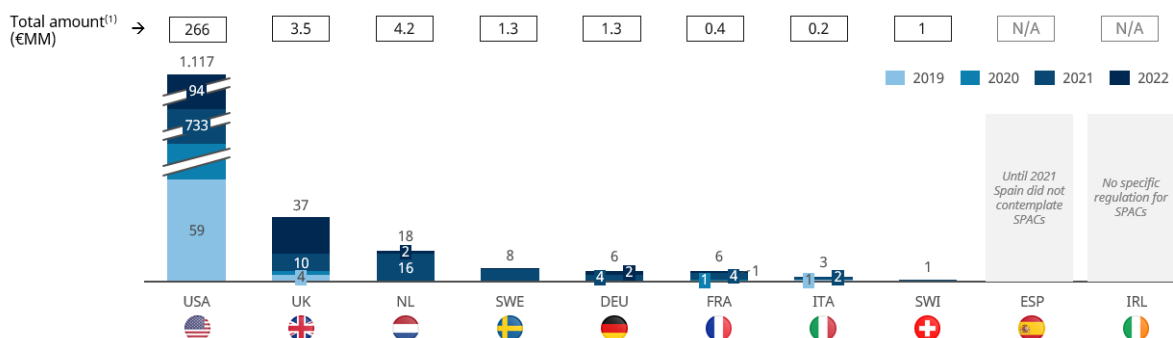


(1) SOCIMI Saint Croix was founded in Luxembourg in 2011 and changed its registered office to Spain in 2014, maintaining its listing on the Luxembourg market.

Source: BME, Euronext

Instruments such as SPACs, designed to encourage the incorporation of companies of a certain size to the stock exchange in a more agile manner, have thrived in recent years in other markets. However, these vehicles have not been developed in Spain due to the legislative delay in regulating the corporate and stock market aspects of this figure, and the lack of fiscal clarity in the treatment of the corporate transactions involved.

Chart 16 - Evolution of SPACs admitted to trading on the global markets

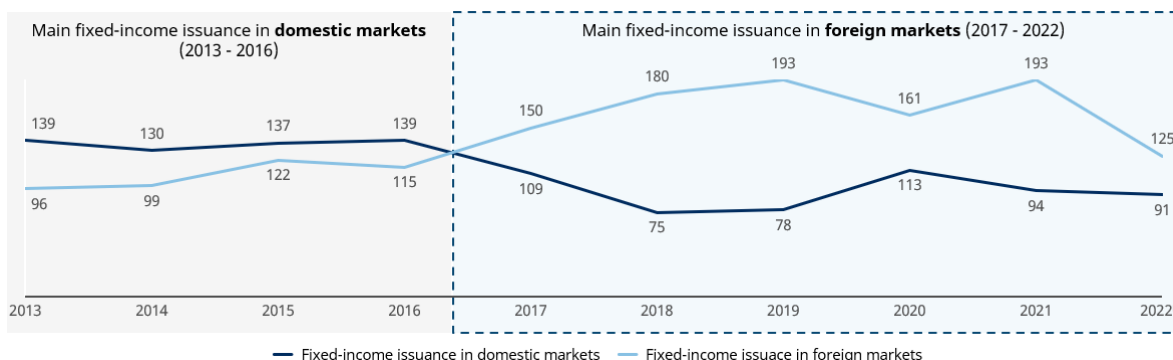


Luxembourg excluded due to data unavailability. Total amount includes overallotments

Source: Refinitiv Workspace

The loss of competitiveness of Spanish capital markets is not confined to equity-related products or instruments. Significant **shortfalls can also be observed in the area of corporate financing through domestic debt issuance**. Thus, the total volume of fixed income from Spanish issuers has remained stable since 2017 but such issues, especially the larger ones, are preferably made in foreign markets due to the greater ease in terms of requirements and terms of issuance processes. Clearly, this limits the development of the financial industry in Spain.

Chart 17 - Evolution of fixed-income issues by Spanish issuers



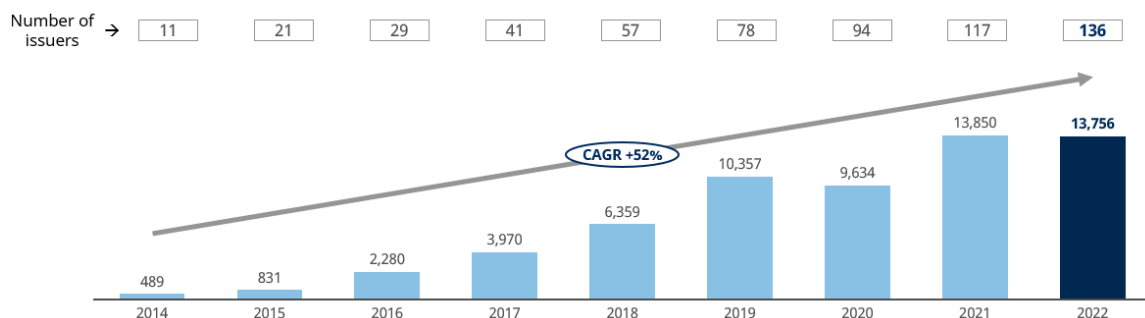
(1) Includes data until September 2022.

Figures in millions of euros

Source: CNMV

As in the case of equities with BME Growth, **the Alternative Fixed Income Market (MARF), created in 2013, has experienced an annual growth in issued volume of 52% and adds around 15 new issuers per year**, but this is still a small proportion compared to the size of the Spanish economy and the number of potential issuers. Encouraging the government to promote the listing of debt issues by public entities could be one of the points to explore in order to increase the depth of the capital markets in Spain.

Chart 18 - Evolution of the number of Spanish issuers and volume of financing on the MARF

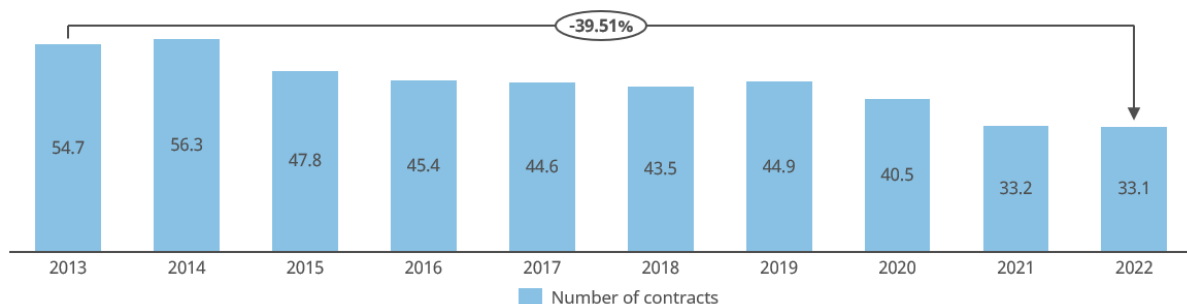


Figures in millions of euros

Source: BME

The **volume of financial futures and options traded in Spain has also undergone** a similar process of **contraction, with a decline of 39.5% since 2013**. These products reflect the breadth and liquidity of the markets and are often widely used by international investors, as well as being indispensable for the management of institutional investors' securities portfolios.

Chart 19 - Volume of options and futures traded in Spain

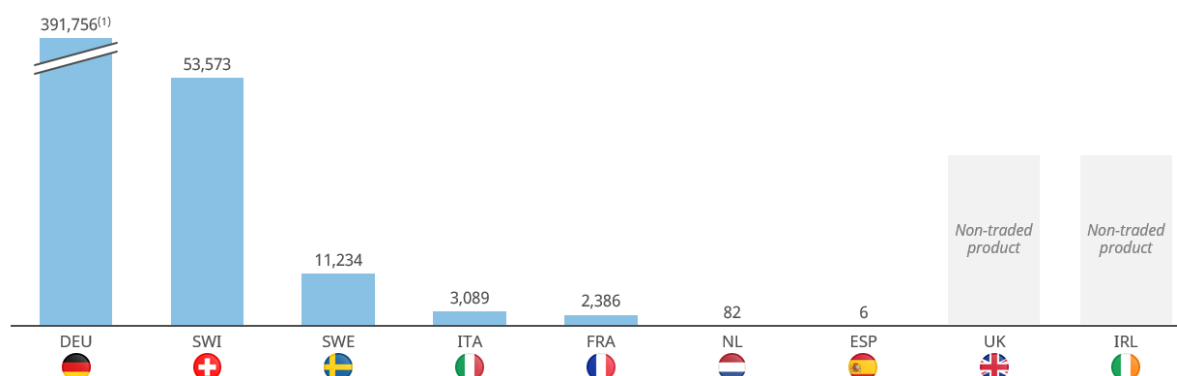


Data in EUR million. Excluding commodity derivatives.

Source: BME

With regards to the development of new investment instruments in Spain, which allow a wider range of investment alternatives to be offered to investors, this is still marginal. For example, investment certificates represent only 0.01% of listed products, mainly due to a tax treatment that is not adapted to the characteristics of what should be a liquid market with a certain depth.

Chart 20 - Volume of investment certificates listed by market



United States and Luxembourg excluded due to data unavailability

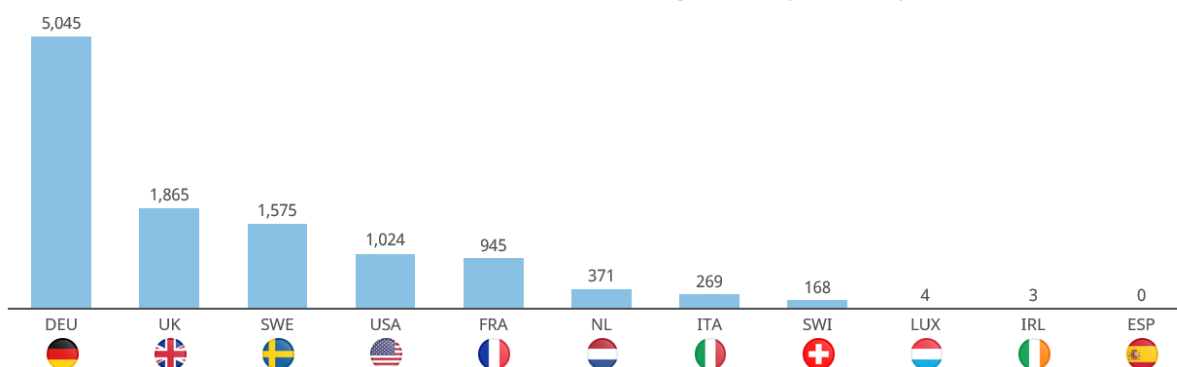
(1) Only data from Börse Stuttgart have been taken because the vast majority of products are also admitted to the market managed by Deutsche Börse (dual listing).

Data in listed units. 2023

Source: BME, Euronext, Deutsche Börse, Börse Stuttgart, Borsa italiana, FESE

Similarly, **Spain also lacks a market for Exchange Traded Products (ETPs)**, which are very popular in neighboring countries. Again, the tax rules applied to them here seem to be an important factor limiting their development.

Chart 21 - Number of ETPs⁽¹⁾ quoted by country



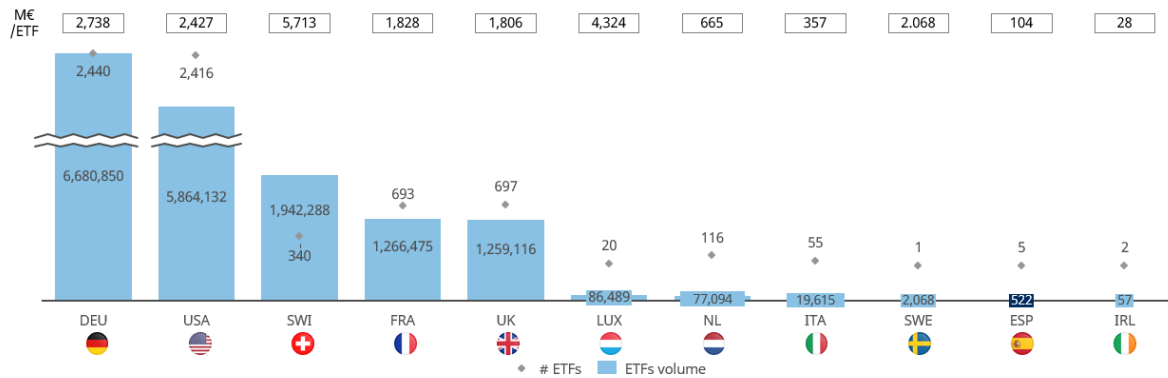
(1) ETPs include ETPs, ETCs and ETNs, (2) European products can be listed simultaneously on multiple markets.

Data in EUR million (2023)

Source: BME, Refinitiv Workspace

The **adverse taxation** that has also been imposed on **Exchange Traded Funds (ETFs)** explains their limited development in Spain, and even their decline since 2017. In contrast, this type of investment fund has grown spectacularly in neighboring countries, especially in the United States, the country with the most developed capital markets.

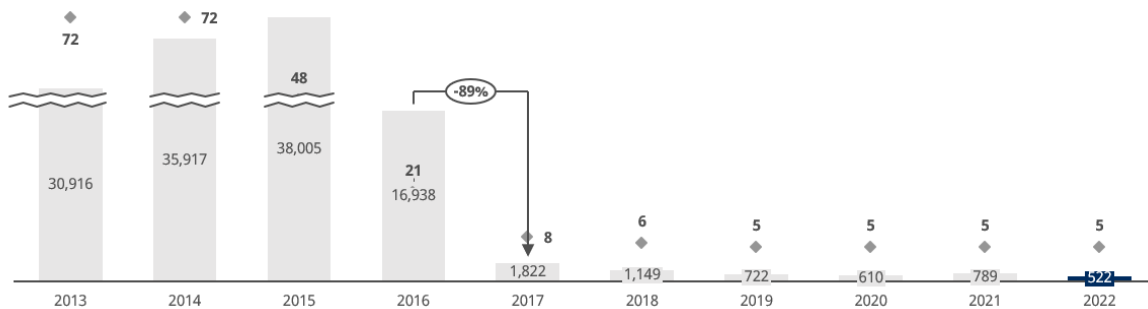
Chart 22 - Assets under management and number of ETFs listed by market



Data in EUR million (2023)

Source: Refinitiv Workspace, BME

Chart 23 - Evolution of assets under management and number of ETFs listed in Spain

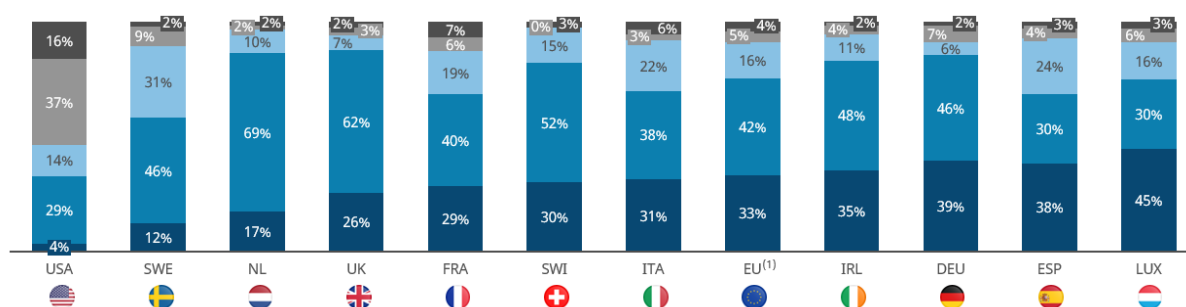


Figures in millions of euros

Source: BME

The aforementioned deficits are also related to the particular distribution of household savings in Spain with respect to the more developed economies of the EU. A supply structure very much centered on the banking channel has **historically contributed to the overweighting of real estate and deposit-type financial assets in the savings and investment portfolios of households. This concentration of demand in this asset class has also had an impact on the reduced development of the supply of other types of financial investment products**, especially because governments have had little incentive to promote alternative long-term investment instruments or formulas. This can be seen in a comparison of the product distribution of household financial savings in Europe. At this point, it would be desirable for governments to try to reduce this gap with Europe by promoting programs aimed at increasing the level of financial education of the population, as well as cultural changes and incentives to ensure that a greater proportion of household savings is allocated to long-term financial products, as is the case in other neighboring countries.

Chart 24 - Distribution of household financial assets



(1) Eurozone; (2) Includes unlisted shares in public limited companies and shares in private limited companies; (3) Includes purchased debt, financial derivatives and other categories not included in the rest.

Data as of 2021

Source: Eurostat, US Federal Reserve, Swiss National Bank, UK Office for National Statistics

Chart 24.1 – Financial Wealth

Financial Wealth (EUR €, 2022)










Source: Eurostat & BCE calculations

In terms of new investment categories, **digital assets are gaining significant prominence in global financial markets**, thanks to increasing digitization and the evolution of *blockchain* technology. The regulation of such assets and markets is undergoing significant changes especially in the EU environment, for example with [the introduction of the Markets in Crypto assets Regulation \(MiCA\)](#).

As has been the case in other markets, **Spain has not** been among the countries that have been advancing **regulation designed to achieve a leading position** as a catalyst for these digital investment flows at the start of this trend. The following table compares the proactive - and favorable - implementation of the MiCA regulatory framework among the different European countries with a view to attracting investment and stimulating the development of a digital asset market in the future.

Table 1 - Comparative Situation: European regulation of crypto assets before the MiCA regulation

Country	Pre-adoption MiCA	Comment
 Spain	No	Prior to MiCA, Spain has only implemented the EU's Fifth Anti-Money Laundering Directive (5MLD), and the CNMV has published Circular 1/2022 on rules, principles and criteria to which advertising activity should be subject when crypto assets are presented as a potential investment object.
 France	Yes	France has had a strong regulatory framework for cryptocurrencies and effective oversight of related activities in place for months now. Prior to MiCA, it already has had specific regulations for the provision of crypto-asset services and the obtaining of authorization and licenses (Article L. 54-10-3 of the French Monetary and Financial Code MFC).
 Germany	Yes	Prior to MiCA, Germany already has had specific regulations for the provision of crypto asset services and a process for obtaining authorization and licensing by BaFin (Federal Financial Supervisory Authority), an established financial regulatory framework.
 Italy	No	It has not had any regulatory regime for authorization and licensing for the provision of crypto services prior to MiCA.
 The Netherlands	No	No prior regulation for authorization and licensing of crypto service provision. It has only incorporated the 5MLD into its legislation.
 Ireland	No	It has only implemented the 5MLD.
 Luxembourg	No	It has only incorporated 5MLD and had a bill to include DLT in financial instruments.

Source: Own elaboration

Annex 5.1. of this report contains the details of each of the size and evolution indicators analyzed, covering: i) the evolution and current of competitiveness level of Spanish securities markets within the European and global sphere; ii) the root causes of the loss or lack of competitiveness; iii) the identification of the benchmark countries for each market and/or financial product.































From the list of indicators analyzed, those considered most representative have been selected for inclusion in sections 1 and 2.1 of this document.

2.2 Comparative regulations of our markets

A detailed comparative regulatory diagnosis has been carried out between Spain and a group of selected countries with certain criteria of competitive affinity in the capital markets environment. For the comparison, indicators or regulatory aspects have been selected whose existence (or non-existence) may help to sway the decisions of investors and issuers in favor of the markets of some countries over others.

The following matrix shows the regulatory aspects analyzed for each of the jurisdictions and graphically represents the result of the comparisons made:

Chart 25 - Summary of comparative regulatory analysis

	 Spain	 Germany	 France	 Italy	 Netherlands	 Ireland	 Luxembourg	 Sweden	 Switzerland	 U. K.
Promotion for companies to join the stock markets										
Promoting market culture										
Preparing for European crypto-asset regulation (MiCA Regulation)	X	✓	✓	X	X	X	X	X	✓	✓
Optionality in moving from an MTF to the regulated market	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
Investment vehicles for investing in domestic SMEs	X	X	✓	✓	X	X	X	X	X	✓
Possibility for the Spanish central securities depository (CSD) to offer custody and settlement of Eurobonds	✓	✓	✓	✓	✓	N/A	✓	✓	X	✓
Securities lending operations of Collective Investment Schemes (CIS)	X	✓	✓	✓	✓	✓	✓	✓	✓	✓
Restrictions on foreign investment in companies	✓	✓	✓	✓	✓	X	N/A	X	✓	✓

Source: Own elaboration

The results obtained in our analysis show that **the specific regulatory framework in Spain undermines the competitiveness of its capital markets, despite having a common starting standard in comparable EU cases**, without prejudice to express recognition of the efforts made in the last two years by the CNMV to encourage and facilitate the use of Spanish securities markets by a greater number of players. In other words, there is still room for improvement in the rules and the way they are applied in practice, balancing the necessary protection of investors with the needs and sensitivities of issuers.

The most relevant differences identified in our analysis are as follows:

- **Promoting the incorporation of companies into securities markets.** Most of the jurisdictions analyzed have implemented measures to promote the use of or access to capital markets, although some have limited themselves to transposing EU legislation

(as in the case of Spain). The cases of Germany, the United Kingdom and Italy stand out as being in the process of developing local legislation for this purpose. Spain also needs these measures and needs to implement them quickly and decisively in order to attract more companies to the markets, accelerate their growth and curb the risk of geographical delocalization of their listing, as well as their debt and equity issuance.

- **Preparing for European regulation of crypto assets (MiCA Regulation).** The EU countries with the most prominent capital markets, Germany and France, carried out legislative initiatives prior to MiCA to regulate the provision of certain crypto asset services, developing authorization and licensing regimes similar to those envisaged in the MiCA Regulation. Spain, if it does not embark on the necessary institutional reaction mechanisms, may once again be left behind at the start of a market open to competition with high growth expectations.
- **Optionality in switching from an MTF to the regulated market.** Spain is, as of the date of this report, the only jurisdiction of those analyzed where there is an obligation for listed issuers to move from a Multilateral Trading System (MTF) to the main segment of the stock exchange (regulated market) when the size of their companies exceeds a certain threshold of market capitalization. BME has already been advised by some issuers of their desire to remain on BME Growth (Spanish MTF) and if that is not possible, their intention to move their listing to an MTF in another neighboring country without this requirement.
- **Investment vehicles and instruments in domestic SMEs.** In several of the jurisdictions analyzed there are examples of vehicles or incentives that encourage investment in SMEs by retail and institutional investors (e.g., France, Italy and the United Kingdom). In Spain such measures are scarce or, on the contrary, are sometimes limitations to such investment.
- **Custody and settlement of Eurobonds by Iberclear, the Spanish Central Securities Depository (CSD).** The impossibility of offering the settlement of Eurobonds by Iberclear until 2022 (following the amendment of Law 41/1999), left Spain for many years at a competitive disadvantage compared to its European peers. The integration of Euroclear Bank into T2S must now be monitored to ensure that no new obstacles arise that prevent the Spanish Depository from participating in this activity on equal competitive terms.
- **Promotion of market culture.** OECD data show that the investment of Spanish households in securities lags behind other European jurisdictions and that there is room for improvement and financial diversification.
- **Securities lending operations of Collective Investment Institutions.** Spain is the only country in Europe that has not developed securities lending operations by CIIIs, despite the fact that this has been insistently requested for the last 15 years.
- **Restrictions on foreign investment in companies.** A comparative analysis shows that a large majority of jurisdictions apply or are in the process of applying restrictions on direct investment by foreigners in sectors that are critical for the nation. Nevertheless, in our view, it is advisable to consider a possible modification of the recent Royal Decree 571/2023 with the intention of incorporating some measures

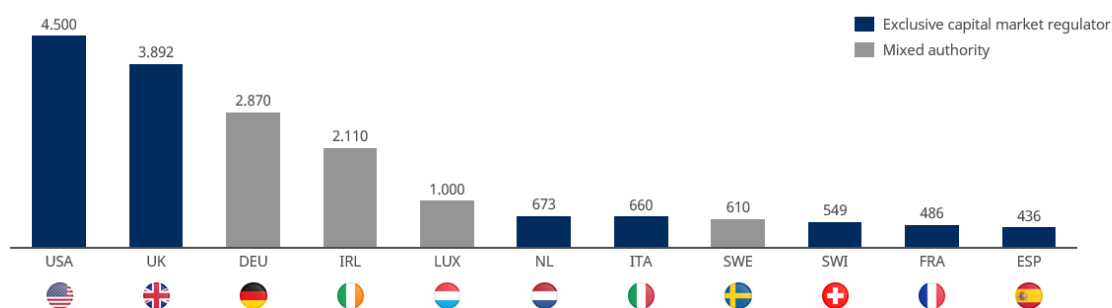
aimed at avoiding unnecessary limitations on foreign investment, as suggested later in this document.

[Annex 5.2.](#) of this report sets out the details of each of the regulatory areas analyzed, covering: i) the applicable Spanish regulatory framework; ii) comparative analysis with other comparable jurisdictions and iii) areas for improvement and proposals for Spain (summarized in chapter 3 of this report).

Resourcing of supervisors

We would like to address here the effective compliance with the regulatory standards governing the securities markets. We refer to the technical and human infrastructure that supports the listing of companies and securities to our capital markets. The administrative side and the processes that require supervisory and authorization measures necessary to safeguard the legality and rights of all parties. These processes, which mostly fall outside the scope of market operators, require a volume of resources that must be adequate to the size and activity of the capital market to which each country aspires. In this respect, and although the data are not strictly comparable given the different responsibilities of the public bodies in charge of regulating and supervising the securities markets, the CNMV in Spain is also at the bottom of Europe in terms of the number of people working to service these markets. This can be seen in the attached graph.

Chart 26 - Analysis of capital market authorities' headcount



Data: # employees

Source: Financial Conduct Authority (UK), Autoriteit Financiële Markten (HOL), Swiss Financial Market Supervisory Authority (SUI), Commissione Nazionale per le Società e la Borsa (ITA), Comisión Nacional del Mercado de Valores (ESP), Securities and Exchange Commission (USA), Autorité des marchés financiers (FRA), Commission de Surveillance du Secteur Financier (LUX), Central Bank of Ireland (IRL), Finansinspektionen (FI), Bundesanstalt für Finanzdienstleistungsaufsicht (ALE)

In this regard, a possible improvement in the structure of resources in the regulatory body should have as priority objective the reinforcement of the competitiveness of the Spanish securities markets in terms of simplifying and speeding up the processes of listings and review of prospectuses and documentation requirements for all financial products issuance (equities, fixed income and derivatives).

2.3 Taxation: competitive aspects that could be improved

An analysis has been made of the tax treatment of certain financial products and investment vehicles in Spain and in different neighboring countries. This comparison of taxes and/or the way they are applied in different jurisdictions allows us to identify potential **tax initiatives** that could be applied to Spanish legislation in order **to improve the competitiveness of the Spanish economy and capital markets**.

The following matrix summarizes the results of our comparative tax analysis:

Chart 27 - Summary of comparative fiscal analysis

	 Spain	 Germany	 France	 Italy	 Netherlands	 Ireland	 Luxembourg	 Sweden	 Switzerland	 U. K
Listed certificates, ETPs: absence of withholding tax	X	X	✓	X	✓	X	✓	✓	✓	✓
Fixed Income; Financial Assets with implicit and explicit returns: no withholding tax on capital gains	X	X	✓	X	✓	X	✓	✓	✓	✓
MTF variable income: capital gains NRI exemption	X	✓	✓	✓	X	✓	✓	✓	✓	✓
MTF equities: dividends; NRI exemption	X	X	X	X	X	X	X	X	X	✓
Spanish equity dividend withholding tax refund procedure: NRI exemption for AIFs investors	X	✓	✓	✓	X	✓	X	✓	N/A	N/A
CIS: Inexistence of Minimum investment SICAVs	X	✓	✓	✓	N/A	N/A	✓	✓	✓	✓
Taxation of digital assets	X	X	X	X	X	X	X	X	X	X
Tax incentives for companies and investors in listed SMEs	X	X	✓	✓	X	X	X	✓	X	X
Absence of the FTT	X	✓	X	X	✓	✓	✓	✓	X	X
Tax incentives for other investment vehicles: SOCIMIs	✓	✓	✓	✓	X	✓	✓	X	X	✓
Tax incentives on other investment vehicles: ELTIF and others	X	X	X	✓	X	X	X	X	N/A	X

Source: Own elaboration

(*) Indicators completed with N/A, in particular "Ret. on FA (coupons)" and "Taxation of ETFs", remain in the table because the comparative analysis has been done on the taxation of other Spanish financial products or other taxes (e.g., corporate income tax).

From the analysis, we draw attention to the following areas where there is room for improvement in a relatively straightforward way:

- **Listed certificates and ETPs:** in Spain these investment products are classified for tax purposes as financial assets with implicit yield and, therefore, the income that personal taxpayers, subject to Personal Income Tax (IRPF), obtain on the transfer or redemption of these products is subject to withholding tax. In other European countries, the income from this type of product is not subject to withholding tax (Luxembourg, Netherlands, Sweden, France, Switzerland, United Kingdom).

For practical purposes, we understand that this tax requirement, which falls on the intermediary agents, constitutes an operational stumbling block that does not facilitate the listing and trading of these products on the stock markets. The withholding tax is a disincentive to supply and demand that restricts or cancels out the potential for development of this large market in our country.

- **Fixed income (Financial Assets with implicit and explicit yields):** in Spain most of these financial products are categorized for tax purposes as either implicit or explicit

yielding assets. The difference depends on the method by which the returns are obtained, such as through sale or redemption (implicit) or through coupons (explicit).

At the time of sale, the return on financial assets with implicit returns is subject to personal income tax (IRPF) withholding. These assets are usually purchased at a discount (less is paid for them at the time of purchase with the promise of receiving a higher price at the end of the redemption period). On the other hand, coupons obtained from products considered as fixed income financial assets with an explicit yield are also subject to withholding tax, as well as the income obtained from the sale of these products in the event that they are not listed on the official Spanish securities markets.

As with listed investment certificates, the application of withholding taxes across the full range of these fixed income products presents operational difficulties for their widespread circulation across markets.

In other European capital markets such as Luxembourg, the Netherlands, Sweden, France, Switzerland and the United Kingdom, this type of product is not subject to withholding tax on the income obtained, which gives them a competitive advantage over Spain.

- **Taxation of ETFs:** in Spain, ETFs, despite being investment funds, do not enjoy the incentive tax treatment that exists for individuals who invest in traditional (unlisted) investment funds, consisting of the deferral of capital gains obtained in transfers or redemptions when there is total reinvestment of the amount obtained in other investment funds.

Practice has shown that the lack of tax deferral of returns in the event of reinvestment makes ETFs less competitive than traditional investment funds, and a regulatory change should be considered to equalize the tax treatment of ETFs.

- **Tax incentives for non-residents on Spanish equities:** in Spain, income derived from the transfer of securities on the main stock market is exempt from taxation for non-resident investors without a permanent establishment in Spain and who reside in a State with a Double Taxation Avoidance Agreement (DTAA) with Spain with an exchange of information clause. However, this excludes securities traded in other market segments (MTFs), such as BME Growth. This exclusion is a disincentive for foreign investment in companies listed in these market segments.

In addition, the requirement that the investor's country must be a jurisdiction with a double taxation treaty with Spain should be reconsidered. For example, this requirement is not established for income (e.g., coupons) from Spanish listed debt. In this respect, the traditional alternative management investment structures of the main private equity funds may be using jurisdictions without a DTAA with Spain.

- **Procedure for the refund of withholdings on Spanish equity dividends:** following the new doctrine of the Supreme Court, EU Alternative Investment Funds (AIFs) are now taxed in Spain at 1% on dividends received from Spanish listed companies, as UCITS funds had been doing.

However, as the tax regulations have not been modified, unnecessary formalities continue to be generated for the accreditation of the right to equal taxation

established in the SC ruling, which could lead to delays in the refunds requested by foreign AIFs and discourage investment in the Spanish stock market.

It should be noted that some of our neighboring countries (Italy, France, Germany, Ireland and Sweden) do not withhold taxes on dividends received by non-resident AIFs.

- **Taxation of Collective Investment Institutions (CIS):** With regard to Non-Resident Income Tax, in accordance with the provisions of the applicable regulations, income derived from the redemption of units in investment funds made on any of the Spanish secondary securities markets and obtained by non-resident individuals or entities without a permanent establishment in Spanish territory, who are resident in a State that has signed a Double Taxation Avoidance Agreement with Spain with an exchange of information clause and which is not considered a tax haven, will be exempt from taxation in Spain.

According to the wording of the rule, only income derived from the transfer or redemption of CIS listed on the main segment of the Spanish stock exchange (regulated market) would be covered by the exemption. In this respect, taking into account that the market segment in which SICAVs are traded is an MTF, the exemption would not apply.

In addition, it is important to highlight the "tightening" with which the tax regime for SICAVs has been regulated in 2021 with the approval of amendments to the minimum investment requirement of 2,500 euros for investors in the vehicle. These amendments, among other things, may be encouraging a relocation of wealth to jurisdictions with less restrictive regulatory and/or tax regimes. This also has a negative impact on the weight of Spanish financial assets in investment fund portfolios.

- **Taxation of digital assets:** as a significant growth industry, digital assets do not have a specific tax regime in Spain, with the general tax rules applying. The lack of a specifically adapted tax regulation in Spain may be encouraging issuers and service providers related to crypto assets to seek jurisdictions with a tax regime that is tailored to this type of new asset class.

In this context, the MiCA regulation, which establishes an approval mechanism for "locally authorized" providers and a transitional regime for operating without a MiCA license, may provide Spain with an opportunity to establish a specific tax regime so that Spain can position itself as an attractive jurisdiction for issuers and service providers at this stage of the industry's development.

- **Tax treatment of companies and investors in listed SMEs (i.e., start-ups):** the recently approved Start-up Law has established a specific tax framework for start-ups in Spain, including reduced tax rates for companies, favorable tax treatment for stock options, tax benefits for founding partners and initial investors, and favorable treatment of carried interest. However, these tax incentives do not apply if start-ups choose to list on a regulated market or trade on an MTF, which may discourage start-ups from listing.

However, other European countries (e.g., Italy, France, Sweden), as well as some Autonomous Communities (i.e., Madrid, Galicia) are regulating tax incentives for investments in companies listed on different types of stock markets.

- **Financial Transaction Tax:** Spain's unilateral implementation of the FTT (outside the EU initiative) may have caused distortions in the trading of Spanish stocks compared to peer companies in jurisdictions without a similar tax. Moreover, its structure affects long-term investors more than high-frequency investors.
- **Tax incentives on other investment vehicles:** in Spain, the main investment vehicles with tax incentives are Collective Investment Schemes (CIS) and Private Equity Entities. European Long-Term Investment Funds (ELTIF), which can invest in equity securities with a capitalization of up to EUR 1.5 billion, do not have a specific tax incentive regime in Spain.

Furthermore, there is no investment vehicle traded on multilateral trading facilities in Spain with an attractive tax incentive regime (following the regulatory amendment included in the SOCIMI regime).

- **Tax incentives for equity financing of companies:** in Spain there is a traditional problem, which is the lack of tax neutrality in the financing of companies through equity compared to financing through borrowed funds or debt (the remuneration of borrowed funds generates financial expenses that are tax deductible for corporate income tax purposes, as opposed to the non-deductibility of dividends paid to shareholders).

This asymmetry in the tax treatment between debt and equity could increase the financial vulnerability of institutions. In addition, it may also have led to a lack of attractiveness for company listings on stock exchanges and reduces inclination towards capital increases.

The Directive known by the acronym DEBRA (Debt Equity Bias Reduction Allowance) aims to correct this scenario by fiscally favoring the equity financing of companies through a mechanism based on the use of notional interest. A tax incentive consisting of a reduction in the taxable base for corporate income tax of an amount calculated as a percentage (notional interest rate composed of the free interest rate plus a risk premium) on the increase in equity, limited for each year to 30% of EBITDA, and on the other hand, a 15% limitation on the deductibility of net financial expenses (in addition to that currently regulated in corporate income tax regulations), with the higher amount resulting from the calculation of both precepts being considered as a non-deductible expense.

Although it was expected that the Directive would be operational by 2024, the parliamentary procedure for approval of the Directive by the member states has been delayed, with no specific deadline for its implementation.

- **Tax incentives for investment in Spanish equities by taxpayers subject to personal income tax (IRPF):** personal income tax regulations do not allow double taxation of dividends from listed shares to be corrected. In the past, personal income tax regulations did allow such correction by different methods, for example, by charging the dividend in full at the marginal rate of the scale and subsequently deducting it from the tax liability, or, alternatively, by means of an exemption of 1,500 euros, which made it possible to correct part of the double taxation suffered.

At least for middle and lower-middle income investors (and not so much for high income investors who are taxed similarly under the previous and current rules), after the elimination of the above-mentioned methods, there may have been some disincentive to invest in listed equities.

In addition, other areas of Spanish tax legislation have been identified which could be subject to modification and which could meet the objectives defined in this document. Among others, we highlight the regulation of a tax deferral regime in the conversion of listed debt into shares on the stock exchange.

[Annex 5.3](#) of this report contains the details of each of the tax areas analyzed covering: i) the applicable Spanish regulatory framework; ii) analysis with respect to other comparable jurisdictions and iii) areas for improvement and proposals (summarized in chapter 3 of this report).

3 List of measures and initiatives to foster the competitiveness of Spanish capital markets

As a result of the analyses carried out, a series of measures and initiatives have been identified that we believe help to strengthen the competitiveness and positioning of Spanish capital markets in the international environment. These measures have been divided or grouped into one of the four categories mentioned below, recognizing that many of them contribute to the achievement of the objectives defined in the other categories.

Encourage companies to join the Spanish stock markets

Measures and initiatives to facilitate and promote the participation of Spanish companies in the securities markets, including the simplification of listing processes and the extension of tax benefits to companies listed on alternative markets:

- [Simplify and streamline the listing process](#): simplification of procedures and requirements in the process of listing companies on the main market of the Spanish Stock Exchange (regulated market) with regard to the requirements to be met by prospectuses, deadlines and documentation requirements.
- [Streamlining and simplifying access to listing on the main \(regulated\) market from other market segments \(MTFs\) where firms voluntarily choose to do so](#): establishment of a simplified and streamlined process that, at a minimum, does not act as a disincentive to firms wishing to do so.
- [Maintain the application of the tax incentives from the "startups" law when companies start trading on MTFs such as BME Growth](#): extension of the tax benefits for companies included in the "startups" law to companies admitted to trading on stock markets for small and medium-sized companies (SMEs) with the aim of encouraging their listing and permanence on the markets and optimizing their financing and growth alternatives.
- [Promote information/communication to companies to facilitate their participation in markets](#): development of more ambitious assistance and training

programs for companies, investors and managers to inform them of the possibilities offered by markets as an alternative for their growth and their sources of financing.

- Eliminate the obligation for companies to move from the MTF where they are listed to the main (regulated) market upon reaching a certain capitalization threshold: the current obligation to change market segment after a certain size of capitalization and the lack of a specific simplified procedure to do so means that there are companies that consider leaving the Spanish stock market to list in another foreign market without these obstacles. Among other things, the extension of the temporary exemptions (for a period of two years for Corporate Governance Report) provided for in the new securities market law (LMV) in relation to compliance with certain transparency obligations is requested.
- Establish and publish monitoring indicators at the different stages involved in a securities issue: calculation and publication of specific KPIs reflecting the evolution and timing of securities issuance processes. Similar to what is done in France and the United Kingdom, and in order to be able to make comparisons.
- Develop new, more flexible markets and segments with lower requirements for SMEs and SOCIMIs: Expanding options for companies and enhancing the competitiveness of the Spanish market to attract new businesses.
- Streamlining product authorization processes in derivatives markets and clearing houses: reducing the time it takes to incorporate these products, as this is an essential factor for their development.
- Exclude exchange-traded derivatives products from the marketing, distribution, trading and marketing restrictions applied to products such as Contracts for Difference (CFDs) which have much looser supervisory and regulatory standards: to increase market safety and investor protection, exchange-traded derivatives have strict supervision reinforced by the use of a Central Counterparty Clearing House which eliminates counterparty risk.
- Establish clear rules and deadlines for communicating dividend distribution policies of listed companies, aiming to enhance the competitiveness of the Spanish derivatives market and, consequently, the liquidity of underlying stocks and derivative products based on them.
- Implementation in Spanish corporate income tax legislation of the measures currently included in the DEBRA Directive Proposal. In particular, i) the introduction of a tax incentive consisting of a reduction in the corporate tax base by an amount calculated as a percentage (notional interest rate composed of the free interest rate plus a risk premium) of the increase in equity, limited for each year to 30% of EBITDA, and ii) the establishment of an additional limitation of 15% on companies' net financial expenditure.

Foster the investment flow to businesses

Measures and initiatives to support companies' liquidity and financing options. Initiatives are proposed, amongst other things, to encourage the participation of retail investors and the creation of SME investment products or vehicles.

- [Develop formulas to encourage the participation of retail investors in Spanish securities markets](#) in line with the recent strategic plan to encourage and improve retail investment in the EU within the framework of the Capital Markets Union (CMU).
- [Promoting knowledge of the Spanish securities markets through the training of the issuers](#): Development of assistance and training programs for companies, their managers and private investors, explaining the search for financing through the securities markets as a financing alternative.
- [Encourage analysts' coverage of listed securities](#): To this end, we propose to work on three lines of action simultaneously: increase to 10,000 million in market capitalization the threshold allowing investment services firms to jointly offer execution services and securities research; to encourage and incentivize from a tax and regulatory point of view the provision of sponsored research services, which have increased significantly in other markets in our environment; and, finally, the non-taxation of VAT on the ancillary service of drawing up investment reports and financial analysis when provided by investment services firms.
- [Ease and encourage investment in listed Spanish SMEs through collective investment vehicles](#): relax liquidity requirements for holding shares of SMEs listed on specialized MTFs (e.g., BME Growth) in the portfolios of ordinary investment funds; and develop appropriate regulation to create new collective investment vehicles specialized in SMEs, e.g., Sustainable SME Investment Funds. Other jurisdictions have specific SME investment vehicles or forms of investment (e.g., in France, Italy or the UK) that have proven to be capital drivers for domestic markets. In addition, as these vehicles are suitable for retail investors, they allow for a broadening of the investor base.
- [Modify the marketing regime for Alternative Investments Funds \(AIF\) to encourage their use as an alternative investment product for private savings](#): this would require not including the old marketing regime in the ongoing amendment of the Collective Investment Schemes (CIS) regulation concerning the CIS of Free Investment (FIL – hedge funds – and SIL – Free investment firms-). The recommended marketing regime is the same as the one that will be applied in the new regulation of European Long-Term Investment Funds (ELTIF), known as ELTIF 2.0.
- [Encourage the listing of alternative collective investment vehicles on regulated capital markets or MTFs](#): the new regulation of ELTIF 2.0, for example, which will enter into force on 1 January 2024, already provides for their admission to trading on regulated markets or MTFs as a valid liquidity mechanism. Also, in the case of the SIL mentioned in the previous section, listing is their natural liquidity channel. This would favor the creation of a secondary market for closed-end investment vehicles.
- [Establish a favorable tax regime for direct investment or investment through collective vehicles, listed or unlisted, that invest in SMEs on the Spanish stock exchange](#). Extend to the whole of Spain the incentives for direct investment in capital increases in SMEs that are already successfully applied in some Autonomous Communities; provide European long-term investment funds (ELTIF) with a competitive tax regime; and transfer the taxation of long-term products such as

insurance companies' or banks' individual long term savings insurance (SIALP) to new types of companies or investment funds that invest in SMEs established in Spain. In addition, the tax incentives of the "start-ups" law for indirect investments in emerging companies traded on BME Growth through an investment vehicle could be considered.

- Extend the tax exemption for non-residents on income from the transfer of securities listed on regulated markets to securities listed on MTFs: promote investment by non-residents in SMEs listed on MTFs by matching the current taxation of investments in companies listed on the regulated market.
- Incentivize market listings as an exit/divestiture alternative for venture capital and private equity firms: adoption of fiscal or other measures to encourage the use of regulated markets or MTFs as a means of divestment.
- **Modify the regulation of Venture Capital Firm – SME (SME-VC) so that they can invest in companies listed on a Multilateral Trading System:** currently, companies eligible for investment by SME-VC cannot be listed on a regulated secondary market or on an MTF (such as BME Growth). This requirement is in contradiction with that applicable to ordinary VCs, which may do so.
- Apply non-residents exemption on dividends received by ordinary harmonized collective investment vehicles (UCITS), also to EU alternative collective investment vehicles (AIFs). Apply the above exemption also to securities traded in Multilateral Trading Facilities: allowing for a swift process of refunds for any excesses made over the withholdings.
- Inclusion in personal income tax (IRPF) legislation of mechanisms to correct economic double taxation of dividends received, either through a system of imputation and deduction in the tax liability, or through a system of exemption of a certain fixed amount, with the aim of encouraging direct investment of family savings in listed equities.

Attract flows of savings and investment into domestic markets and avoid relocation

Measures and initiatives to promote domestic investment and strengthen the local economy and financial industry. Actions are suggested to favor the presence and trading of financial assets in Spanish capital markets.

- Eliminate the FTT (Financial Transaction Tax) as it has been adopted unilaterally by Spain and not in a common way by the European Union: to avoid discrimination of the shares of the main Spanish listed companies against other comparable assets in EU jurisdictions where this type of tax is not applied.
- Develop a comprehensive strategy between the regulator and market players to achieve a real increase in Spain in fixed income issuance volumes by large Spanish companies. The recent reduction of charges for issuers in the verification of prospectuses is a step in the right direction to compete for the large flows of issuance of these assets from Spain, but in our view it is not enough.
- Accelerate the regulation of securities lending operations for Collective Investment Institutions: approval of the Ministerial Order authorizing the CNMV to carry out the regulatory development of securities lending operations by Investment

Funds and other Collective Investment Institutions (CISs). This is a request dating back to 2007, which would increase market liquidity and eliminate a competitive disadvantage for Spanish CISs.

- **Reduce the veto power and regulatory limits on the participation of foreign investors in certain companies:** narrow down the definition of the sectors to which the restriction applies by amending or complementing Royal Decree 571/2023 so that the *ex-ante* administrative authorization regime only applies to investments that could compromise national security.
- **Eliminate withholding tax on assets or listed products in the following cases** (this would be on a par with the existing exemption from withholding tax on many assets with explicit returns. Withholding tax unnecessarily complicates operations for investors and financial institutions, and in many cases discourages and prevents them from being listed in Spain):
 - **Exempting listed products generically known as Exchange Traded Products or ETPs from personal income tax (IRPF) withholding in order to attract their listing in Spain:** these are products recently introduced in the main stock markets that extend investment options for both retail and institutional investors to diverse types of assets or financial instruments. They are already widely present in other major European stock markets such as Germany, France, Switzerland and Italy.
 - **Exempt Investment Certificates listed on official markets from personal income tax (IRPF) withholding.** Products with a large presence and implementation among retail investors in markets such as Germany, France or Italy, thanks to the diversification they offer. They are currently practically non-existent on the Spanish stock market.
 - **Extend to alternative fixed income markets (e.g., MARF) the exemption from the obligation to withhold personal income tax (IRPF) on income derived from the transfer, redemption, exchange and conversion of financial assets with an explicit yield** when the securities are traded on these Multilateral Trading Facilities (MTFs).
 - **Extend to alternative fixed income markets (e.g., MARF) the non-obligation of withholding tax on income derived from the transfer or redemption of financial assets with implicit yield for cases of trading on a Spanish regulated market or an MTF such as the MARF** when the securities are traded on these MTFs. For example, in the case of listed promissory notes.
 - **Eliminate the withholding tax obligation for resident individuals on coupon payments** for fixed income financial assets with explicit yield (bonds and debentures). This withholding obligation makes it difficult for retail investors and intermediaries to operate and, moreover, does not exist for legal entities.
- **Review and harmonization of the tax regime for Collective Investment Schemes (CIS)**
 - **Extend the regime of exempt transfers in investment funds to corporate taxpayers.** Extend the investment made through legal entities.

- Apply the tax deferral regime or exempt "transfers" to ETFs, both for individual investors subject to personal income tax (IRPF) and for those subject to corporate income tax, a measure aimed at encouraging an increase in the direct trading of ETFs in Spain, which are clearly in an unfavorable competitive situation compared to investment funds in terms of taxation.
- Reform of Non-Resident Income Tax (IRNR) to eliminate withholding tax on income derived from the transfer and redemption of CISs listed on Multilateral Trading Facilities (e.g., BME MTF Equity), to bring it in line with other jurisdictions (e.g., Luxembourg) that compete for high-net-worth individuals.
- Rectify the regulatory and tax regime for SICAVs and SOCIMIs. In the case of SICAVs, mainly with regard to the number of investors, which encourages the relocation of large assets to other jurisdictions using similar vehicles, while in the case of SOCIMIs it is with regard to the tax rate applied to undistributed dividends, resulting in a loss of competitiveness compared to other European markets that encourage this figure.
- Reduce to 0% the taxation of Investment Funds and other Spanish CISs in the Corporate Tax, currently at 1%, in order to improve their competitiveness and avoid relocation, transferring the taxation to the shareholder at the time of redemption.
- Extend the exemption from taxation in the Non-Resident Income Tax (IRNR) to capital gains obtained in securities listed on markets for growing SMEs (MTF, e.g., BME Growth). The exemption currently applies only to Spanish securities listed on the main (regulated) market and this would also encourage investment in small and medium-sized companies by non-resident investors.
- Provide a competitive fiscal regime for the different alternative collective investment vehicles regulated by European directives and Spanish law: fully apply the tax deferral regime for exempt transfers to these alternative collective investment vehicles, without distinctions based on their investment policies. For example, with the Free Investment Companies (SIL) and other recently created alternative vehicles such as ELTIF, thus preventing them from losing attractiveness and competitiveness with their European peers.
- Apply the tax regime for Venture Capital Institutions (VCs) to all their investments: do not limit it only to equity invested in assets eligible for the mandatory investment ratio.
- Regulate a tax deferral regime for personal income tax (IRPF) purposes in the event of conversion or exchange of convertible or exchangeable bonds into shares, deferring it until the time of sale of the shares received as a result of the conversion or exchange.
- Improve and broaden retail investors' access to the primary (issuance) and secondary (trading) market for Public Debt (Treasury Bills, Bonds and Spanish Government Bonds)

- To increase the liquidity of the secondary market for Spanish Public Debt. To this end, we would propose that the Treasury include in the activity of Market Makers on Spanish Public Debt the prices in derivatives on the Spanish notional bond.
- Incorporate in Iberclear the offer of settlement through accounts opened with credit institutions.
- To follow up on the current process of joining Euroclear Bank to the pan-European settlement system Target 2 Securities (T2S) of the European Central Bank and to be technically and operationally prepared from Iberclear to offer Eurobond custody and settlement services like any other access from a Central Depository (CSD)-Investor to a CSD-issuer in T2S, i.e. with linkage and settlement at the central bank. This objective has been pursued for 20 years and has not been possible due to various conflicts of interest. Now could be a good opportunity to implement it.
- Possibility of setting up securitization funds (SFs) prior to the transfer of assets and the issuance of liabilities: this would facilitate the listing/market launch processes , avoiding the rigidities derived from the fact that the material execution of the operation and the registration with the National Securities Market Commission would have to coincide in time.
- Amendment of the regulation on Securitization Funds, incorporating the administration and management regime of the securitized assets and the person in charge of the SF: operationally, the amendment of article 26.1b) of Law 5/2015 on the Promotion of Business Financing is proposed.

Encourage the development of new regulated investment and financing ecosystems

Measures and initiatives to promote innovation in the financial sector based on successful models of European partners. Actions are proposed to implement favorable regulations for crypto-assets and innovative investment vehicles.

- Speed up the creation of structures to take advantage of the simplified MiCA regime: promote the creation of national regulations to develop and implement an authorization and licensing regime for the provision of crypto-asset services provided for in the European MiCA (Market In Crypto Assets) Regulation, to take advantage of the existence of a simplified regime and thus attract providers of these services to Spain.
- Establish an incentive tax regime for digital asset activities in Spain, which would facilitate the development of a local industry of reference in the field of financing, trading and custody of this type of financial instruments.
- Streamline the mechanisms for collaboration and promotion of market operators and authorities to develop innovative initiatives in practice. The aim is to encourage and simplify the steps to set up pilot projects or experiments to achieve a better understanding of the modern technologies applied to the Spanish market (AI, Big Data, Digital Assets, DLT, etc.) to be better and faster positioned to offer new services to the national and international financial community.

- **Establish a line of tax incentives in Spain to encourage the transfer or conversion of savings in real assets (especially real estate) into financial savings**, bringing them closer to the proportions in force in the central economies of the EU.
- **Plan for the transfer of functions and knowledge of crypto assets from the Bank of Spain to the CNMV**: development of a "lift law" that allows the transfer of information and knowledge to the CNMV as the entity in charge of licensing under MiCA regulation. Take advantage of the experience of the Bank of Spain in the processing of cases and develop a plan to accelerate this transfer of knowledge and experience from the Bank of Spain to the CNMV on crypto asset providers.
- **Design a national Financial Education Plan aimed at improving the diversification of the savings and investment structure of Spanish families and converge with Europe** in increasing the proportion of family financial savings oriented towards the long term.
- **Adapt regulation and taxation for the creation of an individual investment product in the form of an "investment account" or "umbrella fund" allowing transfers between eligible assets**: this is a loophole that already exists in Sweden and the United States. It would allow diversification of individual savings across a wide range of assets with a tax deferral regime for reinvestment. The operation would be carried out through a financial entity which would channel the orders for the acquisition, subscription and redemption of assets such as shares, short, medium and long-term fixed income, savings accounts, investment funds, ETFs, Investment Certificates, ETPs, life/savings insurance, etc.
- **Promote the development of sustainability analysis and rating services (ESG research) for listed small and mid-cap companies.**
- **Promote the creation of a national roundtable or commission to monitor and continuously improve the competitiveness of Spanish capital markets** to adopt the necessary measures and reforms to prevent Spain from falling off the radar of large international capital flows. This working and thinking group would be made up of experts from public and private entities in the sector.

4 Retrospective simulation of the potential impact of having the right competitive framework: scenarios & final reflections

In this last section we retrospectively present a quantitative estimate of some impacts on specific business volumes. For example, using a simple estimation exercise for the last ten years, we can point out that if some of the market rules we point out in this document had been more aligned with Europe, the capitalization of Spanish listed companies as a whole could have grown at a similar rate to that of the international markets as a whole and reached one trillion euros at the end of October 2023 instead of the €630,000 million that it was (+9.6% compared to December 2013).

Likewise, with a regulation that was more attentive to preserving and expanding our assets, the €28 billion capitalization of the 3,036 SICAVs listed in 2013 would probably not have remained today at around 500 with a value of €14 billion. It is true that part of these assets has been reconverted into other collective investment vehicles authorized in our financial system, but it is no less true that part of the value they represent has gone to places with more favorable legislation, such as Luxembourg.

Another example, in our opinion, is what has happened in recent years with ETFs. In 2015, there were close to 80 ETFs listed on the Spanish stock exchange with assets under management of €45 billion. Following the changes introduced in their taxation since then, their number and value has been diluted to the current 5 ETFs with assets valued at €500 million. According to our calculations, had these tax changes not taken place, the Spanish market would have benefited from the European growth trend and almost a hundred ETFs could be listed today.

We could also quote here the process followed by SOCIMIs, which, after an intense period of growth that took the Spanish stock market from two issuers in 2013 to more than 80 in 2020, the changes in the regulations affecting them have led, among other things, to a decline in interest in this type of company.

Finally, we can also cite as an example of the loss of size and competitiveness of our capital markets the situation of private debt issuance (fixed income). The tendency of many large companies to issue outside Spain has continued to grow. Between 2017 and 2022, if only half of the fixed-income issues carried out by Spanish companies abroad had been executed in Spain, the amount booked in our country in this chapter would have increased by €220 billion, from €560 billion to €780 billion.

There is therefore a significant size deficit in our capital markets, which goes hand in hand with the persistent size deficit of our companies compared to the main Eurozone countries and, in general, to the most developed countries in the world.

In 2017 the Ministry of Economy published a study stating that if the structure of our business fabric converged towards the EU average, our GDP could increase by around 3.3 percentage points. In this structure, **size has an important weight, and we know that the presence of more companies, more investors and more capital in the stock markets is the factor that most rapidly accelerates business transformations individually and in aggregate.**

The CNMV and the Spanish government are currently coordinating with the EU and the OECD to produce a document analyzing and implementing measures to improve investment and financing processes in the Spanish capital markets, along the same lines as this Whitepaper. Before its publication, this report was circulated among the main players, institutions, professionals and companies in the Spanish financial sector to gather their opinions and impressions and to encourage the search for consensus on the objectives pursued and the way to achieve them. Most have expressed their support for the content and timeliness of the Report and, in many cases, have contributed ideas and nuances that have been incorporated.

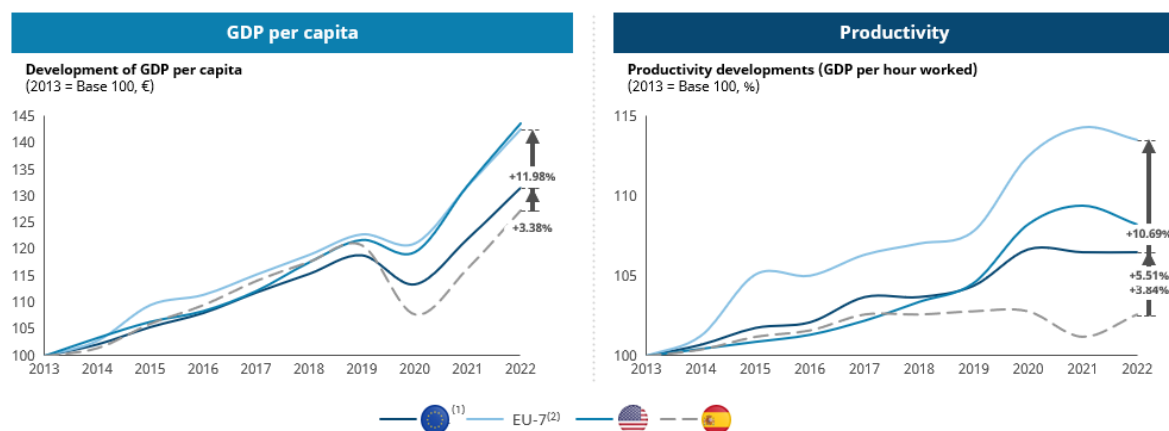
We hope that market players, regulators and legislators can benefit from this report, which summarizes some 60 measures that can significantly help to accelerate the achievement of competitiveness and productivity improvement objectives of Spanish markets and economy.

5 Detail of the report (Annexes)

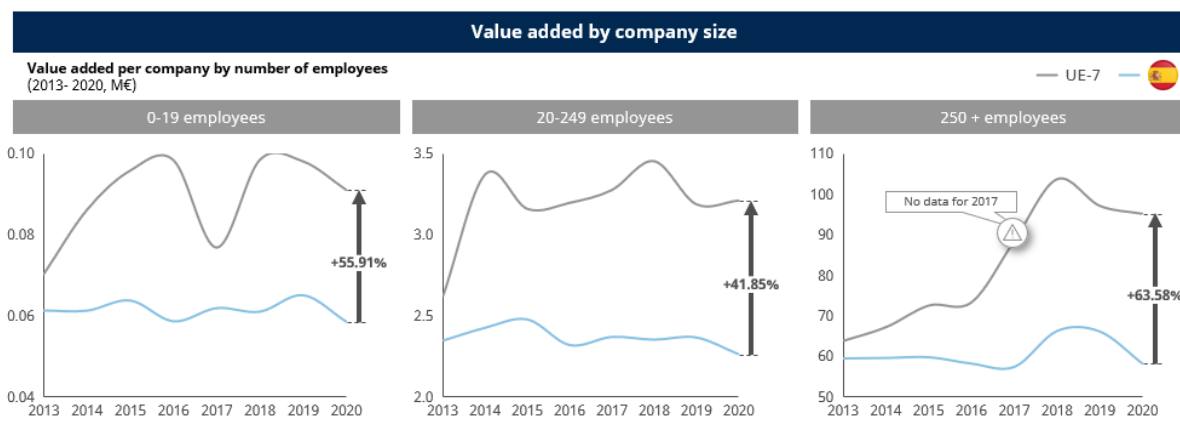
5.1 Annex 1: Selected economic and market size and evolution data

KPI 1 - Macroeconomic convergence indicators

➤ In the last 10 years, Spain has experienced a setback in its convergence with the average GDP per capita and productivity of the European Union countries...



➤ ... reflected in a stagnation of the added value of the business fabric independently to the size of the enterprise

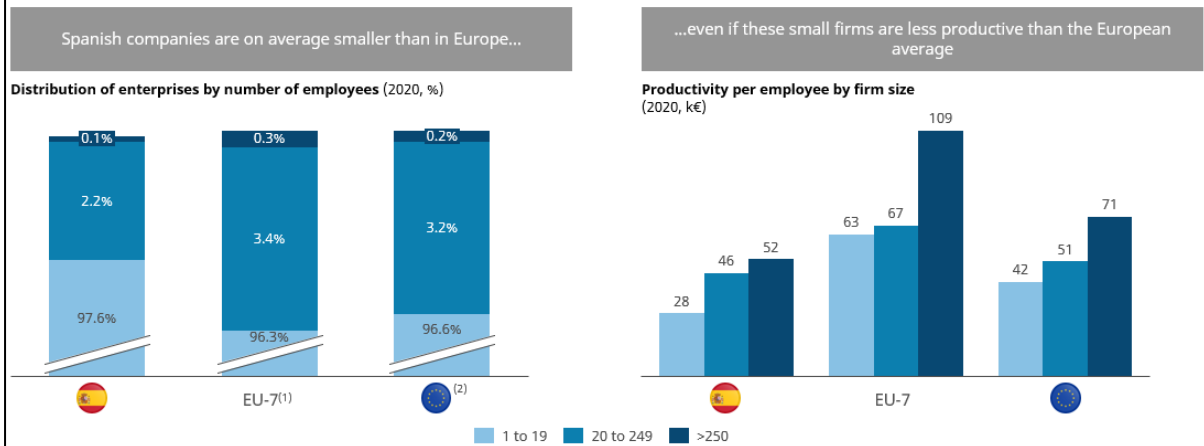


(1) Eurozone; (2) Average of the values for Germany, France, Italy, the Netherlands, Sweden, Ireland and Luxembourg.

Source: Eurostat, OECD, US Federal Reserve, Swiss National Bank, UK Office for National Statistics

KPI 2 - Average company size and productivity

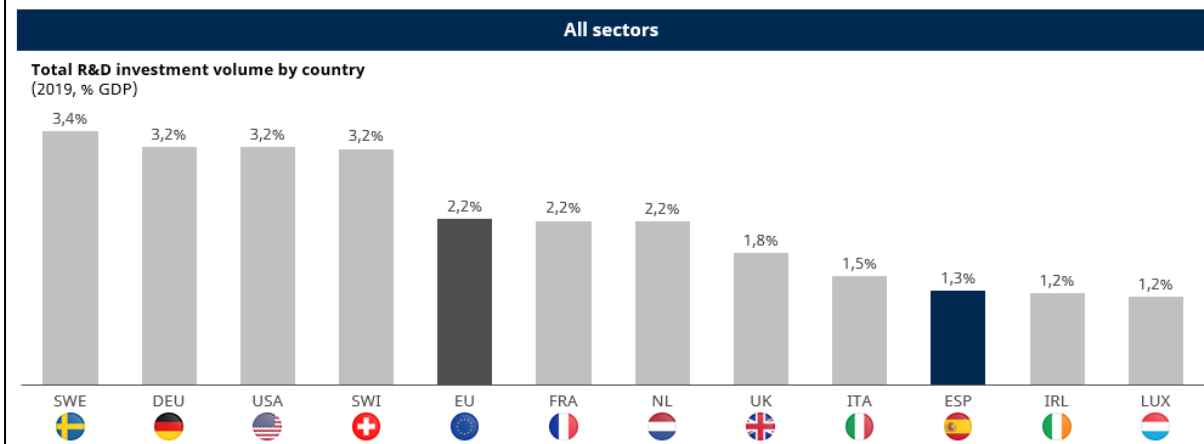
➤ Spain has a higher proportion of small firms relative to comparable economies and lower productivity per employee for all types of company size



(1) Includes benchmark economies: Germany, France, Italy, the Netherlands, Ireland and Luxembourg; (2) Eurozone.

KPI 3 - R&D investment volume by country

➤ Spain ranks at the bottom of the major European economies in terms of R&D investment as a percentage of GDP

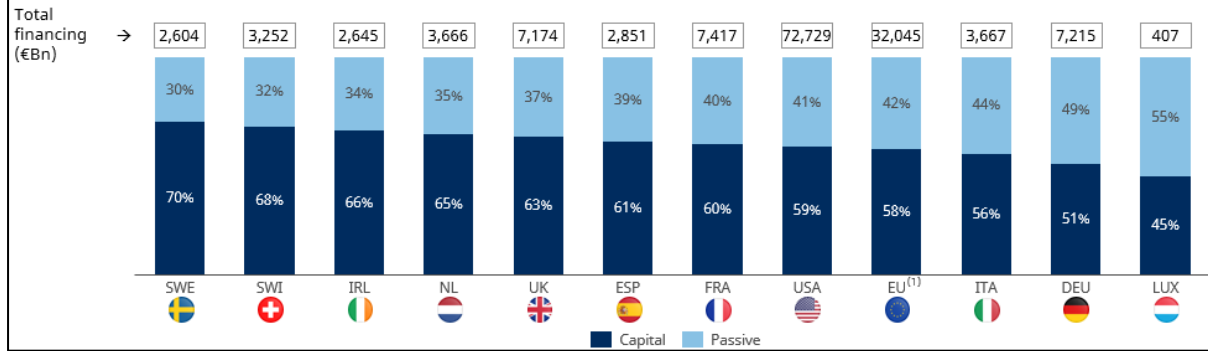


Source: Eurostat, US Bureau of Labor Statistics

KPI 4 - Breakdown of company financing

➤ Non-financial firms in Spain finance themselves, on average, ~3% higher via equity than the average of other Eurozone countries

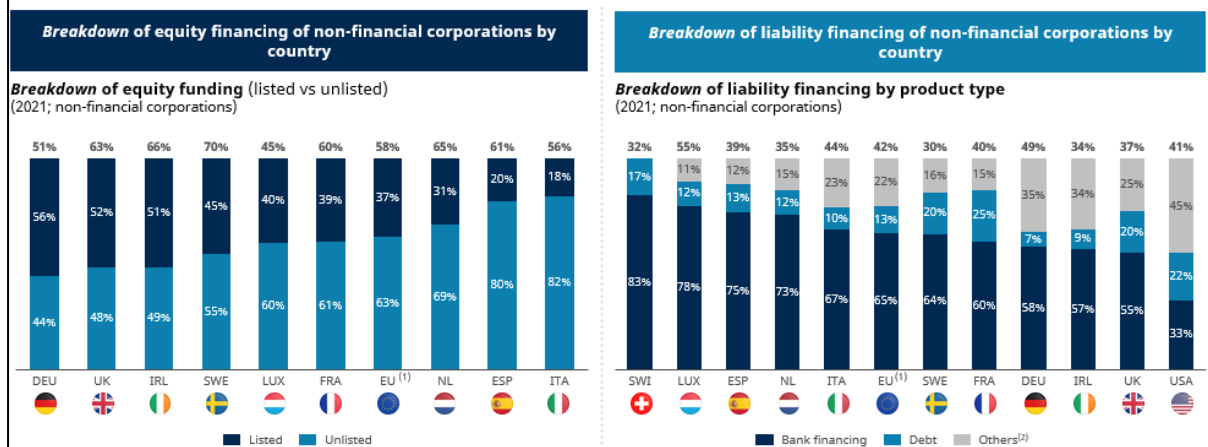
Breakdown of non-financial corporate financing by country (2021; non-financial corporations)



(1) Eurozone. Capital includes listed and unlisted capital. Liabilities include debt, trade finance/suppliers and financial derivatives.

Source: Eurostat, US Federal Reserve, Swiss National Bank, UK Office for National Statistics

➤ Spanish companies resort more to equity financing (~61%) but such financing is not through traded markets (~16% below the average of European peers)



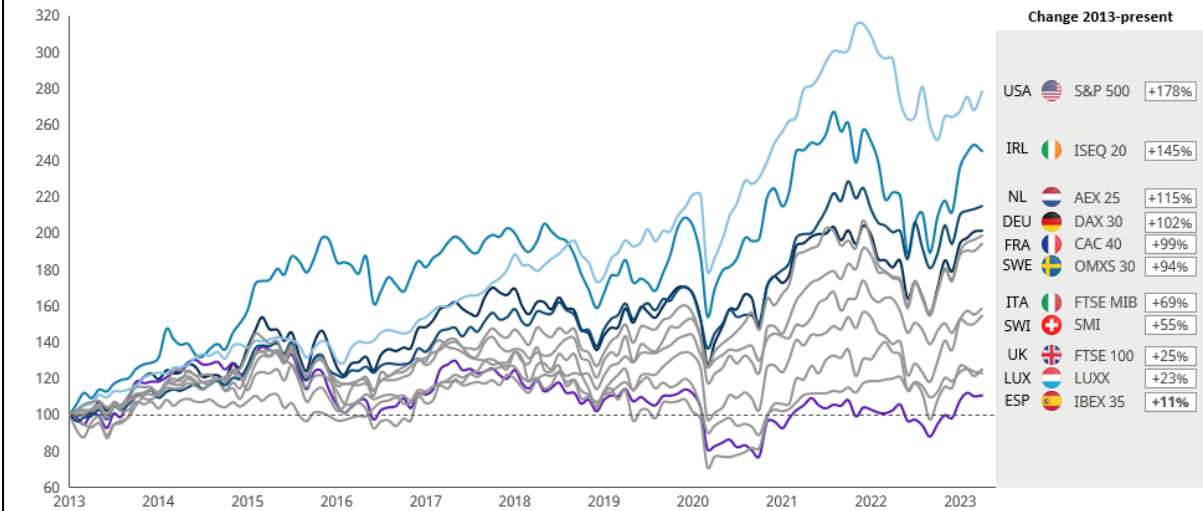
(1) Eurozone; (2) Other includes trade finance/suppliers and financial derivatives. Capital structure not available for the US and Switzerland

Source: Eurostat, US Federal Reserve, Swiss National Bank, UK Office for National Statistics

KPI 5 - Performance of the main stock market indices

➤ Since 2013, Spain has lagged behind comparable economies in the performance of its main stock market index (IBEX 35), with reduced growth (+11%)

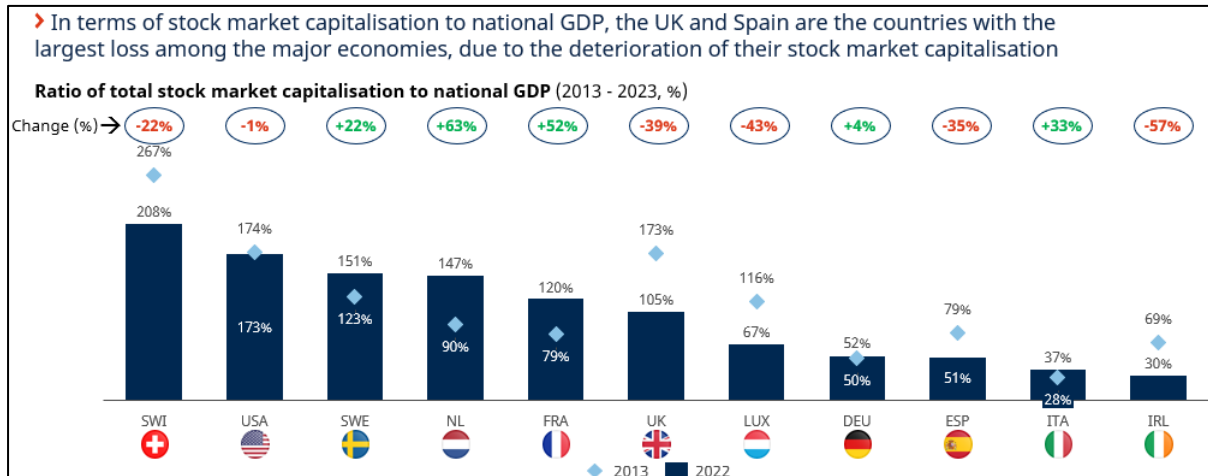
Developments in the main stock market indices
(2013 = Base 100; %)



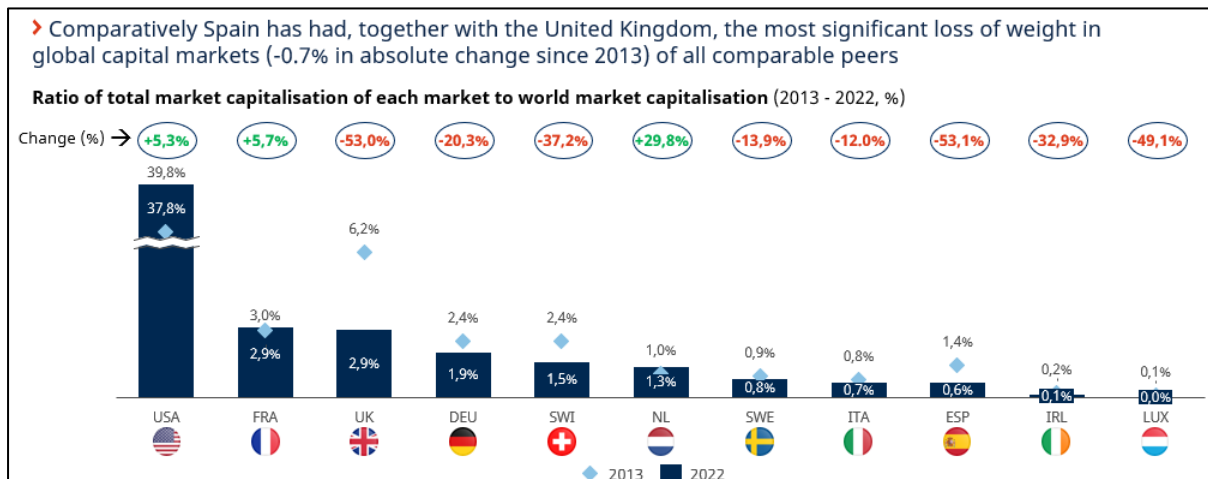
Data from January 2013 to May 2023. The DAX-30 is the most relevant stock market index in Germany, but it is a Performance Index that also includes dividend yields, so it is not strictly comparable with the other indices which are Price Indices.

Source: Refinitiv Workspace

KPI 6 - Evolution of stock market capitalization over GDP

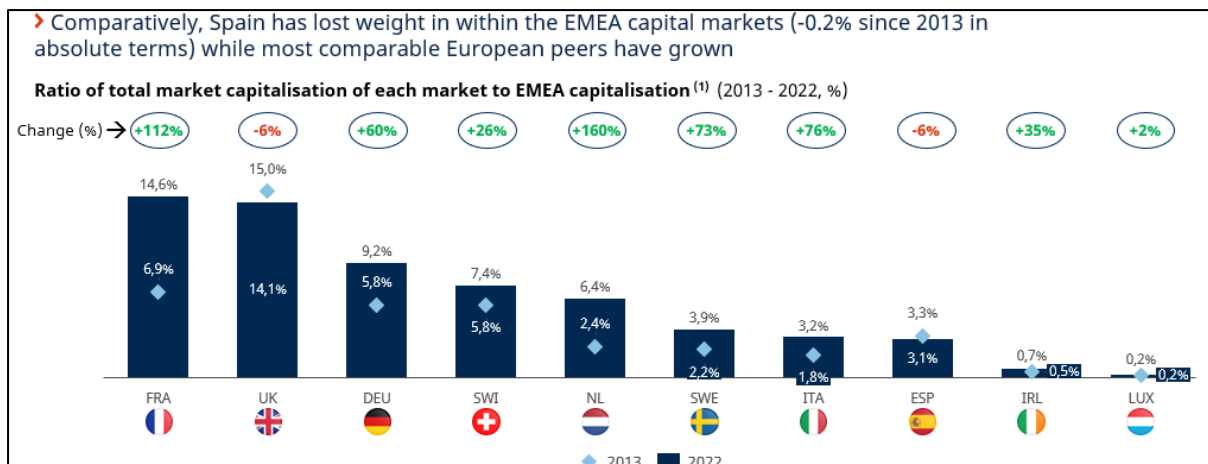


KPI 7 - Evolution of domestic market capitalization over total world market capitalization



Source: WFE, Euronext, Borsa Italiana, BME

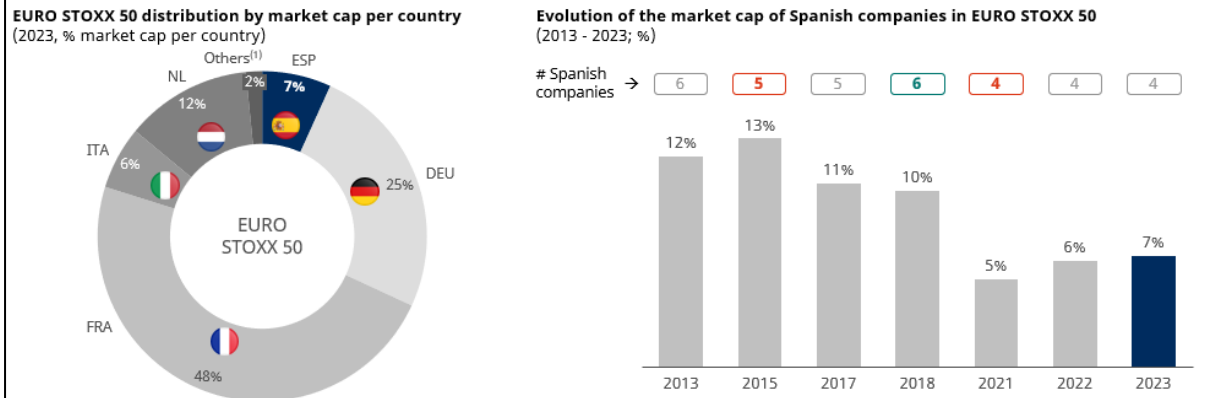
KPI 8 - Evolution of domestic market capitalization over total EMEA country capitalization



Source: WFE, Euronext, Borsa Italiana, BME

KPI 9 - Evolution of the share of Spanish companies in the EURO STOXX 50

➤ The weight of Spanish companies in the EURO STOXX 50 since 2013 has decreased by 51% and currently lists only 4 companies (-2 compared to 2013)

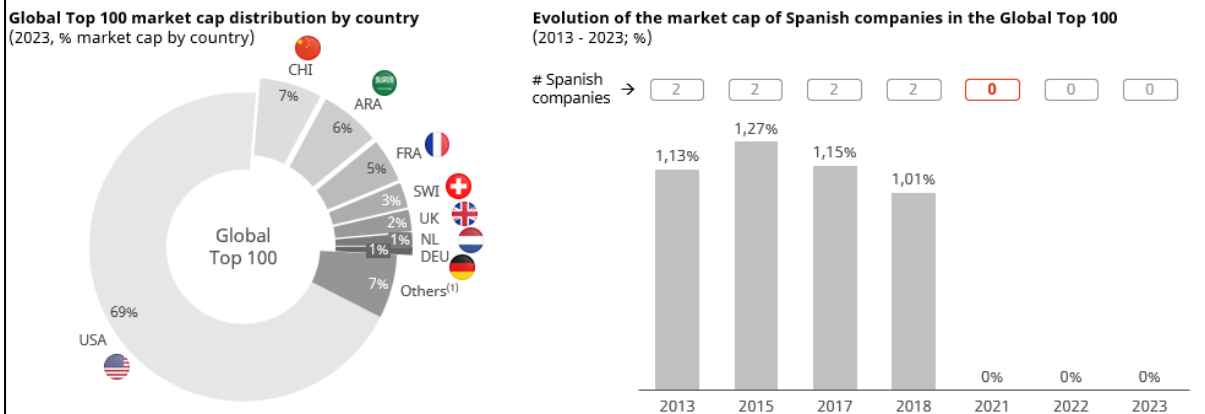


(1) Others: Belgium (2.4%), Ireland (1.5%), Finland (1.5%)

Source: Refinitiv Workspace

KPI 10 - Evolution of the proportion of Spanish companies in the Global Top 100

➤ Since 2018, Spain has not had any listed company in the Global Top 100 listed companies with the highest market capitalisation



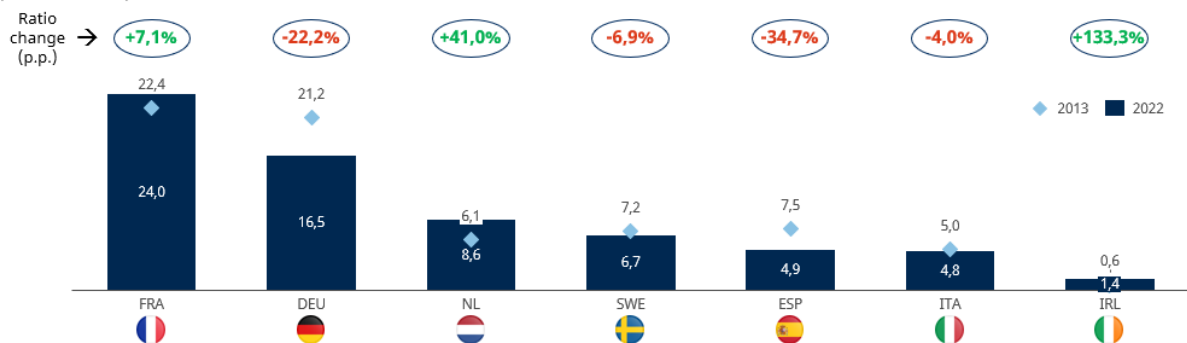
(1) Others: Taiwan (1%), India (1%), South Korea (1%), Denmark (1%), USA (1%), Japan (1%), Australia (0.5%), Canada (0.4%), Australia (0.5%).

Source: Refinitiv Workspace

KPI 11- Evolution of the share of Spanish companies in the MSCI Blue Book Developed Markets Index

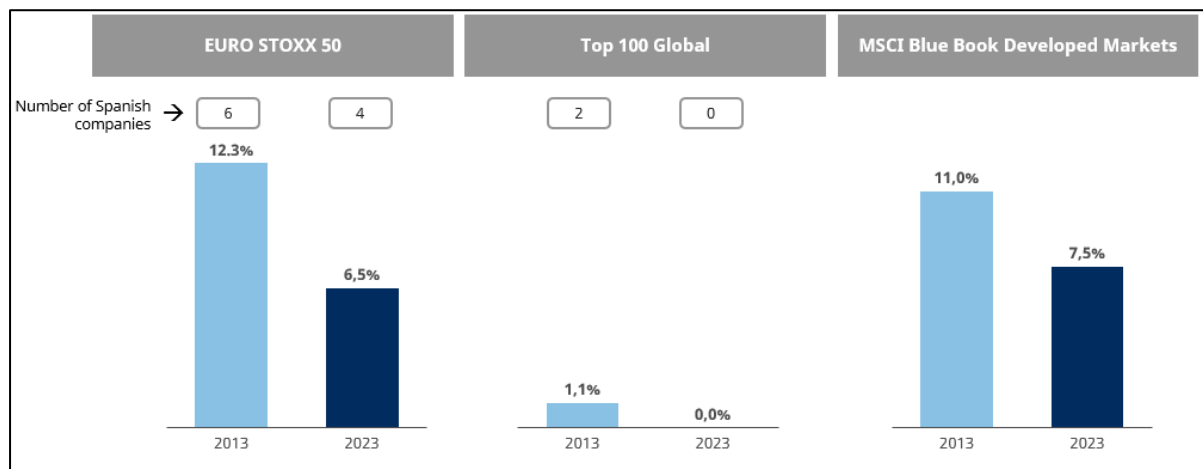
➤ In the last decade, Spain is the country that has lost the most weight in market capitalisation in Europe, being surpassed by the Netherlands as the third largest European market

Weight in MSCI Blue Book Developed Markets index by country (Eurozone)
(2013 - 2023, %)

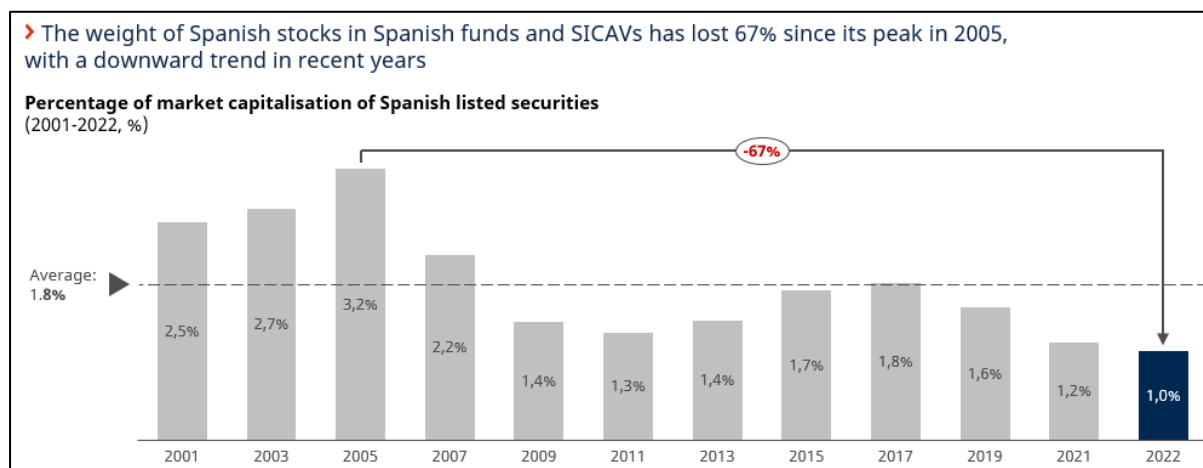


Source: MSCI Blue Developed Markets

KPI 12- Relative weight of Spanish market capitalization in different equity benchmark indices

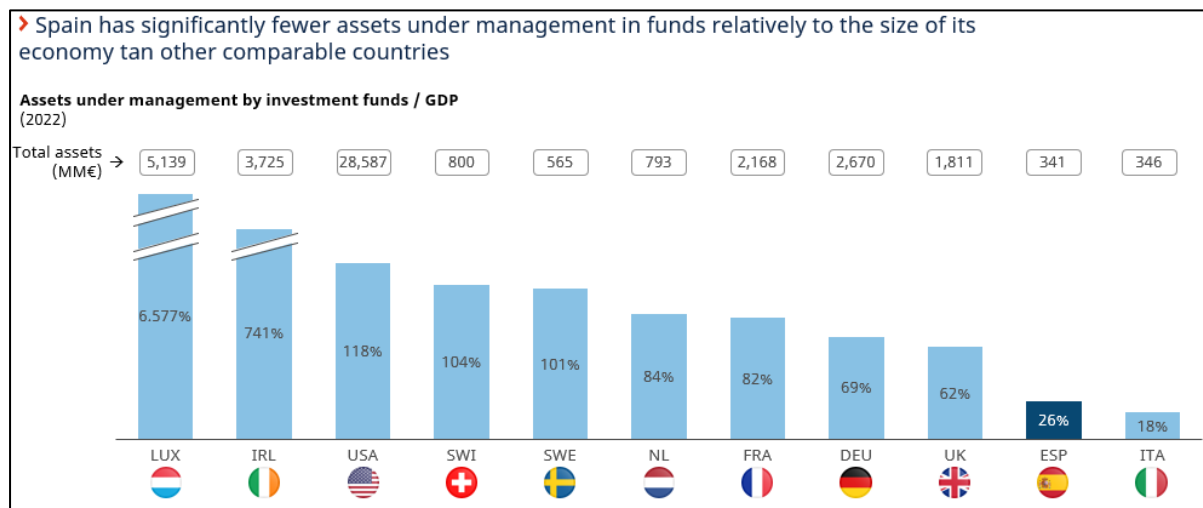


KPI 13 - Weight of the Spanish equity portfolio of the Funds and SICAVs



Source: BME, CNMV

KPI 14 - Assets under fund management relative to investment GDP by country

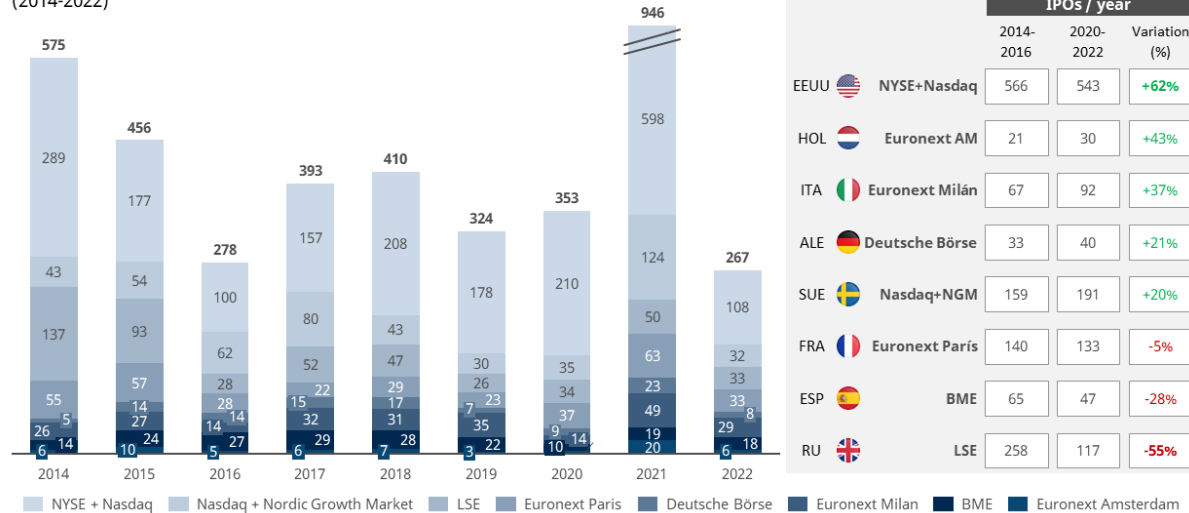


Source: European Fund and Asset Management Association, The International Investment Funds Association

KPI 15 - Evolution of the number of IPOs and volume raised in Spanish and global markets

➤ Spain has recorded one of the largest falls in the number of IPOs conducted per year (-28%) between the periods 2014-2016 and 2020-2022....

Evolution of the number of IPOs in different markets (2014-2022)

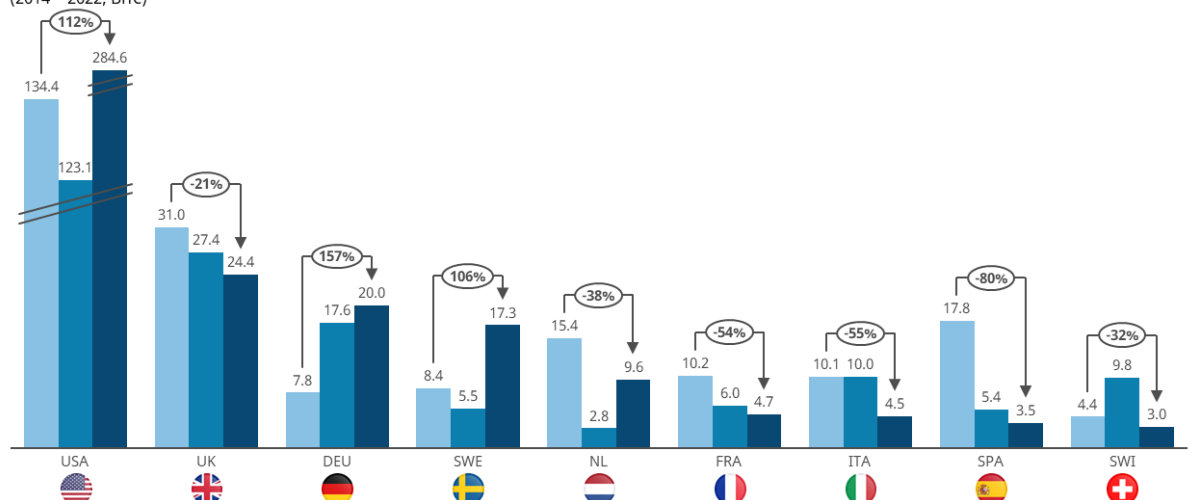


Nasdaq Stockholm and Nordic Growth Market IPOs are counted for Sweden. Ireland, Switzerland and Luxembourg excluded due to low number of IPOs relative to other markets.

Source: BME, Euronext, Deutsche Börse, WFE

➤ ... the largest drop in capital raised through IPOs in the last decade

Capital amounts raised through IPO in each market (2014 - 2022; Bn€)



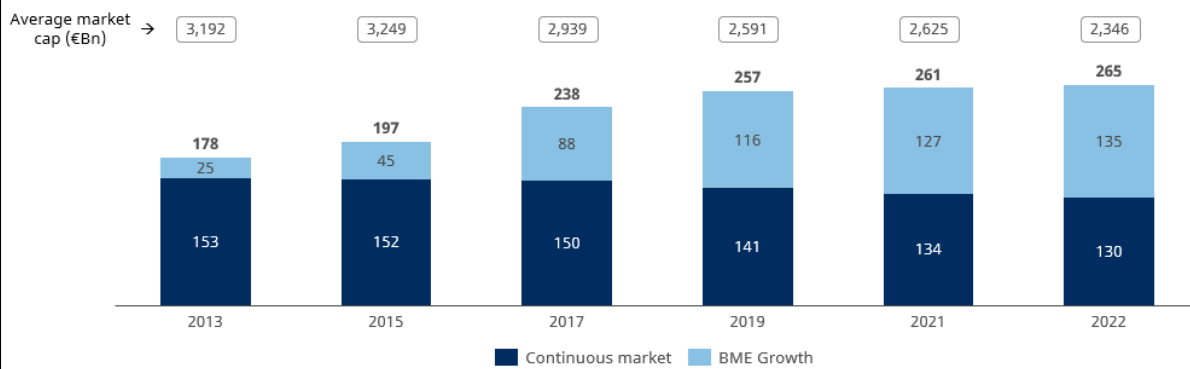
Nasdaq Stockholm and Nordic Growth Market IPOs are counted for Sweden. Ireland, Switzerland and Luxembourg excluded due to low number of IPOs relative to other markets.

Source: BME, Euronext, Deutsche Börse, WFE

KPI 16 - Evolution of the number of companies listed on BME (Continuous Market and BME Growth)

➤ The number of listed companies in Spain has increased thanks to the good performance of BME Growth, but the number of listed companies and volume in the continuous market are decreasing

Evolution of the number of listed companies in Spain⁽¹⁾
(2013-2022; data as at 31 December each year)



(1) Only includes listed companies in the continuous market and BME Growth (excl. SICAVs, SOCIMIs, Latibex segment securities, hedge funds, VCs).

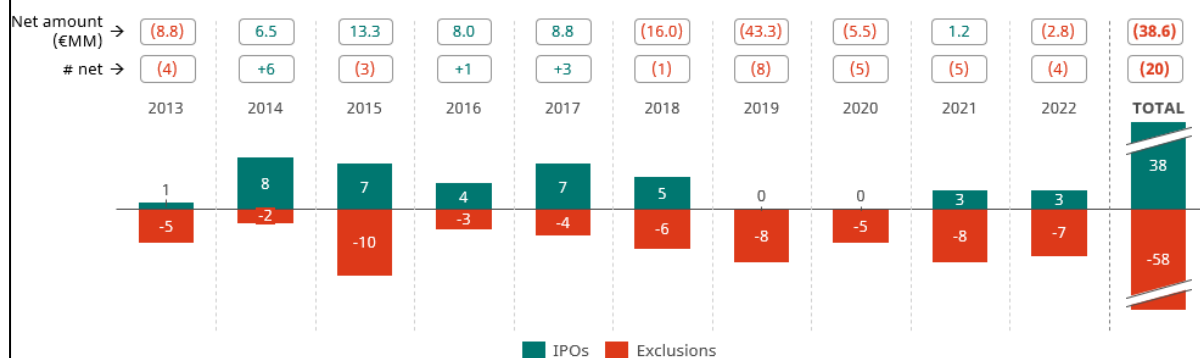
(2) Net amount = capitalization exclusions - capitalization new admissions (IPOs)

Source: BME

KPI 17 - IPOs and delisting's from BME's continuous market

➤ The number of listed companies in Spain has increased thanks to the good performance of BME Growth, but the number of listed companies and volume in the continuous market are decreasing

IPOs and annual delistings on the continuous market (excluding BME Growth)
(2013-2022; data as at 31 December each year)

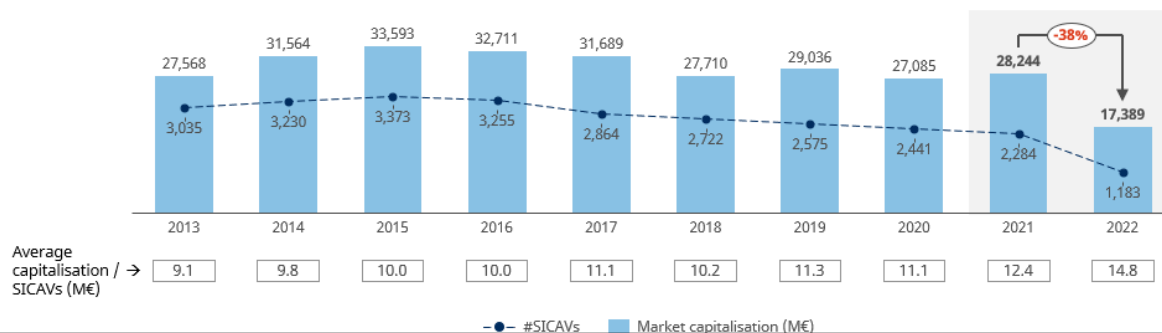


Source: BME

KPI 18 - Evolution of the number of SICAVs in Spain and total market capitalization

➤ Both the number of SICAVs and their market capitalisation in the Spanish markets have suffered a setback due to the legislative change applied to these vehicles in 2022⁽¹⁾

Evolution of the number of SICAVs and total market capitalisation
(2013-2022, M€)

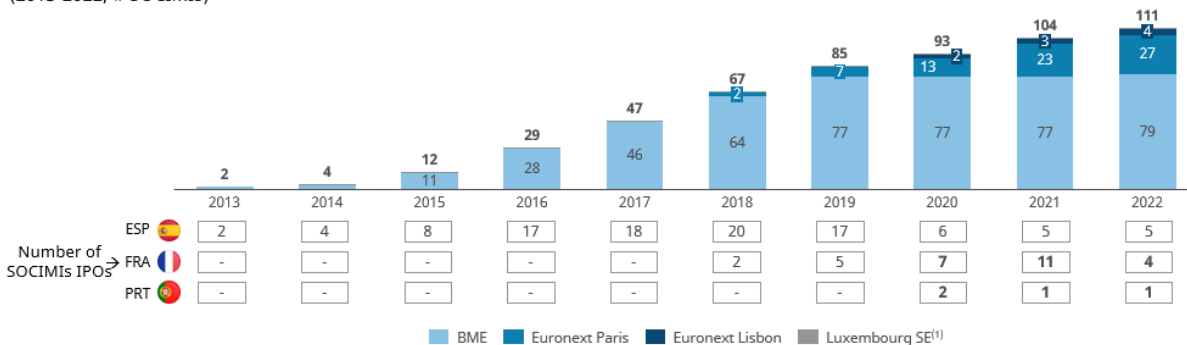


Source: BME

KPI 19 - Number of SOCIMIs domiciled in Spain according to their market of listing

➤ Since 2013, the number of Spanish SOCIMIs has grown steadily, although growth in Spain has stagnated due to the flight of new Spanish SOCIMIs to other European markets

Number of SOCIMIs established in Spain by market they are listed on
(2013-2022; # SOCIMIs)



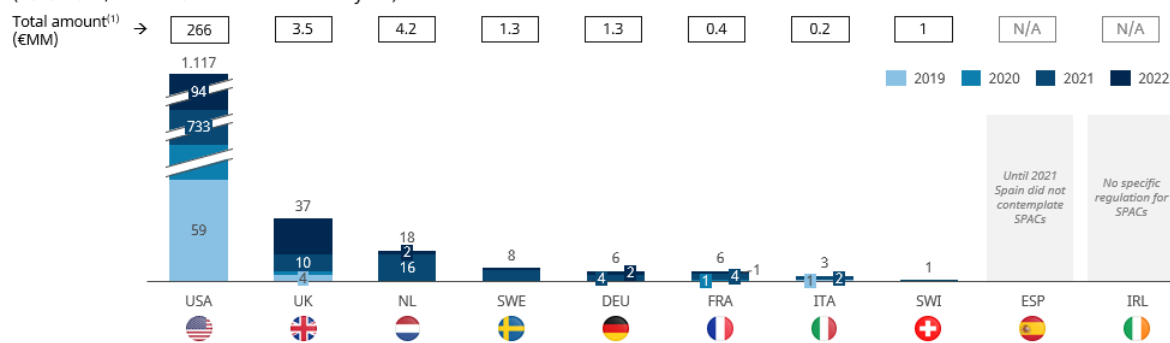
(1) SOCIMI Saint Croix was founded in Luxembourg in 2011 and changed its registered office to Spain in 2014, maintaining its listing on the Luxembourg market.

Source: BME; Euronext, own analysis

KPI 20 - Evolution of listed SPACs

➤ SPACs are investment vehicles that have recently been developed in other exchanges, not developed in Spanish markets due to the lack of clear legislation

Number of SPACs issued on major stock exchanges
(2019-2022; data as 31st December each year)



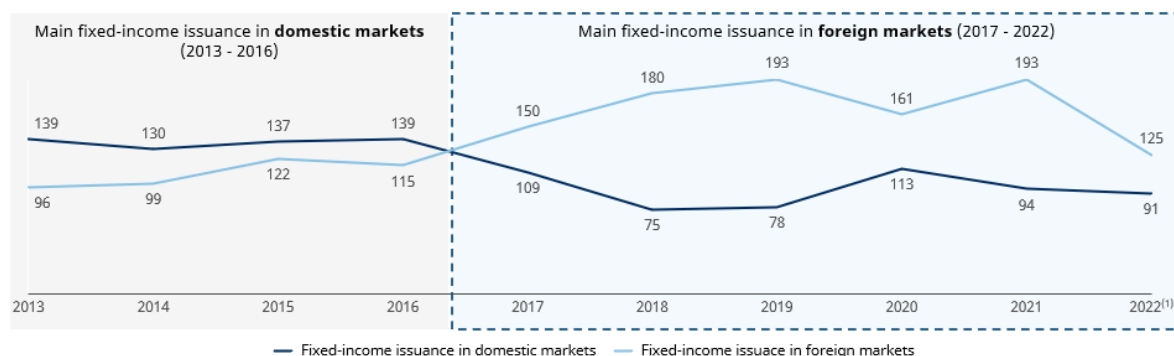
Luxembourg excluded due to data unavailability

Source: Refinitiv Workspace

KPI 21 - Evolution of fixed income issuance by Spanish issuers

➤ In recent years, the volume of fixed income from Spanish issuers has barely changed, but the trend has reversed from 2017 and on and there has been more issuance in foreign markets

Fixed-income issuance volumes by Spanish issuers in domestic vs. foreign markets
(€MM; 2013 vs. 2022)



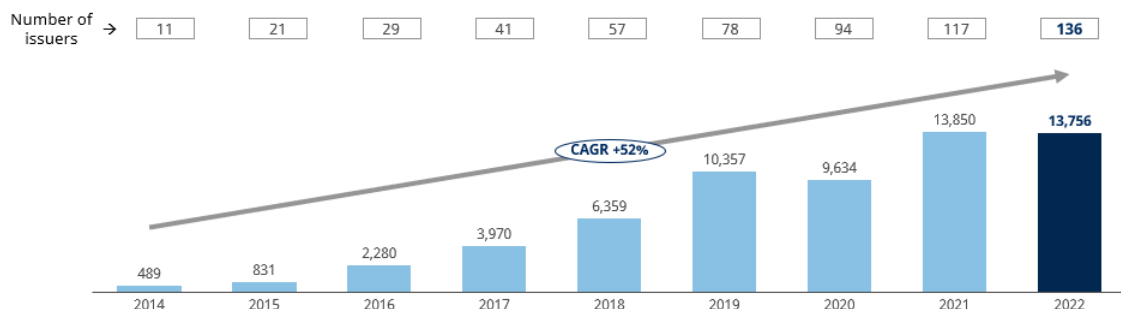
(1) Includes data until September 2022.

Source: Refinitiv Workspace

KPI 22 - Evolution of the number of Spanish issuers and volume of funding in the MARF

➤ Since its creation in 2013, the MARF has experienced an annual growth in issued volumes of +52% and ~15 new issuers are incorporated annually

Evolution of the volume issued for trading and number of issuers financed on the MARF
(2014 - 2022, M€)

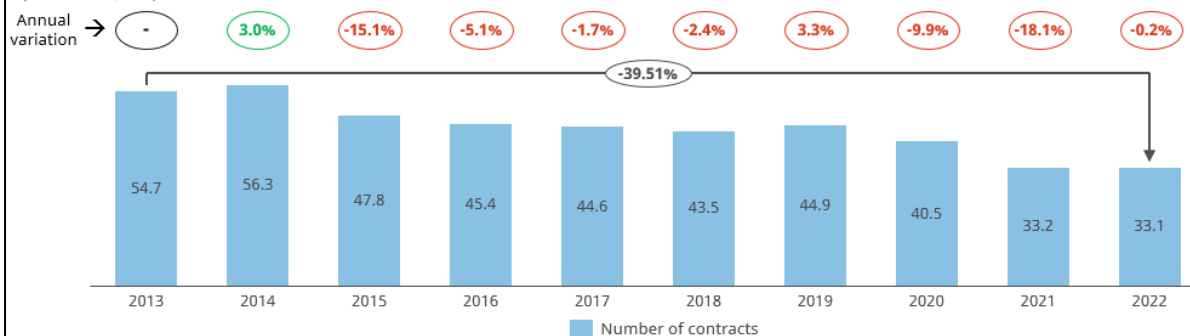


Source: BME

KPI 23 - Volume of derivatives traded

➤ The decline in derivatives trading (Spanish options and futures) since 2013 (-40%) confirms a lack of competitiveness comparing with other European stock markets

Volume of derivatives traded
(2013-2022, #M)

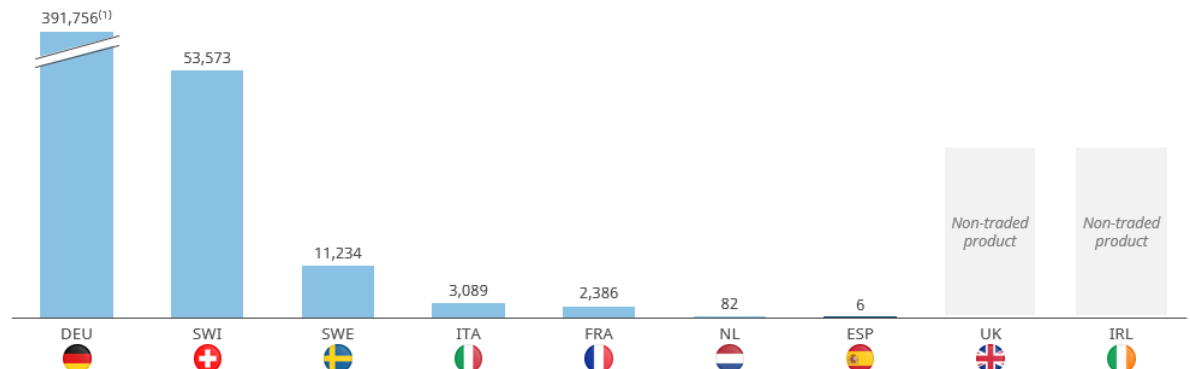


Source: BME

KPI 24 - Volume of investment certificates listed by market

➤ Spain is a marginal player in the investment certificate business, contributing less than 0.01% of listed products

Volume of investment certificates listed by country
(2022, #)

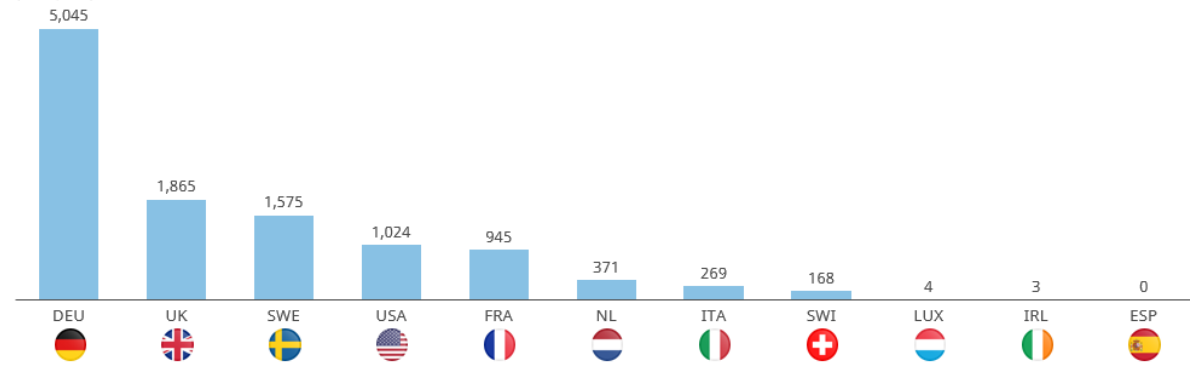


Source: Börse Stuttgart, Euronext, Borsa Italiana, BME, Nasdaq Nordic, SIX Switzerland, London Stock Exchange

KPI 25 - Number of ETPs quoted per country

➤ As a less conventional market, Germany is the flagship market among European markets, followed only by France. Spain does not trade these products

Number of ETPs⁽¹⁾ listed per country
(2023; M€)

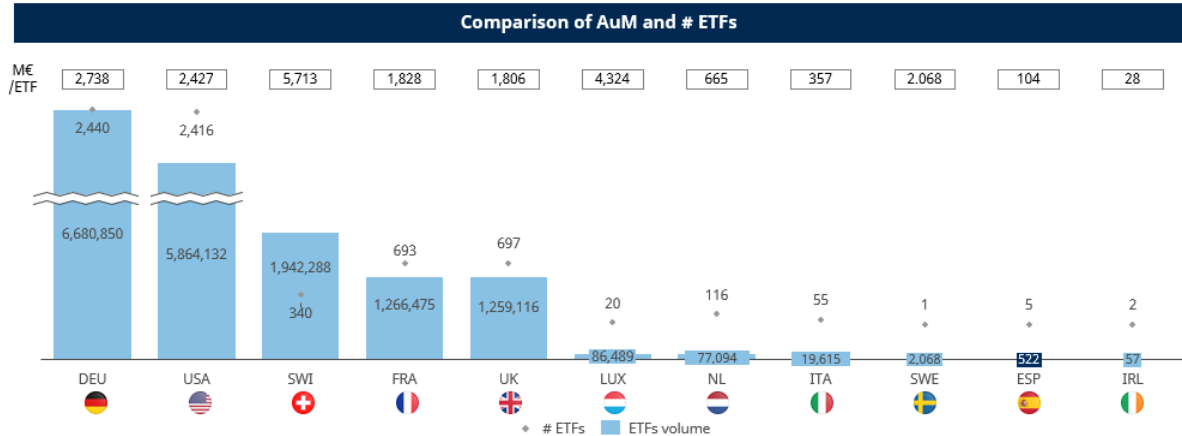


(1) ETPs include ETPs, ETCs and ETNs.

Source: BME, Refinitiv Workspace

KPI 26 - Assets under management and number of ETFs listed per market

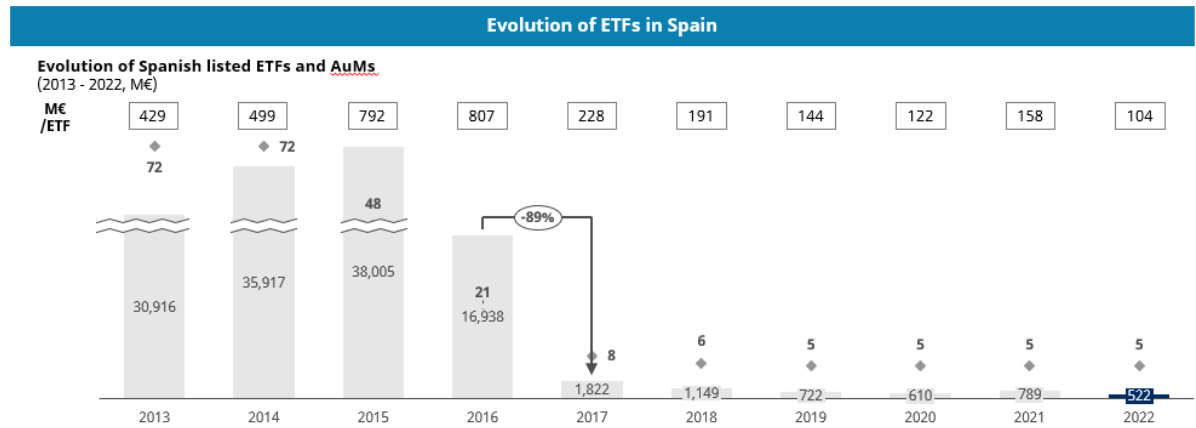
➤ Spain currently ranks at the bottom of ETF markets, with a significant decrease in 2017 in the number of ETFs and AuM due to the tax treatment applied



Source: BME, Refinitiv Workspace

KPI 27 - Evolution of assets under management and number of ETFs listed in Spain

➤ Spain currently ranks at the bottom of ETF markets, with a significant decrease in 2017 in the number of ETFs and AuMs due to the tax treatment applied

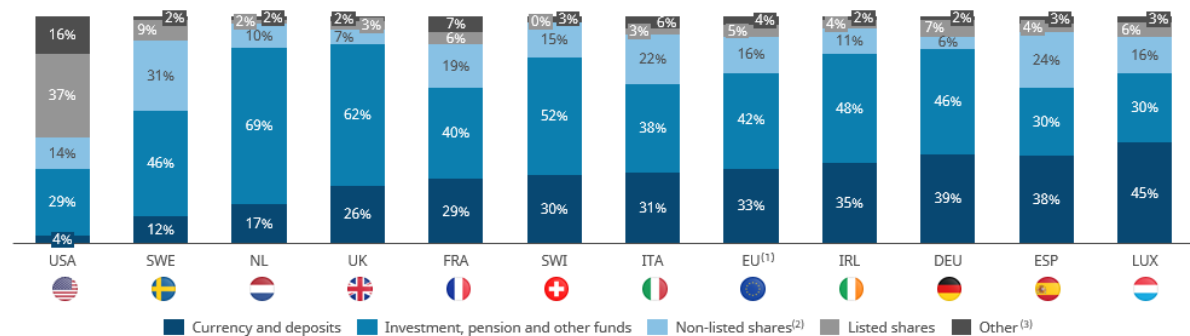


Source: BME

KPI 28 – Breakdown of household financial savings / personal investment

➤ On average, Spanish households hold their savings 4 p.p. above average in cash and deposits (38% vs. 34%) and 13 p.p. below average in funds (43% vs. 30%)

Breakdown of household financial assets
(2021, %)



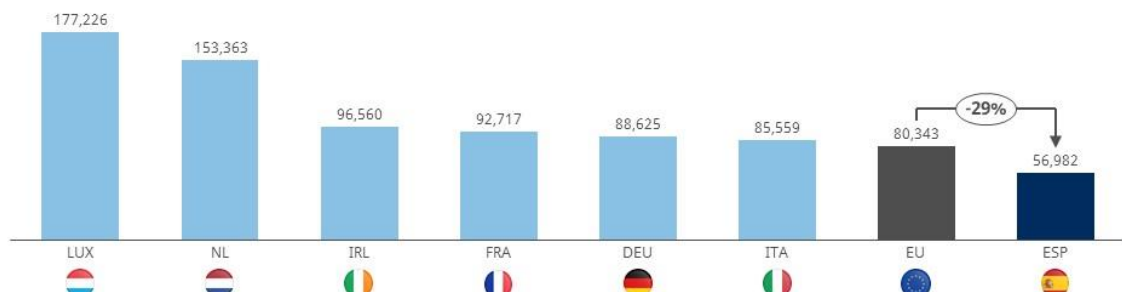
(1) Eurozone; (2) Includes unlisted shares in public limited companies and shares in private limited companies; (3) Includes purchased debt, financial derivatives and other categories not included in the rest.

Source: Eurostat, US Federal Reserve, Swiss National Bank, UK Office for National Statistics

KPI 29.1 – Evolution of financial wealth

➤ The Financial Wealth is the lowest among the mayor countries in the European Union

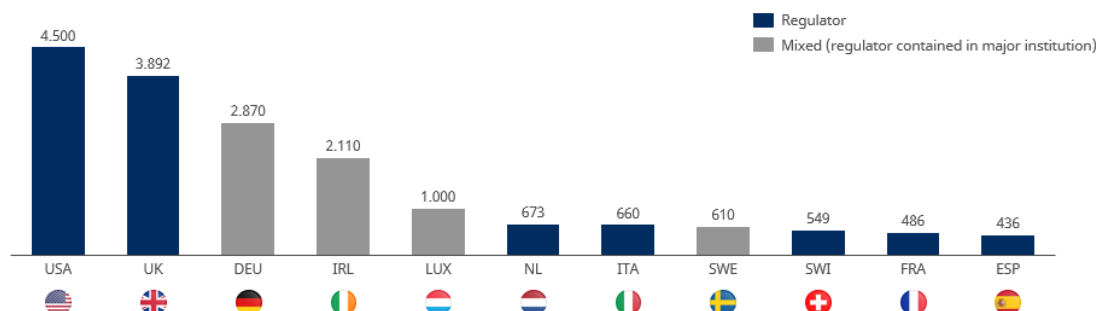
Financial Wealth (EUR €, 2022)



KPI 30 - Analysis of the endowment of capital market authorities

➤ Spain is the country with the lowest number of employees assigned to market regulation, countries such as DEU, IRL, LUX and SWE group their employees in larger institutions (e.g. Central Banks).

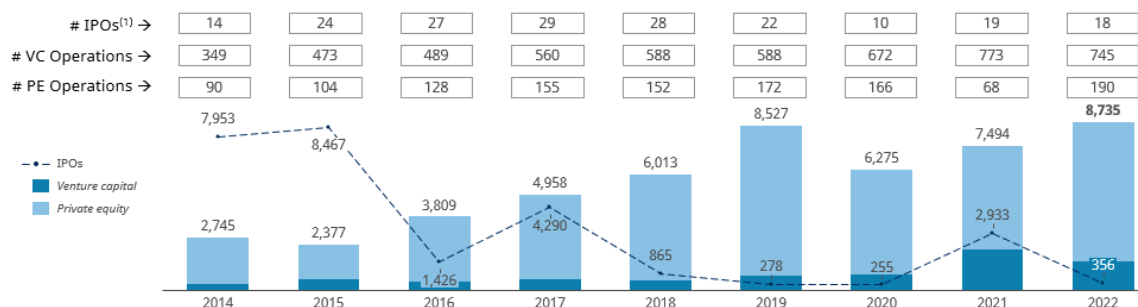
Number of employees per market supervisor or regulator
(# ; data as of latest available date)



KPI 31 - Evolution of the number of transactions and volume raised through IPOs and other alternative sources of financing

► Since 2015, the amount of capital raised through private equities and venture capital has exceeded that raised through IPOs in Spain

Evolution of the number of deals and volume raised through IPOs and alternative financing
(2014 - 2022, M€)

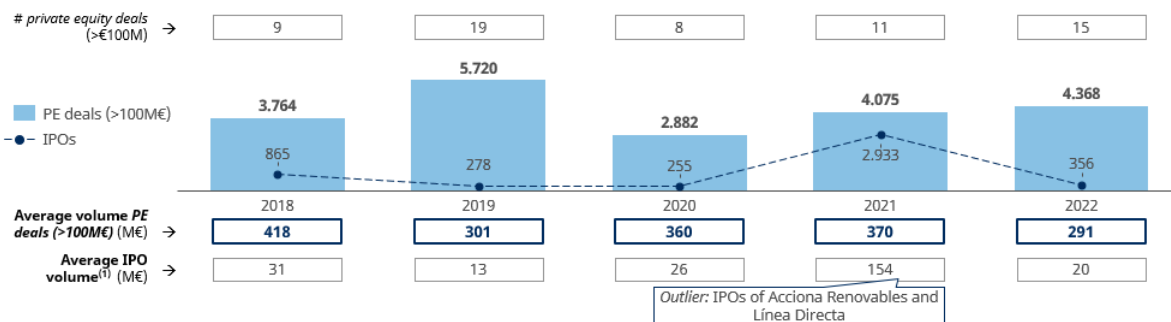


(1) Average volume raised in IPOs on the Continuous Market and BME Growth

Source: BME, Spaincap

► In recent years, in Spain, the average volume of large *private equity transactions* (>€100m) has exceeded the volume raised in the capital markets via IPOs

Evolution of *private equity* transactions over €100M in Spain
(2018 - 2022; M€)

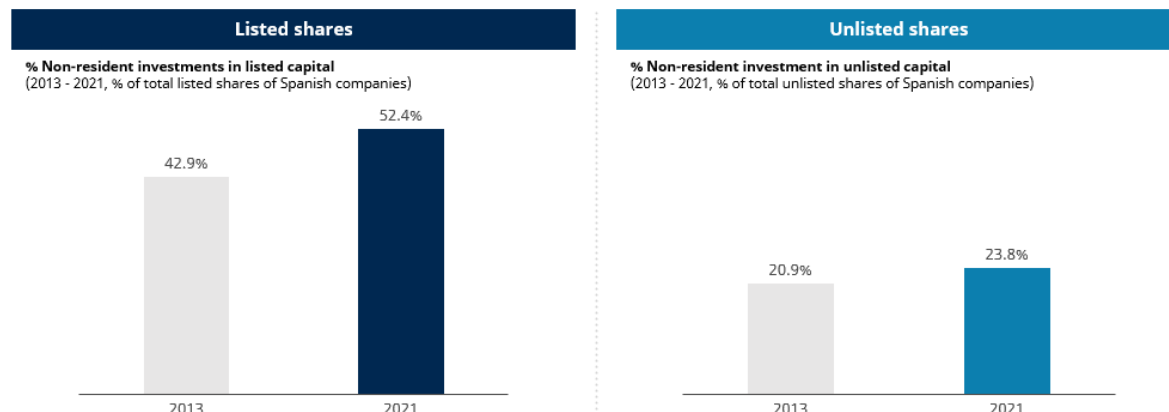


(1) Average volume raised in IPOs on the Continuous Market and BME Growth

Source: BME, Spaincap

KPI 32 - Foreign investment in listed vs. unlisted companies

➤ Spanish companies with capital listed on stock exchanges attract twice as much foreign investment as unlisted companies



Source: Banco de España

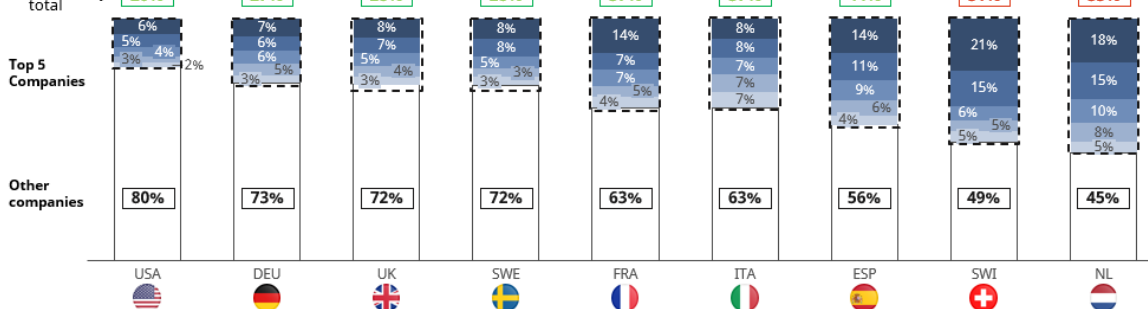
KPI 33 - Concentration of market capitalization in the Top 5 companies

➤ In terms of concentration of market capitalisation in the top 5 companies, Spain is one of the markets with the highest weighting of the largest listed companies

Percentage concentration of market capitalisation in top 5 companies

(2023, %)

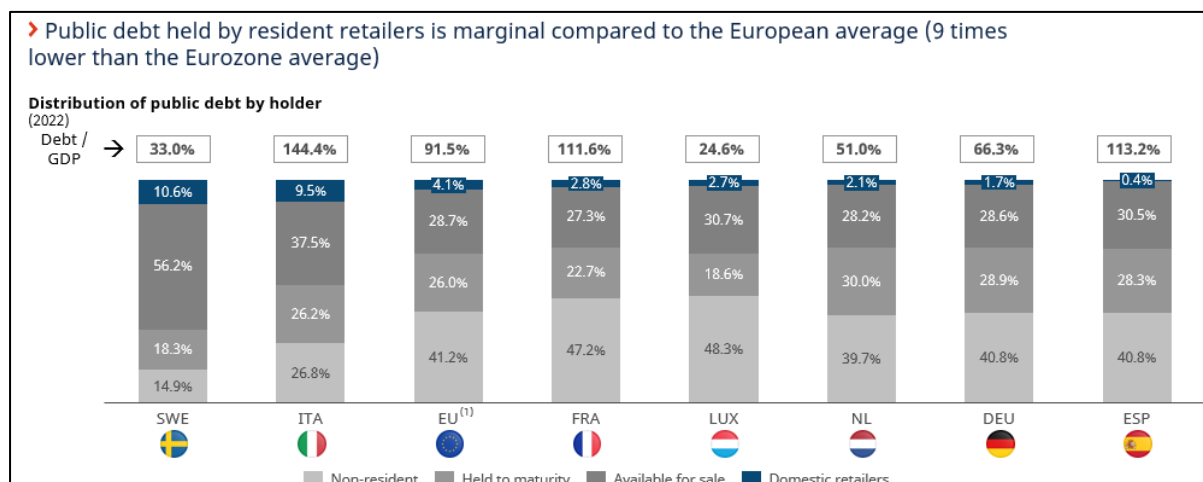
% top 5 of total



Ireland and Luxembourg excluded because of low market capitalization. Market capitalization of foreign companies is excluded.

Source: WFE, Euronext, Borsa Italiana, BME, Refinitiv Workspace

KPI 34 - Distribution of government debt by type of holder in European countries



(1) Euro area; (2) Held to maturity: central banks; (3) Available for sale: financial institutions, investment funds, pension funds, etc.

Source: European Central Bank Statistical Portal, Eurostat

5.2 Annex 2: Comparative regulatory analysis

Encouraging companies to enter the capital markets

We will now offer the results obtained in comparisons of Spain with countries with financial systems of similar development (mainly in the Euro area). Based on the conclusions reached in each of the analyses, we will comment on proposals that we believe have a direct or indirect impact on aspects of market development that would allow Spain to improve the competitive level of its financial industry through measures that promote the participation of more companies, investors, intermediaries, managers and, in general, players in national and international markets.

Due to the wide variety of factors affecting market development and their simultaneous impact on many aspects in need of improvement, the order of the comments and possible measures set out in this section do not follow any particular rank and could well fit into several of the sections into which this chapter of the report is divided.

Promoting the use of market-based instruments and the entry of companies into capital markets

Spanish regulatory reference framework

In recent years most of the regulatory changes (other than tax changes) related to securities markets in Spain have mainly stemmed from the transposition and incorporation of European initiatives into the local framework.

For example, Regulation (EU) 2019/2115¹ introduced several new features, including a simplification of the regime applicable to issuers of financial instruments admitted to trading

¹ Regulation (EU) 2019/2115 of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) 596/2014 and (EU), 2017/1129 in relation to promoting the use of SME growth markets

on SME growth markets, covered by Directive MiFID II², which made reporting or market abuse obligations more flexible.

Without prejudice to the above, with the recent approval of Law 6/2023³, certain measures have been introduced to encourage companies to join the securities markets, the main measures being the following:

- **Simplify and streamline the listing process**⁴: Verification of the requirements for admission of fixed-income issues to trading on a regulated market is now the responsibility of the market's governing body and not of the CNMV. This removes the obligation of double control,
- **Abolition of fees on fixed-income issues**⁵. In relation to the previous amendment, and by virtue of Law 16/2014⁶, the fee applicable to the verification of the requirements for admission to trading of fixed-income issues is eliminated.⁷
- **Extension of the concept of small and medium-sized enterprises ("SMEs")**⁸. For the purposes of the SME growth markets, it is established that issuers of debt that do not have shares or similar instruments traded on any trading venue will be considered SMEs if the nominal value of their debt issued during the previous fiscal year on all trading venues throughout the European Union does not exceed €50 million. The aim is to facilitate the listing of companies on Multilateral Trading Facilities (MTFs), of which BME Growth is the main example.
- **Transitional exemptions from publication and dissemination of information**⁹. Subject to the corresponding regulatory development, it is foreseen that companies whose shares change from being traded on an MTF to being traded on a regulated market, for a maximum transitional period of two (2) years, may benefit from certain exemptions from publication and dissemination of information.¹⁰
- **Extension of the deadline for submission of the second half-yearly financial report**¹¹. For issuers of securities obliged to submit the second half-yearly report, the deadline for its preparation and publication is extended from two (2) to three (3) months.

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

³ Law 6/2023 of 17 March on Securities Markets and Investment Services.

⁴ Article 63.1.b) of Law 6/2023.

⁵ Final provision 8 of Law 6/2023.

⁶ Law 16/2014, of 30 September, regulating the fees of the CNMV.

⁷ It should be noted that, for practical purposes, the amendments introduced by Law 6/2023 on fixed-income issues will apply to those issues that do not require a prospectus, since, in any case, an issue that is considered a public offer requires approval by the CNMV of the issue prospectus.

⁸ Article 76.4 of Law 6/2023.

⁹ Second paragraph of Article 63.7 of Law 6/2023.

¹⁰ It should be noted that what is provided for here is not strictly speaking a novelty, as it was already provided for in the previous securities market regulation. However, in the absence of regulatory development, the door is open to the introduction of modifications to the two-year transitional exemption regime.











¹¹ Article 100.2 of Law 6/2023.











Comparative situation

With a few exceptions, the jurisdictions analyzed have implemented or are in the process of implementing measures to encourage companies to use or access capital markets, in an attempt to make market an attractive alternative.

In addition, many of the jurisdictions surveyed, either through the regulator or the marking operator, publish quantitative indicators (KPIs) on the functioning of the admission to trading process.

Table 2 - Comparative situation: specific measures taken to promote the incorporation of companies in Spanish-Spanish capital markets

Country	Promoting market entry	Comment
 Spain		In Spain, the CNMV has adopted measures that encourage/facilitate the incorporation of companies into the securities markets, although most of them come from the implementation or transposition of European regulations.
 France		In France, specific national measures have been implemented, beyond the transposition of European regulations, mainly in relation to debt securities: flexibility of issuance processes and contractual freedom extended to debt securities above €100,000. In addition, the attractiveness of the French market is also the result of Euronext France's work, in particular with the development of Euronext Growth and Euronext Access, allowing faster processes to be implemented, with greater flexibility and reduced costs. The French Market Authority (AMF) publishes (on a non-recurrent basis) some statistical data or KPIs. For example, the average time taken to review the prospectus
 Germany		There is currently a draft law under discussion (draft law "future financing law", published on 12 April 2023 - "Referentenentwurf des Zukunftsförderungsgesetzes"), scheduled to enter into force in 2024), which aims to increase Germany's attractiveness as a financial center by modernizing and digitalizing its capital market.
 Italy		In Italy, a legislative process was launched on 2 May 2023 that seeks precisely to encourage the use of capital markets, through debt or equity instruments. The legislative changes to be introduced include the following: (i) broadening the concept of SMEs; (ii) reducing the costs and burdens associated with accessing capital markets; (iii) eliminating certain reporting obligations; and (iv) simplifying certain corporate governance requirements.
 The Netherlands		In the Netherlands, no relevant legislative measures have recently been adopted at local level for this purpose, except for the transposition of European legislation. On the other hand, it is important to note that while the Dutch market regulator does not publish statistical data or KPIs on the IPO process, Euronext, the Dutch market owner, does (e.g., it publishes the average time from the start of the IPO process to the actual listing).

Country	Promoting market entry	Comment
 Ireland		In Ireland, no relevant legislative measures have been adopted at local level for this purpose, except for the transposition of European legislation. In addition, it is noteworthy that the Central Bank of Ireland has published several (non-statutory) guides and templates to assist issuers in the securities issuance process.
 Luxembourg		Various rules have been implemented in Luxembourg for this purpose, although they are mainly focused on the issuance, trading and post trade and custody of financial instruments represented by DLT technology (e.g., debt issuance by the European Investment Bank).
 United Kingdom		In the UK, two initiatives can be highlighted: (i) for the regulated market, an alternative IPO regime with lower regulatory requirements (the "standard listing") was introduced, as opposed to the "premium listing"; and (ii) on 3 May 2023, the FCA published a consultation aimed precisely at attracting companies and investors to the capital markets, as the IPO regime has been considered by some issuers as complex and burdensome. The FCA publishes statistical data related to certain KPIs of the IPO process, including the average time of an IPO or the success rate.
 Sweden		In Sweden, local measures have been adopted to this end, although most of them are in line with EU legislation and its transposition into Swedish law. Although the Swedish market regulator does not publish statistical data or KPIs on the IPO process, Swedish market operators do, although none of these KPIs include average IPO process time.
 Switzerland		No specific measures relevant for the purpose have been implemented in recent years. Furthermore, as Switzerland is not part of the EU, it is not subject to legislative harmonization in the field of capital markets.

Source: Own elaboration

Areas for improvement and proposals

As can be seen in the graph "Evolution of the number of companies listed on BME (Regulated Market and BME Growth)" in this report, although the Spanish equity market has grown in terms of the number of companies listed, this is mainly due to the superior performance of BME Growth.

Meanwhile, the Spanish main or regulated market has declined, both in the number of listed companies and in total market capitalization (see Chart 16 of this Annex). The fall in these markets has occurred not only in Spain, but in Europe as a whole.

Undoubtedly, the aforementioned situation is not the result of a single circumstance, but rather multiple factors of different nature, both macroeconomic and microeconomic. These include regulatory disincentives stemming from regulatory and administrative burdens, as

well as the recourse of an increasing number of companies to M&A transactions or venture capital funds, to the detriment of public capital markets¹².

Due to the variety of factors, there is no single solution that can effectively address this challenge and reverse the negative trend but must be approached from different angles.

Firstly, from a regulatory point of view, it is possible to adopt measures which, without losing sight of investor protection, facilitate companies' access to capital markets by alleviating administrative burdens and, consequently, costs.

Such measures would align with the spirit of the CMU and have proven to be effective with the relaxation of issuer requirements in growing SME markets and the corresponding growth of these markets.

Related to these issues, we identify below a series of potential measures to be considered, mainly aimed at facilitating companies' access to the Spanish securities markets and focused on easing the administrative burden associated with this process. We also include measures that would favor the presence of more investors, issuers and products in our markets. These include:

- **Develop new, more flexible markets with lower requirements for SME and SOCIMI securities.** The creation and development of new markets can have several advantages, including: (i) **specialization and focus:** the creation of specialized spaces for specific types of investments allows investors to find more easily investment opportunities that match their objectives, risk tolerance and expertise; (ii) **increased visibility:** these markets can increase the visibility of certain companies or assets; (iii) **improved market efficiency:** specialized markets can facilitate market efficiency: markets can increase the visibility of certain companies or assets; (iii) **improve market efficiency:** specialized segments can facilitate more efficient price discovery, as investors and firms operating in these markets have deeper and more specific knowledge; (iv) **facilitate regulation:** these markets can be easier to regulate, by allowing the development of rules and procedures specific to the needs of each market. The recent launch of the market for Scaleup companies in BME is part of the response to the needs addressed at this point.
- **Streamline product approval processes in markets and clearing houses.** Speed in the admission of these products is an essential factor in their success and, to achieve this, the possibility of introducing standards, simplified application processes, implementing a risk assessment based on principles to speed up authorization, rather than requiring exhaustive analysis, should be assessed. The revision of MiFID II in relation to the Listing Act goes further in this direction of making the IPO process more flexible, simpler, homogenous and comparable across Europe. Furthermore, within the framework of the EMIR 3.0 regulation, the European Commission addresses the authorization processes of CCPs to standardize, streamline and improve competitiveness at EU level.
- **Establish and publish control indicators at the different stages involved in a securities issue.** Calculation and publication of specific *key performance indicators*

¹² These and other factors can be found on page 11 of the "European IPO Report 2020" (<https://www.fese.eu/app/uploads/2020/03/European-IPO-Report-2020.pdf>).

(KPIs)¹³ that reflect the evolution of securities issuance processes, measuring variables such as review periods or the number of additional requirements by the regulator, as, for example, carried out by the French regulator (AMF) or the UK regulator (FCA) or market operators such as the Dutch or Swedish regulator, as can be seen in the comparative analysis carried out in the KPI.

This type of monitoring will allow to analyze the efficiency of the mentioned processes, compare them with others and identify potential areas for improvement.

- **Simplify and streamline the listing process (mainly for IPOs):** To avoid companies perceiving the process of listing their shares on a regulated market or an MTF as an excessive burden, due to the amount and complexity of documentation, long deadlines and advisors' costs, we consider it desirable to simplify it. Measures to simplify the process can be taken without specific regulatory development, such as those already adopted by the CNMV to streamline the authorization processes of regulated entities, e.g., in the publication of guidelines, question and answer documents or standardized templates. A similar solution is adopted by the Central Bank of Ireland, as can be seen from the comparative analysis carried out in the KPI.

The possibility for the regulator to leverage the review of certain requirements on a responsible statement by the issuer and its advisor, in a manner like other administrative procedures, could also be considered as a measure to speed up the review process. For example, some Spanish companies express their disagreement with the early requirement for audited accounts in the IPO process.

- **Develop formulas to encourage the participation of small investors in Spanish markets.** Encourage the safe and informed participation of retail investors in the securities markets, by means of simple and mediated formulas (explanatory videos, hot line consultations, etc.).

In this respect, it is worth highlighting the formula employed by the German Stock Exchange (Deutsche Börse) through the service called "DirectPlace"¹⁴, which can be used by retail investors and allows them to participate in the share placement processes of listed and unlisted companies, enabling them to obtain a broad investor base supporting the success of the securities issue and ensuring a balanced mix of investors.

- **Promote knowledge of financing and listing on capital markets for entrepreneurs, managers and qualified private investors:** development of assistance and training programs for companies, their managers and private investors, promoting the principles of financial literacy necessary to, where appropriate, assess the value of seeking financing through the securities markets. An example would be the "Entorno Pre-Mercado" (EPM) initiative being developed in the Spanish Stock Exchange.
- **Do not impose restrictions on the marketing and trading of derivatives products traded on markets that are subject to strict supervision and seek greater use of centralized clearing (CCP) to eliminate counterparty risk.** Derivatives products

¹³ Similar to those already published by the CNMV on authorization processes for regulated entities.

¹⁴ <https://www.deutsche-boerse-cash-market.com/dbcm-de/primary-market/being-public/directplace>

traded on regulated markets are subject to a very high level of regulation and prior scrutiny, and it is therefore disproportionate to apply similar restrictions on certain products such as Contracts for Difference (CFDs) which are subject to a lower level of regulation and supervision. Regulators should view Regulated Derivatives Markets as an alternative to CFD trading platforms that should be encouraged.

- **Develop a comprehensive strategy between the regulator and market participants to achieve a real increase in the volume of fixed income issuance in Spain by large Spanish companies.** The recent reduction of charges for issuers in the verification of prospectuses is a step in the right direction to compete for the large flows of issuance of these assets from Spain, but in our opinion, it is not enough.
- **Establish clear rules and deadlines for the communication of dividend distribution policies of listed companies** that would improve the competitiveness of the Spanish derivatives market and therefore the liquidity of the underlying shares and the derivative products on them.
- **Increase the liquidity of the secondary market for Spanish Public Debt.** To this end, it is proposed that the Treasury, when assessing the activity of Market Makers in Spanish Public Debt, also consider the positions they take in derivatives on the Spanish notional bond.
- **Incentivize the IPO as a means of divestment for investees of venture capital and venture capital firms.** Adopt fiscal or other measures to encourage the use of regulated markets or MTFs as a means of divestment.
- **Possibility of setting up securitization funds (SFs) prior to the transfer of assets and the issuance of liabilities.** The aim is to avoid rigidities arising from the coincidence in time of two major milestones in a transaction of this type, namely registration of the securitization fund with the CNMV and the actual execution of the specific securitization transaction, with all the complexities that this entails.
- **Amendment of the regulation on Securitization Funds by incorporating the administration and management regime of securitized assets and the head of the TF.** An amendment is also proposed to the regulation on securitization funds, incorporating the administration and management regime of securitized assets and the person in charge of the securitization fund. Specifically, this is article 26.1b) of Law 5/2015 on the Promotion of Corporate Financing.
- **Promoting coverage of listed securities by analyst:** Liquidity is a key issue for the smooth development of markets and analysts' coverage of securities has historically proven to be a key determinant of healthy markets and increased investor interest. More information, more widely and to a wider range of investors, tends to be a guarantee of more acceptable markets.

Among the main reasons contributing to a certain lack of liquidity in Spain and Europe (especially for SMEs) are the restrictions on analysis and coverage activity implemented by MiFID II. Efforts to rectify this with the so-called Quick Fix Directive have proven insufficient. The lack of market liquidity, particularly for SMEs, poses a significant obstacle in considering stock market listings as a viable avenue for growth and financing.

We believe that more efficient measures need to be set than those outlined in the Quick Fix to prevent further deepening of the lack of coverage for companies, whose primary consequence is the breakdown of the meeting point between issuers and institutional investors.

For this reason, and about this specific issue, **this document proposes:**

- To increase the market capitalization threshold for investment firms to jointly offer execution and research services to €10 billion. The threshold currently stands at €1 billion and only the joint execution and analysis of orders in securities of listed companies with a market value or market capitalization of less than €1 billion can be offered.
- To encourage and incentivize from a fiscal and regulatory point of view the provision of sponsored research services, which have increased significantly in other markets around us.
- Not to tax VAT on the ancillary service of producing investment research and financial analysis when provided by investment firms.

We believe that the time is right to incorporate some of these measures both in the Listing Act and in the proposed Omnibus Directive that will amend MiFID II, among other directives, both within the framework of the Retail Investment Strategy. Against this background of regulatory change and improvements in investment practices, it is clear that we are at an important turning point. The proposed initiatives reflect an effort to adapt to new market realities and investor expectations. This effort to adapt and improve, stated in proposals such as raising the market capitalization threshold and incentivizing specialized services, is a clear indication of the continuing evolution of the financial investment landscape. The initiative to **encourage access to alternative investment for retail clients under the** Capital Markets Union (CMU) and the Retail Investment Strategy has led to the harmonization of the marketing regime for alternative collective investment vehicles to retail investors, as well as cross-border marketing. This opening has materialized in the change of the marketing regime for ELTIF (at European level), as well as in the marketing regime for Private Equity Institutions (at national level) and will soon be completed with the planned amendment of the Regulation on Collective Investment Schemes, which will allow the marketing of CIVs to retail investors under better conditions than those currently in place.

This has greatly increased the appetite of investors in the private banking sector for alternative investment products, most of which are closed-end vehicles.

The establishment of measures to encourage the listing of such alternative investment vehicles on the Spanish markets (whether regulated markets or MTFs) would favor the creation of a secondary market for closed-end funds, and at the same time help to reduce the gap caused by the reduction of SICAVs in the Spanish market.

Optionality in moving from an MTF to the regulated market

Spanish regulatory reference framework

Spanish law provides for a unique obligation for companies that are listed exclusively on a multilateral trading facility ("**MTF**"). Specifically, according to the provisions of Law 6/2023¹⁵,

¹⁵ Law 6/2023 of 17 March on Securities Markets and Investment Services.

when the capitalization of the shares of such companies exceeds €1 billion for a continuous period of more than six (6) months, they are legally obliged to apply for admission to trading on a regulated market within nine (9) months¹⁶.

The origin and *raison d'être* of this obligation, unique in the European benchmark markets, dates to 2014, with the so-called "Gowex case"¹⁷. In response to this situation and to prevent a similar case from occurring again, the requirements applicable to companies listed on the then Alternative Stock Market (today BME Growth) were reinforced by Law 22/2015¹⁸ and Law 5/2015¹⁹. These Laws, among other requirements, introduced the obligation to submit mandatory half-yearly accounts (until then voluntary) and the obligation to list on a regulated market when the capitalization of the companies exceeded the threshold of €500 million for a continuous period of six (6) months.

Subsequently, in 2020, by means of the sixth final provision of Royal Decree-Law 34/2020²⁰, the threshold would be raised to the current one billion euros.

Finally, it is important to note that some measures have been incorporated to make this obligation more flexible by establishing a maximum transitional period of two (2) years during which these companies may benefit from certain exemptions related to transparency obligations²¹. This issue is already addressed in this report in the section on "specific measures adopted to encourage companies to join the Spanish securities markets" and, as indicated there, it is not a new measure introduced by Law 6/2023. However, at the date of preparation of this report it is a matter pending development by Royal Decree.

Comparative situation

In none of the European jurisdictions under analysis is there a legal obligation like that provided for in the Spanish regulation for companies listed on an MTF to make the leap to the regulated market, and even less so when certain economic thresholds are exceeded.

Although none of the EU countries have an obligation similar to the Spanish one in their national legislation, it is worth noting here that, as Regulation (EU) 2019/2115 states in its explanatory memorandum (15), SME growth markets should not be seen as the final stage in the development of issuers and should allow successful companies to grow and one day move to regulated markets, in order to benefit from greater liquidity and a larger pool of investors.

Likewise, MiFID II establishes, among other requirements, that to qualify as an SME growth market, at least 50% of the issuers whose financial instruments are admitted to trading on

¹⁶ Article 63.7 of Law 6/2023.

¹⁷ <https://www.expansion.com/2014/07/06/mercados/1404668937.html>

¹⁸ Law 22/2015 of 20 July 2015 on the Auditing of Accounts











¹⁹ Law 5/2015, of 27 April, on the promotion of business financing.

²⁰ Royal Decree-Law 34/2020 of 17 November on urgent measures to support business solvency and the energy sector, and on tax matters.

²¹ These exemptions were ratified by Law 6/2023 and are awaiting regulatory implementation. However, the current draft of the Draft Royal Decree on financial instruments, admission to trading, registration of negotiable securities and market infrastructures ([ECO Tes 20210430 AP RD Instrumentos.pdf \(mineco.gob.es\)](#)) establishes limited exemptions in line with previous regulations.

the MTF must be SMEs²² at the time the MTF is registered as an SME growth market and in all subsequent calendar years²³.

Table 3 - Comparative situation: obligation to move from a Multilateral Trading Facility (MTF) to the regulated market

Country		Obligation to jump to a regulated market	Comment
	Spain	Yes	In Spain, when the capitalization of the shares of a company listed on a multilateral trading system exceeds €1 billion for a continuous period of more than six (6) months, they are legally obliged to apply for admission to trading on a regulated market.
	France	No	No such obligation is levied
	Germany	No	No such obligation is levied
	Italy	No	No such obligation is levied
	The Netherlands	No	No such obligation is levied
	Ireland	No	No such obligation is levied
	Luxembourg	No	No such obligation is levied
	United Kingdom	No	No such obligation is levied
	Sweden	No	No such obligation is levied
	Switzerland	No	No such obligation is levied

Source: Own elaboration

²² For the purposes of Directive 2014/65/EU (MiFID II), small and medium-sized enterprises are defined as companies with an average market capitalization of less than EUR 200 million.

²³ Article 33(3)(a) of Directive 2014/65/EU (MiFID II).

Areas for improvement and proposals

Since the birth of this obligation in 2015, certain measures have been implemented to make it more flexible²⁴, precisely because it is aware that this particular obligation of the Spanish legal system is perceived as a burden by companies listed on BME Growth, especially due to the regulatory consequences of having to be listed on a regulated market if the threshold of €1 billion market capitalization is exceeded.

Moreover, if a company listed on BME Growth is affected by this obligation, it can always choose to transfer its listing to another multilateral trading system, with the detriment that this implies for the Spanish market.

In the light of the above, there are still areas for improvement in this area, especially if the situation in Spain is compared with other EU member states, since, following the analysis carried out, no similar requirement has been identified in the other jurisdictions covered in this analysis.

It is worth noting that the European Union's Capital Markets Union (CMU) initiative is aimed precisely at removing certain barriers to the full integration of European capital markets. These barriers include administrative and regulatory barriers, which are perceived as significant obstacles to the development of European capital markets, especially as regards the participation of European small and medium-sized enterprises in these markets (whether in SME growth markets or in regulated markets)²⁵.

This provides an ideal scenario for the review and modification of such obligations.

Specifically, the following measures are proposed:

- **To eliminate the requirement to switch from trading on an MTF to the regulated market.** The current obligation to change market segment after a certain size of capitalization and the lack of a specific simplified procedure for doing so means that some companies are considering leaving the Spanish stock market to trade on a foreign market without these obstacles.
- **To streamline and simplify access to trading on the main (regulated) market from other market segments (MTF).** The main purpose of this measure is to facilitate and streamline the upgrade to the regulated market of companies whose shares have been traded on BME Growth, implementing a simplified process that allows these companies to leverage, as far as possible, on the information provided during the admission to trading process already carried out on the aforementioned MTF. The proposed measure does not seek to lower compliance and supervision standards, but rather to promote a more streamlined and efficient transition, while respecting transparency and investor protection obligations. We would request the amendment of the Royal Decree on financial instruments, admission to trading, registration of

²⁴ For example: (i) the increase by one hundred percent (100%) of the capitalization threshold from which the obligation to switch to the regulated market arises, or (ii) the existence of a maximum transitional period of two (2) years during which these companies may benefit from certain exemptions.

²⁵ For example, according to the "Commission Staff Working Document accompanying the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 596/2014 and (EU) 2017/1129 with regard to promoting the use of SME growth markets" ([link](#)), it is precisely the administrative and regulatory burdens that small and medium-sized listed companies point to as an obstacle to their listing on regulated markets.

negotiable securities and market infrastructures, to extend the temporary exemptions (for a period of two (2) years) currently provided for in article 63.7 of the Securities Market Law, in relation to compliance with certain transparency obligations.

In order to assess possible exemptions, we would propose to have the assistance/opinion of BME, as well as to carry out a consultation or survey aimed at companies listed on BME Growth, in order to clearly identify which regulatory requirements these companies perceive as the most significant obstacles.

The implementation of these measures could change the current perception of listing on a regulated market from being seen as a stumbling block and/or administrative and legal imperative to being seen as an opportunity.

Investment vehicles aimed at investing in listed domestic SMEs

Spanish regulatory reference framework

The Spanish legal system does not contemplate, neither in Law 35/2003²⁶, nor in Law 22/2014²⁷, the existence of domestic investment vehicles that have as their main purpose, or indirectly as an incentive, investment in: (i) SMEs listed on an MTF; or (ii) unlisted SMEs, for the purpose of divestment through the listing of such companies on the capital markets.

On the other hand, at European level, measures have been adopted to encourage investment in SMEs, giving access to retail investors, for example, through European long-term investment funds or "ELTIF"²⁸, which are regulated by Regulation 2015/760²⁹.

However, for one reason or another³⁰, these vehicles have not had a significant uptake in Spain³¹.

Comparative situation

The situation in the other European jurisdictions is not homogeneous.

On the one hand, there are EU jurisdictions such as France, Italy and Sweden, and other European jurisdictions, such as the UK, whose local regulations provide for the existence and establishment of specific vehicles or products that promote this type of investment.

As an example, the following products are highlighted:

- France has two types of venture capital funds designed to invest in small and medium-sized enterprises related to different strategic sectors (such as information technology, science, environment, energy or telecommunications). These are the so-called "*Fonds*

²⁶ Law 35/2003 of 4 November 2003 on Collective Investment Undertakings.

²⁷ Law 22/2014 of 12 November 2014 regulating venture capital companies, other closed-end collective investment undertakings and management companies of closed-end collective investment undertakings and amending Law 35/2003 of 4 November 2003 on Collective Investment Undertakings.

²⁸ The purpose of FILPE is to provide long-term financing for various infrastructure projects, unlisted companies or small and medium-sized listed companies that issue equity or debt instruments for which there is no readily identifiable buyer.

²⁹ Regulation 2015/760 of 29 April 2015 on European long-term investment funds

³⁰ Among other reasons, the absence of a tax regime (with the exception of provincial regulations in Vizcaya and Álava) to encourage their creation is one of the most important.




³¹ Only two (2) FILPEs are registered with the CNMV.

Communs de Placement dans l'Innovation" (FCPI) and "*Fonds d'Investissement de Proximité*" (FIP), both vehicles suitable for retail investors.








- (i) **Venture Capital Trust**: closed-ended collective investment schemes, similar to other venture capital firms, which must apply for admission to trading and whose portfolio must consist of at least 70% of shares in certain companies that are not listed or traded on the *Alternative Investment Market* (AIM), the UK's MTF for growth companies; (ii) **Enterprise Investment Scheme**: a vehicle designed to attract individual investors to small and medium-sized unquoted UK companies; and (iii) **Business Property Relief**: a type of scheme that provides tax relief for investments by a deceased taxpayer in shares of AIM companies.
- In Italy, the so-called "*Piani Individuali di Risparmio*"³² (PIR) have been introduced, which are instruments designed to encourage retail investors to invest in companies that do not belong to the main national (in the Italian case, the FTSE MIB) or international stock market indices, thus boosting investment in small and medium-sized enterprises.
- Finally, the Swedish case. Although Sweden does not have vehicles similar to those envisaged in France, the United Kingdom or Italy, it has designed other instruments that seek to promote greater participation of retail investment in Swedish capital markets, such as the "*Investeringskonto*", which are savings accounts aimed at investment, with tax advantages. Eligible assets include shares in listed companies.

Apart from the countries mentioned above, no similar investment vehicles or products, other than ELTIF, have been identified in the rest of the European jurisdictions, as in Spain.

Table 4 - Comparative Situation: Investment vehicles targeting investment in domestic small and medium-sized enterprises listed

Country	Investment vehicles in listed SMEs	Comment
 Spain	No	Spanish regulation does not have investment vehicles or products, suitable for the retail public, which are specialized in investing in listed SMEs.
 France	Yes	In French regulation, there are types of national investment vehicles, suitable for retail investors, specialized in investing in SMEs, such as the so-called " <i>Fonds Communs de Placement dans l'Innovation</i> " and " <i>Fonds d'Investissement de Proximité</i> ".
 Germany	No	German regulation has no investment vehicles or products, suitable for the retail public, which are specialized in investing in listed SMEs.

³² They were introduced with the Stability Law 2017 (*Legge di stabilità 2017*) published in the Italian Official Journal on 21 December 2016.

Country	Investment vehicles in listed SMEs	Comment
 Italy	Yes	Italian regulation does provide for such vehicles, such as the so-called " <i>Piani Individuali di Risparmio</i> ".
 The Netherlands	No	Dutch regulation has no domestic investment vehicles or products, suitable for the retail public, which are specialized in investing in listed SMEs.
 Ireland	No	Irish regulation has no domestic investment vehicles or products, suitable for the retail public, which specialize in investing in listed SMEs.
 Luxembourg	No	Luxembourg regulation has no domestic investment vehicles or products, suitable for the retail public, which are specialized in investing in listed SMEs.
 United Kingdom	Yes	English regulation provides for three types of vehicles, whose investment objects consist mainly of investment in listed or unlisted SMEs: <i>Enterprise Investment Scheme</i> , <i>Venture Capital Trust</i> and <i>Business Property Relief</i> .
 Sweden	No	Swedish regulation does not have domestic investment vehicles suitable for the retail public that specialize in investing in listed SMEs, although since 2012 it has introduced the " <i>Investeringsparkonto</i> ". A type of savings account that promotes retail investment in listed securities and investment fund shares, with certain tax advantages.
 Switzerland	No	Swiss regulation has no domestic investment vehicles or products, suitable for the retail public, which are specialized in investing in listed SMEs.

Source: Own elaboration

Areas for improvement and proposals

Small and medium-sized enterprises form the bulk of the European Union's business fabric. They account for more than 50% of European gross domestic product and more than 60% of European employment³³. In Spain, specifically, according to data from the Central Business Directory, as of 1 January 2022, small and medium-sized enterprises represent 99% of the Spanish business fabric³⁴.

If Europe's small and medium-sized enterprises grow, so will the economy of their respective countries. It is therefore essential that resources and funding can flow effectively to them.

In this context, it should not be forgotten that precisely one of the objectives of the Capital Markets Union ("**CMU**") is to try to widen access to finance for European small and medium-sized enterprises, seeking to increase their growth. Indeed, Action 5 of the CMU 2020 Action

³³ European Commission. "*Annual report on European SMEs 2020/2021*". July 2021. Page 8.

³⁴ Ministry of Industry, Trade and Tourism. "*Portrait of SMEs. DIRCE on 1 January 2022*". Edition February 2023. Page 2.

Plan aims to steer small and medium-sized enterprises towards alternative providers of finance³⁵.

In this context, the possibility of accessing non-bank financing for this type of company, either through venture capital or capital markets (the former often being the prelude to the latter), is of particular relevance.

Hence, the importance of creating vehicles or other financial products that encourage society's investment (both institutional and retail) in small and medium-sized enterprises, listed or unlisted; as well as incentives for these or other venture capital vehicles to complete the divestment process by exiting their portfolio companies via the regulated market or MTF.

To ensure that this compilation of intentions doesn't remain empty, it's crucial that the application of the regulation governing the limits that Collective Investment Undertakings (CIUs) have in their operations concerning the holding of shares listed on MTFs (such as BME Growth) is rigorously applied and monitored. And keeping in mind one of the primary objectives: that small companies have stable shareholdings. These holdings should serve as instruments through which small investors can indirectly and collectively participate in these companies. Therefore, the combination of the limits established for CIUs by the diversification coefficient (Article 50.2 of the RIIC) and the liquidity principle (Article 53 of the RIIC) must be applied rigorously. Yet, they should not act as a deterrent for institutional investment portfolio managers even at the outset.

In view of the above, the implementation of the following measures should be considered:

- **Promote SME retail investment vehicles or products.** Carry out the necessary regulatory developments for the creation of a specific category of products or vehicles, suitable for retail investors, whose purpose is to invest in debt or equity instruments of SMEs, listed or unlisted.

To ensure that the aforementioned vehicles or products have a greater impact on the Spanish economy, it would be advisable to consider the possibility of focusing them on investment in the sectors that are to be promoted³⁶ (as in the French example).

In order to encourage and attract their use, as other European jurisdictions have done, it would be advisable to accompany the creation of these vehicles or products with certain tax incentives (as will be pointed out below, tax incentives for investors could be regulated, such as those established in the law on "start-ups" and extended to the case of companies listed on BME Growth).

Given that these vehicles must be open to retail investors, it is advisable that their regulatory development be carried out under the current Law 22/2014, as advantage could be taken of the amendment introduced by Law 18/2022 to Article 75.2 of Law 22/2014. This amendment has made the regime for retail investors in venture capital firms more flexible. Thus, as an alternative to the minimum initial investment requirement of 100,000 euros, the marketing of shares or units of ECRs or EICCs to retail investors is permitted, provided that they access the investment through the recommendation of an entity authorized to provide advisory

³⁵ https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan_en

³⁶ For example, they could be in line with the sectors to be promoted in the European Union within the Next Generation EU Funds or the objectives set out in the UN's 2030 Agenda for Sustainable Development.

services, with a minimum initial investment of 10,000 euros and, provided that it does not represent more than 10% of the client's financial assets, if this does not exceed 500,000 euros.

- **Incentivize listing on markets as a means of divestment for venture capital and private equity firms.** Implement measures, fiscal or otherwise, that encourage venture capital firms to use regulated markets or NTFs as a means of divestment.

Possibility for the Spanish central securities depository (CSD) to offer custody and settlement of Eurobonds

Spanish regulatory reference framework

The primary registration of Eurobonds is carried out by so-called International Central Securities Depositories ("ICSDs"), of which there are two (2) in the European Union: Clearstream Banking Luxembourg and Euroclear Bank in Belgium.

Historically, ICSDs settle the cash leg of a securities transaction (including Eurobonds) through open cash accounts as they are banks, rather than central bank money accounts. This situation remains unchanged today, despite the creation and implementation of the pan-European securities settlement system "TARGET2-Securities" or "T2S" (which offers settlement in central bank money), as ICSDs have not joined and integrated the technological solution proposed by the Eurosystem.

This particularity has led to the fact that local CSDs can only offer Eurobond settlement services, if their regulations allow them to carry out such settlement, through cash accounts opened with a credit institution.

With regard to the situation in Spain, we can distinguish between two stages:

- Until the entry into force of Law 18/2022³⁷, Law 41/1999³⁸ only allowed the Spanish CSD³⁹ to settle cash transfer orders through central bank money accounts⁴⁰.
- Following the entry into force of Law 18/2022, Article 3.d) of Law 41/1999 was amended to allow that, when it was not possible or the resources were not available to settle cash through accounts at a central bank, cash settlement could be carried out through accounts opened at a credit institution or even through the central securities depository's own accounts, if it had a banking license. Subsequently, with the entry into force of the Securities Market and Investment Services Law⁴¹, the aforementioned Article 3.d) was amended again to provide a clearer wording, while maintaining the possibility of settling the cash leg of a securities transaction through commercial bank money if central bank settlement were not feasible.

³⁷ Law 18/2022 of 28 September on the creation and growth of companies

³⁸ Law 41/1999 of 12 November 1999 on payment and securities settlement systems.

³⁹ Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores S.A.U. (Securities Registration, Clearing and Settlement Systems Management Company).

⁴⁰ Article 3.d of Law 41/1999.








⁴¹ See the second final provision of Law 6/2023.

Comparative situation

At the European level, the CSDR⁴² already states in its explanatory memorandum⁴³ that, in order to avoid settlement risks arising from the insolvency of the settlement agent, and whenever possible and feasible, CSDs should settle the cash component of the securities transaction through accounts opened with a central bank, but that, when this is not possible or feasible, CSDs should be able to settle through accounts opened with a credit institution. This premise is reflected in Article 40.2 of the CSDR.




The analysis shows that all CSDs in the European jurisdictions analyzed offer settlement of Eurobonds. In the case of EU member states, this would be in line with the provisions of the CSDR. The case of Spain and Germany stand out, as until recent dates, they were unable to offer Eurobond settlement. However, in the German case, this was not important as the Clearstream group owns the Luxembourg ICSD and the German CSD.

Table 5 - Comparative situation: Spanish CSD's ability to offer custody and settlement of Eurobonds

Country	Eurobonds Settlement	Comment
 Spain	Yes	However, until recently, the Spanish CSD (Iberclear) could not offer settlement of Eurobonds.
 France	Yes	The French CSD (Euroclear France) can offer custody and settlement of Eurobonds.
 Germany	Yes	The German CSD (Clearstream) can offer custody and settlement of Eurobonds from the beginning of 2022.
 Italy	Yes	The Italian CSD (Euronext Securities Milan) can offer custody and settlement of Eurobonds.
 The Netherlands	Yes	The Dutch CSD (Euroclear Nederland) can offer custody and settlement of Eurobonds.
 Ireland	N/A	Ireland does not have a locally based CSD
 Luxembourg	Yes	European regulations do allow for this. However, since the issuance of Eurobonds is centralized by the two ICSDs, it is not attractive for the local CSD (from a business perspective).

⁴² Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and central securities depositories ("Central Securities Depositories Regulation").

⁴³ See point "(44)" of the CSDR Explanatory Memorandum.

	Country	Eurobonds Settlement	Comment
	United Kingdom	Yes	The English CSD (Euroclear UK & International Limited) can offer custody and settlement of Eurobonds.
	Sweden	Yes	The Swedish CSD (Euroclear Sweden) can offer custody and settlement of Eurobonds.
	Switzerland	Yes	The concept of CSD in the Swiss regulation is not equivalent to that of the European regulation, the function of the European CSD being performed by SIX Group AG. However, SIX Switzerland can offer custody and settlement of Eurobonds.

Source: Own elaboration

Areas for improvement and proposals

The impossibility of offering Eurobond settlement by Iberclear until 2022 (with the amendment of Law 41/1999) has left the Spanish CSD at a competitive disadvantage compared to its European counterparts.

In view of the above, now that the regulatory constraint is fortunately partly overcome, it is proposed:

- **Incorporate the custody and settlement of Eurobonds by Iberclear, the Spanish Central Securities Depository (CSD).** The impossibility of offering settlement of Eurobonds by Iberclear until 2022 (following the amendment of Law 41/1999) left Spain for many years at a competitive disadvantage vis-à-vis its European counterparts. The integration of Euroclear Bank into the settlement system (T2S) of the European Central Bank (ECB) is the appropriate opportunity to do so, ensuring equal terms for the Spanish Depository vs its peers.

This would be carried out through the opening of a standard link with Euroclear Bank once it has joined T2S and will allow Iberclear to boost the offer of custody and settlement services for Eurobonds using Central Bank money. In December 2021, Euroclear Bank and the ECB reached an agreement whereby Euroclear Bank would migrate to the T2S platform, with this migration taking place in stages.

- **Enable Iberclear to offer settlement through accounts opened with credit institutions.**

Securities lending operations of collective investment undertakings

Spanish regulatory reference framework

In Spain, collective investment undertakings ("CISs") cannot carry out securities lending operations (except in certain limited circumstances⁴⁴), since, although they are empowered

⁴⁴ The limitations are set out in the fifth additional provision of Royal Decree 878/2015, which establishes that CISs may lend their securities, up to a limit of 50% of their assets, for the following two purposes:

- Providing credit to the market in spot stock exchange transactions.
- Loans that can in turn be used by central counterparties and CSDs to ensure delivery of securities on the settlement date, which would include loans of last resort regulated by BME Clearing.

to do so in accordance with article 30.6⁴⁵ of Law 35/2003⁴⁶, the mandatory ministerial development has not been implemented to date⁴⁷, despite various initiatives to introduce the aforementioned regulatory development.

Comparative situation





At EU level, under Article 51(2) of the UCITS Directive⁴⁸, UCITS⁴⁹ are allowed to make use of securities lending as part of their efficient portfolio management techniques.

The European Securities and Markets Authority ("**ESMA**"), in its Guidelines on Exchange Traded Funds (ETFs) and other UCITS issues (currently consolidated in ESMA's Q&A on the implementation of the UCITS Directive⁵⁰), sets out certain requirements applicable to the use of efficient portfolio management techniques affecting securities lending.

Finally, it is worth noting that ESMA highlighted in a May 2022 report that securities lending is precisely one of the "most common efficient portfolio management techniques used by UCITS fund managers".⁵¹

The comparative analysis shows that Spain is the only European country under analysis in which CISs are not allowed to carry out securities lending operations.

Table 6 - Comparative situation: the operation of securities lending by Spanish Collective Investment Undertakings (CIS)

Country	Securities lending	Comment
 Spain	No	In Spain, CISs may not carry out securities lending operations, except in certain circumstances.
 France	Yes	In France, UCITS may carry out securities lending as part of their efficient portfolio management techniques.
 Germany	Yes	In Germany, UCITS are allowed to carry out securities lending as part of their efficient portfolio management techniques.
 Italy	Yes	In Italy, UCITS may carry out securities lending as part of their efficient portfolio management techniques.

⁴⁵ This states that: "securities and other assets in the portfolio of financial CISs may be the subject of securities lending operations with the limits and guarantees established by the Minister of Economy and Finance".

⁴⁶ Law 35/2003 of 4 November 2003 on Collective Investment Undertakings.







⁴⁷ See question 32 of Section 1 of the "Questions and Answers on the regulation of CISs, CIUs, CIUs and other closed-end collective investment vehicles" published by CNMV.

⁴⁸ Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

⁴⁹ Acronym for Undertakings for Collective Investment in Transferable Securities or UCITS.

⁵⁰ Questions and Answers. Application of the UCITS Directive. ESMA34-43-392.

⁵¹ See point "39" on page 13 of the "Final Report on the 2021 CSA on costs and fees", published by ESMA on 31 May 2022 (ESMA34-45-1673).

	Country	Securities lending	Comment
	The Netherlands	Yes	In the Netherlands, UCITS are allowed to carry out securities lending as part of their efficient portfolio management techniques.
	Ireland	Yes	In Ireland, UCITS may carry out securities lending as part of their efficient portfolio management techniques.
	Luxembourg	Yes	In Luxembourg, UCITS may carry out securities lending as part of their efficient portfolio management techniques.
	United Kingdom	Yes	In the UK, UCITS may carry out securities lending as part of their efficient portfolio management techniques.
	Sweden	Yes	In Sweden, UCITS may carry out securities lending as part of their efficient portfolio management techniques.
	Switzerland	Yes⁵²	In Switzerland, investment funds are allowed to engage in securities lending, although this is not a practice encouraged by the Swiss regulator.

Source: Own elaboration

Areas for improvement and proposals

The use of securities lending operations by investment vehicles enables their managers to achieve additional returns⁵³ and provides extra liquidity to the market for its proper functioning.

Therefore, the limitations to this operation, on the one hand, leave Spanish CISs at a competitive disadvantage with respect to their European peers (which are authorized to do so) and, on the other hand, reduce the liquidity of Spanish capital markets.

⁵² Although Switzerland is not part of the EU and therefore the UCITS Directive does not apply, it has been indicated as "Yes" in the sense that Switzerland does allow its investment funds to carry out securities lending operations.

⁵³ In order to fully understand the scope and scale of this market, it is imperative to turn our attention to the valuable data provided by the prestigious *International Securities Lending Association* ("ISLA") for the first half of 2022. According to ISLA estimates, the total value of assets available for lending globally amounts to an impressive EUR 28.5 trillion, with an approximate utilisation of EUR 2.7 trillion. These figures cover a wide range of financial instruments, including equities, government bonds, corporate bonds, exchange-traded funds (ETFs) and American Depositary Receipts (ADRs). This thriving industry generates around €9 billion in profits annually for the various players involved. However, it is surprising that the Spanish market, despite having a remarkable volume of assets in CISs of around 550 billion euros, as well as a considerable 115 billion euros in pension funds, has not been able to capture any of this industry, as a result of the lack of regulatory development that has not been forthcoming.

Furthermore, the CNMV, through its chairman Rodrigo Buenaventura, has expressed its express support for the necessary regulatory development to be carried out, dispelling doubts about the potential risks of encouraging short selling ⁵⁴.

In the light of the above, the following measure should be put in place:

Accelerate the regulation of Securities Lending operations for Collective Investment Institutions: Urgent approval of the corresponding Ministerial Order to allow Spanish CISs to access securities lending operations, without being subject to current legal limitations.

Promotion of market culture

Spanish regulatory reference framework

The Ministry of Economic Affairs and Digital Transformation, the Bank of Spain and the CNMV have promoted various measures aimed at creating and fostering a market culture in Spanish society. In each case, these actions are aimed especially at citizens in their capacity as investors, managers or owners of companies and financial advisory professionals.

For example, the CNMV, which tends to be the most active public agent in this area, offers a large amount of open educational content in the form of guides, infographics, courses and videos on financial education in the "Investors and Financial Education" section of its website⁵⁵. In addition, it produces guidelines and Q&As in relation to the admission to trading process, especially on the preparation of prospectuses by companies, documentation to be submitted and procedural aspects. Also in 2022, a specific contact point for enquiries on IPOs was set up.

This educational work of the CNMV is one of the main pillars of its activity, which is reviewed and updated annually through the Commission's Activity Plans⁵⁶. In these plans we can see that each year numerous actions are promoted in the field of financial education.

On the other hand, it is imperative to refer to the Financial Education Plan published in the Official State Gazette (BOE) on 28 January 2022⁵⁷, which is a renewal of the agreement signed in 2008 by the Bank of Spain, the CNMV and the Ministry of Economic Affairs and Digital Transformation, for the promotion, development and implementation of a strategy aimed at improving financial education in Spain.

Comparative situation

The comparative analysis shows that, to a greater or lesser extent, all European countries have programs aimed at promoting market culture, through various initiatives focused on educating citizens.





















⁵⁴ "It would not encourage short selling because the volume of investment in Spanish shares held by national funds is ridiculously low, less than 4% of the capitalization of the Spanish stock market. In other words, 96% is in the hands of international investors who can lend the securities, and the marginal addition to the lendable balance that what is now in the hands of the national funds would represent is not a risk, and would allow participants to be remunerated somewhat more" ([link to press article](#)).

⁵⁵ <https://www.cnmv.es/portal/Inversor/Indice.aspx>

⁵⁶ <https://www.cnmv.es/portal/Publicaciones/PlanActCNMV.aspx>

⁵⁷ [BOE-A-2022-1390 Resolution of 25 January 2022, of the National Securities Market Commission, publishing the Agreement with the Bank of Spain and the Ministry of Economic Affairs and Digital Transformation, for the promotion and development of the Financial Education Plan.](#)

Table 7 - Comparative situation: promoting market culture

Country	Market culture	Comment
 Spain		In recent years, several initiatives have been launched to promote market culture among citizens, with a focus on investor protection.
 France		In France, several initiatives have been taken to educate and train investors, the main purpose of which is to communicate about risks and to inform about how to invest safely in the markets. These initiatives are mainly carried out by the Paris Europlace association.
 Germany		The draft "future financing law" (<i>Referentenentwurf des Zukunftsfinanzierungsgesetzes</i>), provides for the promotion of market culture by incentivizing employee share ownership schemes.
 Italy		The Bank of Italy and the Italian Markets Authority (CONSOB) promotes measures for the financial education of citizens, focused on enabling investors to make an informed investment decision.
 The Netherlands		The Dutch Authority for the Financial Markets (AFM) focuses primarily on protecting investors by warning them of the potential risks of investing in different financial instruments, promoting safe and informed investment.
 Ireland		The Irish Competition and Investor Protection Commission offers an advisory service for investors in the capital markets on its website. In 2019, the <i>Ireland for Finance</i> strategy was launched, which includes an action plan and measures related to the promotion of market culture.
 Luxembourg		The Luxembourg Capital Markets Association (LuxCMA) and the government have promoted various initiatives, particularly in digitalization (digitization of tradable securities).
 United Kingdom		UK authorities, regulators and industry organizations have promoted financial education and awareness programs focused on improving investors' understanding of financial products, risk management and long-term investment strategies.
 Sweden		Sweden stands out as having one of the highest rates of financial education in the world. This is because financial education has been promoted for decades in schools by various associations, including the Swedish Financial Supervisory Authority (<i>"Finansinspektionen"</i>).
 Switzerland		The Swiss regulator (FINMA) is promoting various initiatives to encourage market culture but focusing on aspects such as investor protection or the suitability and appropriateness of investments according to the investor profile.

Source: Own elaboration

Areas for improvement and proposals

The importance of financial education is crucial. The more informed society is, the better decisions it can make about its finances.

Although, as indicated in the previous section, Spain has promoted various measures aimed at promoting financial education among citizens and companies, OECD data show that the participation of Spanish households in the securities markets lags behind other European jurisdictions. While in countries such as Sweden or the Netherlands the percentage of deposits and cash is between 10% and 17%, in Spain this percentage is 38.4%⁵⁸. It is therefore reasonable to think that there is room for improvement and diversification in this area.

This situation can be explained from different angles. From a strictly cultural point of view, the lower exposure of Spanish households and companies to the markets may be due to the perhaps excessive focus on risks in the information published on markets and investment. Although investor protection should not be neglected and is not intended to be questioned, it is true that a different complementary approach could be taken, also highlighting the benefits of investment through the markets and not only their risks.

There are also factors that have to do with the strong and predominant historical presence of the banking sector in all processes that have to do with savings, financing and the spending and investment decisions of all social agents in Spain.

In line with the above, we propose:

- **To design a national Financial Education Plan aimed at improving the diversification of the savings and asset allocation of Spanish families and converge with Europe** by increasing the proportion of family financial savings oriented towards the long term.
- **To promote information/communication to companies to facilitate their participation in markets:** through the development of more ambitious assistance and training programs for companies, investors and managers to inform them of the possibilities offered by markets as an alternative for their growth and their sources of financing.

Similarly, more focus on market and financial system education should be considered as part of an informed investment decision.

In addition, it would be advisable to promote awareness of the Free Investment Collective Investment Institution (FI CIS) as an alternative product to attract private savings, especially after the tightening of the Spanish legal regime applicable to SICAVs.

FI CIS (mainly SIL) are little known vehicles in the Spanish market, as they have traditionally been exclusively aimed at professional investors. The expected reform of their marketing regime will soon take place, which will allow retail investors access to this product. This, together with its tax regime, may favor the choice of this product as an alternative to SICAVs, and halt the relocation of assets that has been occurring since the 2021 reform.

In this regard, it is important to note that the Draft Royal Decree that will amend the CIS Regulation establishes the same marketing regime for CISs (Funds, FILs, and Companies, SILs) to retail investors as the old ELTIF regime. In other words, following the reform, FI CISs may be marketed to retail investors investing at least €10,000 and doing so under the MiFID

⁵⁸ OECD (2023), Household financial assets (indicator). doi: 10.1787/7519b9dc-en (as of 18 May 2023): <https://data.oecd.org/hha/household-financial-assets.htm#indicator-chart>

investment advice service. However, the new ELTIF 2.0 regime does not require a minimum investment and does not require the investment to be made as part of the advisory service, but only requires the investment to be subject to a suitability assessment by the ELTIF manager.

It would be highly desirable for the promotion of FI CISs among retail investors that the amendment of the CIS Regulation is not approved under the old regime of ELTIF (now obsolete), but under the new regime established by the ELTIF 2.0 regulation.

Restrictions on foreign investment in enterprises

Spanish regulatory reference framework

In Spain, as in the rest of the member states of the European Union, the free movement of capital takes precedence, although member states are authorized to introduce certain exceptions⁵⁹ to this principle.

The Spanish legislator, making use of the powers conferred on it by European legislation, regulates in Law 19/2003⁶⁰ the limitations and restrictions to the liberalization regime of certain foreign direct investments in Spain.

In 2020, through the fourth final provision of Royal Decree-Law 8/2020⁶¹, the second transitory provision of Royal Decree-Law 11/2020⁶² and the single transitory provision of Royal Decree-Law 34/2020⁶³, a new article 7.bis was introduced in Law 19/2003, creating a regime for obtaining *ex ante* administrative authorization for a series of foreign direct investments in Spain.

Thus, Law 19/2003 allows for the suspension of the liberalization regime by **requiring prior authorization** in the following cases:

- Investments that are ultimately made by residents of countries outside the EU and the European Free Trade Association and that involve the foreign investor holding 10% or more of the share capital of a Spanish company or acquiring control of all or part of it. In addition, if there are national security implications, prior authorization would be required to exceed 5%.
- Investments made by residents of other EU and EFTA countries in listed companies in Spain, or in unlisted companies if the value of the investment exceeds € 500 million (provided that they invest in one of the sectors referred to in Article 7a (2) of Law 19/2003).

⁵⁹ See Articles 64 to 66 of the Treaty on the Functioning of the European Union and Regulation 2019/452 on the control of foreign direct investment in the Union.

⁶⁰ Law 19/2003 of 4 July 2003 on the legal regime governing the movement of capital and foreign economic transactions and on certain measures to prevent money laundering.

⁶¹ Royal Decree-Law 8/2020 of 17 March on extraordinary urgent measures to address the economic and social impact of COVID-19.

⁶² Royal Decree-Law 11/2020 of 31 March adopting additional urgent social and economic measures to address COVID-19.

⁶³ Royal Decree-Law 34/2020 of 17 November on urgent measures to support business solvency and the energy sector, and on tax matters.



- Investments affecting public order, public security and public health in sectors such as, but not limited to: critical infrastructure; critical and dual-use technologies (including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence technologies, etc.); supply of critical inputs (in particular energy); or in sectors with access to sensitive information (in particular personal data).

Finally, it is worth mentioning that on 4 July 2003, the regulations implementing Law 19/2003⁶⁴ were published, which develop the regime for direct investments by foreigners in Spain.

Comparative situation







The comparative analysis shows that all jurisdictions apply or are in the process of applying restrictions on foreign direct investment in sectors that are critical to the nation. It is important to note that since 11 October 2020, following the entry into force of Regulation 2019/452⁶⁵, foreign direct investment control mechanisms are allowed to be applied directly in all EU member states, as a directly applicable legal framework has been developed, regardless of whether member states previously had national rules in place.

Table 8 - Comparative situation: restrictions on foreign investment in companies

Country	Restrictions on foreign investment	Comment
 Spain	Yes	In 2020, through the approval of two Royal Decree-Laws, a prior authorization regime was introduced for foreign investments in national companies, subject to certain requirements and justified by the fact that these sectors affect public order, public security and national public health, thus putting an end to the liberalization regime that existed in Spain.
 France	Yes	In France, a foreign investor must obtain prior authorization from the Ministry in charge of the economy when its investment in certain sectors (public security; national defense; research activities; production or marketing of arms, ammunition, gunpowder; renewable energies, biotechnologies) involves: (i) acquiring, directly or indirectly, control of a French entity; (ii) acquiring all or part of the activity of a French entity; or (iii) obtaining, directly or indirectly, more than 25% of the voting rights of a French entity.
 Germany	Yes	In Germany, restrictions on foreign direct investment are regulated by the " <i>Außenwirtschaftsgesetz - AWG</i> " and the " <i>Außenwirtschaftsverordnung - AWV</i> ". They generally apply to the acquisition of a domestic company or shares in a domestic company by a non-EU national or a non-EU member of the European Free Trade Association (EFTA). The threshold above which the restrictions apply is 10%, although depending on the sector it may be higher (20% or 25%).

⁶⁴ Royal Decree 571/2023 of 4 July on foreign investments

⁶⁵ Regulation 2019/452 of 19 March 2019 on the control of foreign direct investment in the Union

Country	Restrictions on foreign investment	Comment
 Italy	Yes	In Italy, since the introduction of the so-called "Golden Powers Decree" (Decree Law 21 of 15 March 2012), the Italian government has been empowered to carry out prior control and set specific conditions for the acquisition of shareholdings, to veto the adoption of certain resolutions, acts and corporate transactions and to oppose the acquisition of shareholdings in order to preserve the ownership structures of companies operating in sectors considered strategic and of national interest.
 The Netherlands	Yes	Restrictions on foreign direct investment do exist in the Netherlands. On 1 January 2023, a law ("Wet veiligheidsstoets investeringen, fusies en overnames") came into force requiring prior notification of an intention to acquire a Dutch company, provided that the company is considered to be: (i) an essential supplier; (ii) an operator of a high-tech campus; or (iii) active in the fields of critical technologies.
 Ireland	No	There are currently no restrictions on foreign direct investment in Ireland, except for the direct application of the provisions of Regulation 2019/452 which establishes a framework for the control by member states, for reasons of security or public order, of foreign direct investment. In addition, it is worth mentioning that a regulation ("Screening of Third Country Transactions Bill") is in the process of legislative approval, which will allow foreign direct investments in critical Irish industries or sectors to be conditional or prohibited.
 United Kingdom	Yes	Restrictions exist in certain sectors or industries (national defense; critical infrastructure; critical technologies; etc.). In particular, mention should be made of the National Security and Investment Act (NSIA) passed in April 2021. The NSIA is designed to enhance the UK government's ability to scrutinize and intervene in investments that have national security implications.
 Sweden	No	Currently, there are no restrictions on foreign direct investment in Sweden. However, following the adoption of Regulation (EU) 2019/452, there is a legislative initiative not yet approved by the Swedish parliament, according to which foreign investments that pose risks to national security (among others) may be reviewed by a special supervisory authority and, if necessary, even banned.
 Switzerland	Yes	<p>Switzerland does not restrict foreign direct investment in general. However, there are certain sectors where there are restrictions on foreign ownership:</p> <ul style="list-style-type: none"> - Real estate: as a rule, non-residents must obtain authorization from the authorities of each canton to acquire certain types of real estate in Switzerland. The law applies to both residential and commercial real estate. - Financial sector: Under Swiss financial laws and regulations, purchasers seeking to acquire a regulated financial institution in Switzerland must obtain certain prior approvals.

Source: Own elaboration

Areas for improvement and proposals

A comparative analysis shows that there is a general trend in Europe towards greater control of foreign investment in critical sectors and infrastructures, especially after the sharp fall experienced by the markets in the months following the pandemic. For Spain, we believe that it would have been advisable to take advantage of the recent process of processing the draft Royal Decree on foreign investment to incorporate some measure aimed at avoiding limitations that may be excessive for foreign investment, returning to a situation similar to the one that existed before 2020. Therefore, consideration should also be given to amending the recent Royal Decree 571/2023 or supplementing it by means of ministerial orders or other regulatory text along the following lines:

- **Reduce the veto power and regulatory limits on the participation of foreign investors in certain companies**, narrowing the definition of the sectors to which the restriction applies, clarifying that the regime will only apply to investments that could compromise national security. At the very least, no further extension of the RD in the terms that were established to regulate and prevent situations arising from an exceptional event.

5.3 Annex 3: Comparative tax analysis

Introduction

We now turn to an in-depth analysis of the main areas for improvement or regulatory changes which, from a taxation point of view, we believe could strengthen the competitiveness of Spanish financial markets.

Although Spain generally has modern tax regulations that are harmonized with the main European and international standards, we believe that some areas for improvement could be assessed with respect to the taxation of certain financial products that are traded or can be traded on Spanish stock exchanges.

In this sense, the taxation of certain financial products in Spain could be limiting the development of their offer in the Spanish market, while other European countries are betting on the introduction of tax incentives with the aim of diversifying their market and broadening the investment options available to both individual and institutional, national and foreign savers.

The Spanish stock market stands out for its diversity of investor types and for the confidence of foreign investors. Maintaining this diversity and confidence requires proactive measures to correct any problems that are detected. The importance of international capital and the ease with which it can move around makes it increasingly clear that the tax factor is a major competitive element.

On this issue, Spain has some deficits that depend almost exclusively on the legislator's will to solve them. Critical years lie ahead in which it is essential to raise capital and develop the ecosystem of wealth generated by capital markets in order to support faster economic growth.

Based on the above, this section contains an analysis and proposal for amendments to the current tax regulations on certain financial instruments or special tax regimes already existing in our tax system, as well as other areas of Spanish tax legislation, which, as mentioned above, would make it possible to promote the development of Spanish financial markets.

Within each area of analysis, there will first be a brief introduction on the tax regime of each vehicle or financial product, or on the main tax implications applicable, followed by a comparative analysis of the taxation applicable both internally (comparing it with the domestic taxation applicable to other financial products) and with respect to the legislation applicable in neighboring countries.

Finally, following this analysis, we propose the tax changes that we believe could enhance the competitiveness of the aforementioned financial products, with the aim, at least, of placing us in a better competitive position in tax matters.

Objectives of the tax measures

Firstly, any tax reform should seek to preserve product neutrality where possible. In this case, a reform of taxation in Spain should seek to make progress in correcting the bias of lack of neutrality that still exists in the tax rules in favor of debt over equity financing.

Potential changes to tax rules would pursue the following objectives:

- To encourage the incorporation of new companies to the stock markets as the most consolidated way of boosting the size, sustained capitalization and competitiveness of the Spanish business fabric.
- To favor the attractiveness and competitiveness of Spanish companies in the markets and progressively increase their presence in different national and international fields and portfolios.
- To encourage the trading in our market of financial products and assets that maintain the attractiveness and foster the growth of our financial sector and investment options by enhancing diversification opportunities. Most of these products are already successful in other major national jurisdictions competing with Spain. Their full implementation in Spain would facilitate a significant increase in the flow of funds and capital through the domestic investment ecosystem.

Listed Investment Certificates and ETPs

Spanish regulatory reference framework

Financial assets with an implicit yield are those in which the yield is generated by the difference between the amount paid at issue, first placement or endorsement, and the amount committed to be repaid at maturity of those transactions whose yield is fixed, in whole or in part, implicitly, through any transferable securities used to raise funds from third parties.

In accordance with Personal Income Tax (IRPF) regulations, income derived from financial assets with implicit returns is considered as savings income (at tax rates generally lower than those of general income) and can compete, a priori, under similar tax conditions with other financial products such as CISs, ETFs, warrants, shares, derivatives, etc.

The main operational obstacle faced by financial assets with implicit returns is that **the income derived from the transfer or redemption of these assets is subject to personal income tax withholding** (as opposed to derivatives of financial assets listed on official Spanish markets with explicit returns, which are exempt from withholding tax).

Among the different types of financial assets with implicit returns traded on securities markets are structured products (e.g., **listed investment certificates**).

As detailed above, the Certificates are atypical transferable securities of a compound nature (i.e. structured financial instruments), which combine the characteristics of both (i) derivative financial instruments (variable return because they are linked to the performance of the underlying; possibility of loss of principal) and (ii) debt financial instruments (by paying their purchase or subscription price, the investor obtains the right to a redemption at maturity vis-à-vis the issuer). They combine features of fixed-income or equity securities and also of derivative financial instruments, and their return is generally linked to their redemption or repayment.

They are also freely transferable on the secondary securities market by private placement and negotiation. Their term of issue may be chosen by the issuer, or they may be perpetual in nature. The financial profile of these instruments is as varied as desired, with underlyings on stock market indices, a series of indices or a basket of shares listed on organized stock markets, or other more specific benchmarks (*hedge funds, private equity*).

The Directorate General of Taxes (DGT) has assimilated the tax treatment of the Certificates to that of debt instruments and has therefore determined that the Certificates are Financial Assets with implicit yield, which give rise to positive or negative income from capital gains for their individual holders, on the occasion of their transfer, redemption or reimbursement, and withholding obligations for the issuers or intermediaries.











As mentioned above, the obligation imposed on financial intermediaries under Spanish law to withhold withholding tax makes it difficult for financial assets subject to withholding tax to be traded widely in the financial markets, placing them in a less competitive position with respect to other financial products, mainly due to the high administrative and management costs that this entails.

In a similar situation, we find products gaining popularity in the world's major stock exchanges but absent from the Spanish stock market, known as Exchange Traded Products (ETPs). These products are further divided into Exchange Traded Commodities (ETCs), allowing exposure to certain commodities (such as gold, metals, etc.), and Exchange Traded Notes (ETNs), providing exposure to interest rates and even cryptocurrencies. ETPs are

issued as a debt instrument, subjecting returns obtained by individual residents in Spain to withholding obligations.

Comparative situation

Table 9 - Comparative analysis: financial assets with implicit yield (e.g., Exchange Traded Investment Certificates, ETPs)

Country	Absence of Withholding Tax on Listed Investment Certificates and ETNs, ETCs	Comment
 Spain	No	In Spain, legal entities are exempt from withholding tax, but individuals are not.
 France	Yes	
 Germany	No	There is a threshold of €1,000 exempt from taxation on income derived from savings for individuals who inform the financial institution where they have the financial product how they wish to apply this exemption.
 Italy	No	
 The Netherlands	Yes	
 Ireland	No	
 Luxembourg	Yes	
 United Kingdom	Yes	
 Sweden	Yes	
 Switzerland	Yes	

Source: Own elaboration

Areas for improvement and proposals

Article 75.3.e) of the Personal Income Tax (IRPF) Regulation only exempts from the withholding obligation income derived from the transfer or redemption of financial assets with an explicit yield listed on an official Spanish securities market.

This means that income derived from certain Financial Assets with an implicit yield, such as listed Investment Certificates or ETPs, is subject to withholding tax when the recipients are individual residents in Spain.

Moreover, as described in the previous section, these products in the main European financial markets are not subject to withholding tax on their capital gains (Netherlands, Sweden, France, Switzerland, Luxembourg and the United Kingdom). This makes it very difficult, and ultimately discourages, the distribution of these products through the stock market.

An inadequately tailored tax treatment to the characteristics and market of these products has greatly limited the development in Spain of a highly successful market, unlike what has occurred in many European countries. In those countries, a plethora of investment opportunities specifically tailored to investors' needs and demands are made available.

In addition, the requirement of withholding taxes for intermediaries in our legal system prevents financial assets subject to withholding tax from being widely traded on an exchange, since the calculation of this tax requires additional operational modules, as well as the fact that, by competing with other financial products, which are not subject to withholding tax, they are placed at a disadvantage.

It therefore seems appropriate to support the development of these products in Spain by eliminating the withholding tax through the amendment of Article 75.3.e) of the Personal Income Tax (IRPF) Regulation, a measure that does not pose difficulties and could give a boost to the diversification of the Spanish market.

It would be well-received by the Spanish financial **market to exempt Financial Assets with implicit returns traded on official secondary Spanish markets and held in custody from the duty of withholding tax for Personal Income Tax**, just as the exemption applies to Financial Assets with explicit returns. This justification arises from the fact that these markets, through their operators, provide well-established information supply mechanisms to the Administration, ensuring that control over taxable income always remains in place.

Fixed income; financial assets with implicit and explicit return

Spanish regulatory reference framework

Spanish tax legislation includes financial products related to fixed-income securities within the concept of financial assets.

Fixed income financial assets with implicit yield are considered to be those in which the yield is generated by the difference between the amount paid at issue, first placement or endorsement, and the amount committed to repayment at maturity of those operations whose yield is fixed, wholly or partially, implicitly, through any transferable securities used to raise funds from third parties.

Financial assets with an explicit return are financial assets that generate interest and any other form of remuneration agreed as consideration for the transfer of own funds to third parties (e.g., coupon payments) that is not covered by the concept of implicit returns.

In accordance with personal income tax (IRPF) regulations, both income derived from financial assets with implicit returns and income derived from financial assets with explicit returns are considered as savings income (at tax rates generally lower than those of general income), and can compete under similar tax conditions with other financial products such as CISs, ETFs, warrants, shares, derivatives, etc.

The main operational hurdle faced by financial assets with implicit returns is that the income derived from the transfer or redemption of these assets is subject to personal income tax withholding.



For corporate income taxpayers, the exemption from the obligation to withhold tax on said income extends to both financial assets with implicit returns and those with explicit returns, when **both are traded on an official Spanish secondary securities market or on the Alternative Fixed Income Market (MARF), a multilateral trading system.**



In the case of **financial assets with an explicit yield** when the yield is obtained by an individual resident in Spain, there are **two new** operational **pitfalls** that do not arise when the recipient is a legal entity. The first is that **coupons are subject to withholding tax**, and the second is that the income derived from the transfer or redemption is also subject to withholding tax when the assets are traded outside the main (regulated) markets (as would be the case of the Alternative Fixed Income Market or MARF, which is an MTF).

As mentioned earlier, the obligation for financial intermediaries to withhold taxes within our legal system hinders financial assets subject to withholding from being widely traded in capital markets, placing them in a less competitive position compared to other financial products. This is mainly due to the high administrative and management costs involved

Comparative situation

Table 10 - Comparative Analysis: Fixed Income; Financial Assets with Implicit and Explicit Returns

Country	Absence of Withholding Tax on FA (coupons)	Absence of Withholding Tax on FA with implicit return	Comment
 Spain	No	No	In Spain, legal entities are exempt from withholding tax, both on coupons and on implicit returns on listed products (including MTF). In the case of individuals, only income derived from the transfer or redemption of FAs with an explicit yield.
 France	N/A	Yes	

Country	Absence of Withholding Tax on FA (coupons)	Absence of Withholding Tax on FA with implicit return	Comment
 Germany	N/A	No	There is a threshold of €1,000 exempt from taxation on income derived from savings for individuals, who inform the financial institution where they have the financial product how they wish to apply this exemption.
 Italy	N/A	No	
 The Netherlands	N/A	Yes	
 Ireland	N/A	No	
 Luxembourg	N/A	Yes	
 United Kingdom	N/A	Yes	
 Sweden	N/A	Yes	
 Switzerland	N/A	Yes	Retention in case of vouchers or similar products.

Source: Own elaboration

Areas for improvement and proposals

Article 75.3.e) of the Personal Income Tax (IRPF) Regulation only exempts income derived from the transfer or redemption of financial assets with an explicit yield listed on an official Spanish stock exchange from the withholding obligation.

In contrast, the Corporate Income Tax Regulations provide for an exemption from withholding tax on all income (implicit and explicit) from financial assets when they are traded on an official Spanish secondary securities market or on Alternative Fixed Income Market, a multilateral trading system.

This implies that there is an inequality of tax treatment for withholding tax purposes between individual taxpayers and legal entities that has no particular justification.

- Therefore, a **first measure would be to extend the non-obligation of personal income tax (IRPF) withholding for income derived from the transfer or redemption of financial assets with implicit yield to cases where these are traded on a Spanish regulated market or on the MARF.**

On the other hand, **for returns on financial assets with explicit yields**, the following measures would be proposed:

- **Eliminate the obligation to withhold personal income tax (IRPF) on the coupon.**
- **Extend the exemption from the withholding obligation for income derived from the transfer, redemption, exchange and conversion when securities are traded in a multilateral trading facility (MTF) set up in accordance with the Securities Market Law, with the paradigmatic example being the Alternative Fixed Income Market (MARF).**

These amendments would equalize the treatment of personal income tax (IRPF) withholdings for both individuals and legal entities resident for tax purposes in Spain.

In addition, the requirement of withholding taxes for intermediaries in our legal system prevents financial assets subject to withholding tax from being widely traded on an exchange, since the calculation of this tax requires additional operational modules, as well as the fact that, by competing with other financial products, which are not subject to withholding tax, they are placed at a disadvantage.

It therefore seems appropriate to support the development of these products in Spain **by eliminating the withholding tax through the amendment of Article 75.3.e) of the Personal Income Tax (IRPF) Regulation**, a measure that does not pose difficulties and could give a boost to the diversification of the Spanish market.

As described in the previous section, these products in the main European financial markets are not subject to withholding tax on their capital gains (Netherlands, Sweden, France, Switzerland, Luxembourg and the UK). This makes it very difficult, and ultimately discourages, the distribution through the stock market of these products.

Taxation of ETFs

Spanish regulatory reference framework

Spanish investors' access to exchange-traded funds or ETFs is far below that of their European and global counterparts, depriving Spanish savers of the investment opportunities and returns that are available in other countries in the region.

The main difference between ETFs and the aforementioned ETPs (e.g., ETNs, ETCs) is that they are not issued as debt instruments, but are listed investment funds, and the income obtained on redemption of these is classified as capital gains and losses that are included in savings income, and not as income from capital gains.

Therefore, and as we will point out below, the comparative focus of these products for the purposes of analyzing their competitiveness must be made with another financial product marketed in Spain, traditional investment funds.

In Spain, ETFs do not have any tax incentive, unlike mutual funds, and are taxed on behalf of their investors in a similar way to equities. In particular, their individual investors cannot

apply the exempt "transfer tax regime" available to traditional investment funds, which consists in the tax deferral of gains obtained on redemption of an investment fund when the amount obtained is fully reinvested in another investment fund.

In this regard, although some years ago (specifically in 2017 as a result of the administrative criterion issued by the Directorate General for Taxation) ETFs listed abroad were allowed to apply the "tax regime for transfers", this asymmetry was subsequently corrected in 2021 by amending the tax regulations to equalize the tax treatment of ETFs listed abroad with ETFs listed in Spain, without either of them therefore having access to the tax deferral regime.

Comparative situation

In other comparable countries, there isn't a tax deferral regime applicable to investment fund redemptions. Therefore, ETFs in those jurisdictions can compete on equal terms with traditional investment funds due to the absence of the mentioned.

In Spain, the impossibility of applying the exempt transfer regime makes ETFs less competitive than traditional Spanish or EU UCITS investment funds, which do have access to the tax deferral regime.

Areas for improvement and proposals

As described above, one of the main reasons for the lack of ETFs in the investment portfolios of Spanish individual investors is taxation and, in particular, the non-application of the tax deferral regime for capital gains, or as it is known in the market, the exempt "pass-through tax regime".

Practice has shown that the absence of tax deferral makes these products less competitive than traditional investment funds, whose resident individual investors do have access to the tax deferral regime.

Therefore, in order to encourage an increase in direct contracting of ETFs in Spain, which are clearly at a disadvantageous competitive position compared to investment funds regarding taxation, it is necessary that:

- **The tax deferral or exempt "pass-through" regime may apply to ETF investors who are individuals subject to personal income tax (IRPF).**
- **The application of the deferral regime to corporate taxpayers should also be analyzed.**

Tax incentives for Non-Residents on Spanish equities

Spanish regulatory reference framework

In accordance with the provisions of Spanish non-resident income tax (IRNR) regulations, **income derived from the transfer of securities on any of the official secondary markets for Spanish securities** obtained by non-resident individuals or entities without a permanent establishment in Spanish territory, who are resident in a State that has signed a double taxation avoidance agreement (DTAA) with Spain with an exchange of information clause, **will be exempt** from taxation in Spain.

According to the wording of the rule, only income derived from the transfer of securities listed on the main (regulated) market of the Spanish stock exchange would be covered by the exemption.

In this sense, considering **that the market on which a large number of growing companies are listed is a Multilateral Trading System or MTF (the example is BME Growth), the aforementioned exemption would not apply.**

In this respect, the application of withholding taxes in this case is a clear disincentive to foreign investment in Spain in the above mentioned MTF for growing companies.

On the other hand, and as we have shown, the aforementioned exemption would only be applicable to income derived from the transfer of securities listed on official Spanish secondary markets, but not to income derived from the distribution of profits (i.e., dividends).

On this point, income obtained on the transfer of securities in listed entities may correspond to reserves that can be distributed as dividends. Therefore, when such reserves are received as a result of their distribution, the aforementioned exemption should apply.





This could encourage investment in Spain by non-resident investors seeking a return on their investment through dividends.







This consideration would be even more important given that London is the main European financial center for equities in terms of liquidity and trading volume, and that one of the main aspects of its tax system is the non-taxation of dividends distributed by entities resident in UK to persons or entities not resident there.

Finally, the traditional alternative management investment structures of the main private equity funds use jurisdictions that do not have an agreement with Spain and may even be considered as non-cooperative jurisdictions for Spanish tax purposes.

Comparative situation

Table 11 - Comparative analysis: tax incentives for Non-Residents on Spanish equities

Country	Capital gains exemption Listed/traded equity MTFs	Exemption dividends Listed/traded equity MTF	Comment
 Spain	No	No	Non-Resident Income (IRNR) taxation on capital gains on BME Growth securities.
 France	Yes	No	There is no taxation on capital gains on non-significant shareholdings (25%).
 Germany	Yes	No	
 Italy	Yes	No	There is no taxation of capital gains on listed equities. For alternative market traded equities there would be no taxation for "whitelist" recipients.

Country	Capital gains exemption Listed/traded equity MTFs	Exemption dividends Listed/traded equity MTF	Comment
 The Netherlands	No	No	Assuming a shareholding of less than 5%, there is no withholding tax on capital gains, but capital gains could be subject to taxation in the Netherlands unless a Double Taxation Avoidance Agreement assigns the right of taxation to the country of tax residence.
 Ireland	Yes	No	With regard to withholding tax on dividends, there are local exemptions subject to a number of requirements.
 Luxembourg	Yes	No	
 United Kingdom	Yes	Yes	
 Sweden	Yes	No	
 Switzerland	Yes	No	

Source: Own elaboration

Areas for improvement and proposals

As described above, income derived from the transfer of securities carried out in a Multilateral Trading System or MTF (the main example is BME Growth) is not exempt from taxation in Spain, since, according to the literal wording of the rule, only income derived from the transfer of securities listed on the main (regulated) market of the Spanish Stock Exchange would be covered by the exemption.

Given that the application of withholding taxes in this case is a clear deterrent on foreign investment in Spain in the aforementioned alternative market, we would propose: **to extend the existing exemption for official markets to income derived from the transfer of shares traded on Multilateral Trading Facilities (MTFs), as would be the case of BME Growth.**

On the other hand, consideration could be given to extending the exemption for dividends from securities traded both on the main (regulated) market of the Spanish Stock Exchange and on Multilateral Trading Facilities (MTFs).

The following is proposed:

- **To reform of Non-Resident Income Tax (IRNR) to eliminate withholding tax on income derived from the transfer and redemption of shares listed on Multilateral Trading Facilities (MTFs).**
- **To reform Article 14 of the Non-Resident Income Tax Law to include the exemption of dividends from entities** traded on Multilateral Trading Facilities (MTFs) (such as BME Growth), as it would significantly boost the incentive for foreign investment in Spain in small and medium-sized companies, and the tax collection impact of such a measure may not be material.

Having said this, most of our neighboring jurisdictions (except the UK) tax dividends paid to non-residents at source.

Finally, another aspect to be assessed would be the extension of the exemption for non-resident investors located in jurisdictions with which Spain does not have a Double Taxation Avoidance Agreement. In this regard, as already indicated, the traditional alternative management investment structures of the main private equity funds use jurisdictions that do not have an agreement with Spain and could even be considered as non-cooperative jurisdictions for Spanish tax purposes.

This would encourage investment in listed/traded equities in Spain by equalizing the tax treatment of listed public or private debt for the purposes of non-application of withholding tax to non-residents.

Procedure for the refund of withholding taxes on Spanish equity dividends

Spanish regulatory reference framework

In accordance with Spanish non-resident income tax (IRNR) regulations, **dividends and profit shares obtained without the intermediation of a permanent establishment by CISs regulated by Directive 2009/65/EC** of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS Directive) are **exempt**.

However, in no case shall the application **of this exemption result in taxation lower than that which would have resulted** if the same tax rate applied to this income had been applied to Spanish-resident collective investment institutions under Corporate Income Tax."

This means that **dividends paid by Spanish listed entities and obtained by European UCITS investment funds are taxed at 1%, i.e.,** like Spanish CISs.

However, the regulations establish that there will be a 19% withholding obligation on dividends paid, with the investment fund (normally through its management company) having to subsequently request a refund of the difference (18%) in order to apply the exemption.

However, CIS not regulated by the UCITS Directive, i.e. Alternative Investment Funds (AIF) resident in the EU, and managed by Management Companies to which the AIFMD applies, do not have the aforementioned exemption available according to the literal wording of the regulation, and the dividends obtained by them are a priori subject to 19% taxation, compared to the 1% taxation of UCITS funds.

This treatment could amount to discriminatory treatment contrary to the principle of free movement of capital because Spanish hedge funds (FILs) regulated in the Spanish Law on Collective Investment Institutions, which are taxed at 1%, could be analogous vehicles to certain European AIFs.

This has led many managing entities to which the AIFMD applies to initiate administrative and/or litigation proceedings before the Spanish Courts of Justice in recent years to claim equal treatment for the European AIFs they manage.

In this respect, it is important to note that the Supreme Court has recently issued several rulings accepting appeals filed by AIF managers for the application of the aforementioned equal treatment with Spanish ELTIF, in contravention of the EU principle of free movement of capital.

In particular, the SC ruling mainly establishes that such equal treatment must occur when:











- The non-resident AIF cannot deduct in its jurisdiction the excess tax borne in Spain. In practice, these types of vehicles do not apply a tax deduction in their jurisdictions as they are usually exempt from taxation.
- They are "open" institutions (without any limitation of access to professional or qualified investors detracting from their open nature).
- Have a valid authorization to operate in their home country, issued by the regulator.
- They provide evidence that they are managed by a management entity under the terms of the AIFMD.

It is very relevant to point out that the SC establishes that it is the foreign AIF that must assume the burden of proof of compliance with these requirements, without being able to demand means of proof different from those required of Spanish hedge funds (due to the lack of regulation), nor means of proof that are disproportionate or extraordinarily difficult to obtain.

While this doctrinal criterion, which equalizes the tax treatment, could overcome the reluctance that non-resident AIFs might have to invest in Spanish equities, it cannot be ruled out that, given the requirements necessary for access to the 1% tax, and that the accreditation of these requirements falls on the investor, the procedures for the refund requested could be lengthened over time, generating an unnecessary hurdle for the attraction of capital.

Comparative situation

Table 12 - Comparative analysis: procedure for refunding withholding tax on Spanish equity dividends

Country	Exemption for non-resident AIFs on equity dividends	Comment
 Spain	No	<p>Spanish regulations only maintain the 1% taxation in case the investors are UCITS funds.</p> <p>The SC has issued a doctrine to equalize the taxation of non-resident AIF investors with non-resident UCIT investors.</p>
 France	Yes	
 Germany	Yes	
 Italy	Yes	
 The Netherlands	No	
 Ireland	Yes	
 Luxembourg	No	
 United Kingdom	N/A	
 Sweden	Yes	
 Switzerland	N/A	

Source: Own elaboration

Areas for improvement and proposals

As described above, following the new SC doctrine, EU AIFs are now taxed in Spain at 1% on dividends received from Spanish listed companies, as UCITS funds had been doing.

However, **to avoid all the unnecessary formalities for the accreditation of the right to equal taxation (1%) established in the SC ruling, and to ensure that refunds of excess withholdings are made swiftly, we would propose to extend, for EU AIFs, the exemption set out in article 14 of the Non-Resident Income Tax (IRNR) Act to dividends obtained by UCITS funds.**

Such a measure would avoid the disincentive for these non-resident investors caused by the excessive time that would be generated in administrative and contentious tax procedures for the refund of **withholding** taxes in Spain.

Finally, it is worth mentioning that some of our neighboring countries (France, Italy, Germany, Sweden and Ireland) do not levy withholding tax on dividends received by non-resident AIFs.

Taxation of Collective Investment Institutions

Spanish regulatory reference framework

In accordance with Corporate Income Tax regulations, CISs incorporated in Spain, and regulated under Law 35/2003 on Collective Investment Institutions, will be taxed at 1%. These are mainly Spanish investment funds and SICAVs covered by the UCITS Directive, as well as the so-called hedge funds (FIL).

In general terms, the taxation of CISs investments is deferred to the unitholder or investor in the relevant CISs.

In the case of individual unitholders, income obtained on the transfer or redemption of shares or units of CISs generates capital gains and losses to be included in the savings tax base.

In addition, it is important to note that individual investors subject to personal income tax (IRPF) have access to the so-called exempt "transfer" regime whereby they can defer the income obtained on the transfer or redemption of shares or units in Spanish CISs or UCITS marketed in Spain when the amount obtained is reinvested in its entirety in other shares or units of qualified CISs.

With regard to the Non-Resident Income Tax (IRNR), in accordance with the provisions of the applicable regulations, income derived from the redemption of units in investment funds made on any of the official secondary markets of Spanish securities obtained by non-resident individuals or entities without a permanent establishment in Spanish territory, who are resident in a State that has signed a Double Taxation Avoidance Agreement with Spain with an exchange of information clause, and which is not considered a tax haven, will be exempt from taxation in Spain.

Unlike the treatment applicable to equities, capital gains obtained on the transfer and/or redemption of shares and/or units of CISs are subject to withholding tax on account of personal income tax (IRPF), corporate income tax and non-resident income tax (except in the case of CISs listed on official markets, as mentioned above).

According to the wording of the rule, only income derived from the transfer or redemption of CISs listed on the main (regulated) Spanish stock market would be covered by the exemption. In this respect, taking into account that the main market on which SICAVs are

traded in Spain (BME MTF Equity) is a Multilateral Trading System, the aforementioned exemption would not apply.

Finally, it is important to highlight the "tightening" that has been regulated in the tax regime for SICAVs in 2021 with the approval of amendments to the minimum investment requirement of €2,500 for investors in the vehicle.





Such changes may be encouraging the relocation of wealth to jurisdictions with more stable regulatory and/or tax regimes.





At this point, it is worth noting that, from a tax perspective in Spain, SICAVs are taxed exactly the same as investment funds. While it is true that they may have some advantages compared to investment funds, none of them are related to taxation. The main advantage lies in the ability of the sponsors of the company to create more personalized investment strategies. Additionally, SICAVs are entities that exist in the main European financial markets without any intention of eliminating them.

Maintaining and even attracting capital to the Spanish collective investment industry, through the professionalized management of Spanish CISs, is essential for the competitiveness of Spanish companies and financial markets. For example, a relocation of assets could have a negative impact on the weight of the Spanish stock market in investment fund portfolios.

Comparative situation

Table 13 - Comparative analysis: taxation of Collective Investment Schemes

Country	CISs tax rate	Exemption from IRNR capital gains if listed on the MTF	Minimum investment per shareholder	Comment
 Spain	1%	No	Yes	
 France	0%*	Yes	No	(*) There is no taxation on capital gains on non-significant shareholdings (25%).
 Germany	15%	Yes	No	
 Italy	0%*	Yes	No	(*) 4,65% regional tax on management fees. (**) Dividends: no withholding for "whitelist" recipients. (**) Capital gain: there would be no withholding tax for "whitelist" recipients.

Country	CISs tax rate	Exemption from IRNR capital gains if listed on the MTF	Minimum investment per shareholder	Comment
 The Netherlands	0%	N/A	N/A	The Netherlands does not commonly use SICAVs.
 Ireland	0%	N/A	N/A	Ireland does not commonly use SICAVs. The equivalent vehicle is the ICAV, PLCs which have no minimum investment requirement and are generally exempt from taxation on both the vehicle and distributions to non-residents.
 Luxembourg	0%	Yes	No	
 United Kingdom	0%*	Yes	No	(*) 0% for dividends and capital gains (**) Except in the case of SOCIMIs and PAIFs in dividends where a withholding tax of 20% applies.
 Sweden	0%	Yes	No	
 Switzerland	0%	Yes	No	Swiss SICAVs are fiscally transparent

Source: Own elaboration

Areas for improvement and proposals

Firstly, we would like to refer to the special relevance of other financial centers (e.g., Luxembourg, Ireland) as international financial centers in the CISs markets. Among their main attractions are the exemption from taxation of income obtained by CISs and the non-taxation of income distributed by these entities to their members or unitholders, as well as income derived from the transfer or redemption of the shares

For this reason, and despite the low taxation established for this type of entity in Spain, there are **certain tax aspects of CISs and of their members and participants, the modification of which would encourage the creation of new entities in Spanish territory:**

- As a first measure to encourage investment in such entities among non-resident investors, the exemption regulated in the Non-Resident Income Tax (IRNR) for capital

gains on listed securities could be modified and extended to securities traded on Multilateral Trading Facilities (MTFs). In particular, this exemption only applies to securities traded on one of the main (regulated) secondary markets for Spanish securities obtained by non-resident individuals or entities without a permanent establishment in Spanish territory, who are resident in a State that has signed a Double Taxation Avoidance Agreement with Spain with an exchange of information clause, and which are not considered to be a non-cooperative jurisdiction.

In this regard, taking into account that the main stock market on which SICAVs are listed is an MTF, the aforementioned exemption would not apply. Therefore, in order to encourage investment in this type of entity by non-resident investors, it would be sufficient to include Multilateral Trading Facilities in the rule regulating the exemption.

- On the other hand, as we have shown, the aforementioned exemption would only be applicable to income derived from the transfer or redemption of securities listed on main (regulated) secondary markets, but not to income derived from the distribution of profits (i.e., dividends).

On this point, it should be borne in mind that income obtained on the transfer or redemption of units in listed SICAVs may correspond to reserves that can be distributed as dividends. Therefore, when such reserves are received as a result of their distribution, the aforementioned exemption should apply.

This could encourage the attraction of non-resident investors seeking a return on their investment through dividends.

- In addition, **bearing in mind that in most of our neighboring jurisdictions CISs are taxed at 0% corporate income tax, Spanish CISs should also be exempt from taxation.**
- **Revert the regulatory and tax regime for SICAVs:** The tax regime for Spanish SICAVs, as described above, should be reconsidered, as the tightening of requirements (e.g., minimum investment per shareholder) has led to the liquidation and relocation of these investment vehicles, resulting in the outflow of invested capital from Spain.

In this respect, as reflected in the table above, the main financial centers of the investment fund industry have more stable regulatory and fiscal environments for SICAVs, with no minimum investment per participant usually required, as is the case in Spain following the amendment introduced in 2021.

However, the relocation of capital to be managed from these jurisdictions may have a negative impact on the weight of the Spanish stock market in investors' asset portfolios.

Spanish regulations establish a favorable tax regime for traditional Collective Investment Institutions (CISs) and Venture Capital Institutions (VCCIs). The harmonization of the regulation affecting managers of alternative investment vehicles (AIFMD)⁶⁶ in 2011, together

⁶⁶ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) Nos 1060/2009 and (EU) No 1095/2010

with recent regulatory initiatives to give retail investors access to these products as an alternative to traditional harmonized collective investment vehicles (UCITS), has led to a very significant increase in these alternative collective investment vehicles, as well as the emergence of special European figures such as European Venture Capital Funds (EuVECA), European Social Entrepreneurship Funds (EuSEF) and European Long-Term Investment Funds (ELTIF).

Spanish legislation, which has already incorporated these figures into Law 22/2014, should provide all of them with a favorable and harmonized tax regime. The tax regimes of our neighboring countries are particularly favorable to collective investment vehicles, without establishing relevant distinctions based on their investment policy, as is the case with Spanish regulations. If a favorable tax regime is not established, Spanish vehicles set up in legal forms other than CISs or ECRs, such as the aforementioned ELTIF, EuVECAs, EuSEFs or other closed-end collective investment vehicles, will lose attractiveness and competitiveness with their European peers, which will increase the delocalization of Spanish private savings in favor of other EU countries.

On the other hand, applying the same transfer regime that currently applies to traditional Collective Investment Schemes to Free Investment Collective Investment Schemes would be welcome, which would in turn increase the alternatives available for private savings. Today, increasingly popular vehicles such as SILs are only eligible for the deferral regime as exit vehicles, unless they have at least 500 shareholders.

The application of the ECR tax regime to all investments made by the ECR is justified because in the absence of the ECR tax regime, ECR managers do not request the disbursement of commitments until they can be realized in investments in eligible assets. Extending the favorable tax regime to all investments made by the ECR would instead encourage the disbursement of investment commitments to invest in listed assets as a method of managing the ECR's liquidity.

Taxation of digital assets

Spanish regulatory reference framework

Digital assets are becoming a relevant industry with great potential for growth and for attracting new players in the financial industry.

In Spain there is no specific tax regime for the digital asset industry, and the general tax rules apply.

Specifically, in relation to the taxation of digital assets themselves, the only specificity that exists are the criteria issued by the DGT in relation to personal income tax (IRPF) and VAT through binding consultations and the tax forms for the communication of tax information by issuers, suppliers and users that are in the process of being approved.











The lack of specific regulation, and in particular of tax incentives, puts Spain at a disadvantage, as it causes issuers and service providers related to the digital asset industry (e.g., custodianship) to seek jurisdictions with more incentive-based tax regulation.

The fact that the MiCA regulation already approved includes and recognizes an approval mechanism for providers who, according to national regulations, have obtained a "local authorization" to provide crypto-asset services, also establishing a transitional regime of the possibility of operating without a MiCA license for those who do so with a local one, should

be taken advantage of and accompanied by a specific tax regime, so that Spain can position itself as an attractive jurisdiction in this phase of development of the industry that attracts issuers and providers; integrating this new reality in our country.

Comparative situation

Table 14 - Comparative analysis: Taxation of digital assets

Country	Tax incentives for digital assets	Comment
 Spain	No	In Spain there is no special tax regime specifically for digital assets.
 France	No	They are generally taxed in the same way as financial assets.
 Germany	No	There are no specific tax incentives for investments in digital assets. However, digital assets may receive favorable treatment insofar as they could be considered as " <i>commodities</i> " and capital gains could be exempted from taxation after a holding period of one year for individuals.
 Italy	No	
 The Netherlands	No	
 Ireland	No	
 Luxembourg	No	
 United Kingdom	No	
 Sweden	No	
 Switzerland	No	

Source: Own elaboration

Areas for improvement and proposals

Beyond the reporting obligations that are in the process of being approved, in order to develop the digital asset sector in Spain and, specifically, to increase the custody of digital assets in Spain, we would propose to establish, in parallel to the reporting obligations, an incentive tax regime that will attract companies in the digital asset sector to Spain and allow the development of the industry in our country.

This is particularly relevant because most of the countries around us do not currently have any relevant tax incentives in place for this industry, so it is an opportunity for Spain to get ahead of the main European financial centers in this area.

Tax treatment of companies and investors in listed SMEs (i.e., start-ups)

Spanish regulatory reference framework

The recently published Law 28/2022 of 21 December on the promotion of the start-up ecosystem (hereinafter "start-up law") has established, amongst other things, a specific tax framework for start-ups.

Among other aspects, it establishes:



- Reduced corporate tax rates (15%).
- Favorable tax treatment of *stock options*.
- Favorable personal income tax (IRPF) treatment for founding partners and early-stage investors.
- Favorable treatment for *carried interest*, which qualifies as income from work that can be deducted at 50% without any quantitative limit.









However, the application of regulatory tax incentives does not apply if emerging companies are listed on the main (regulated) stock market or traded on a Multilateral Trading Facility or MTF (eg. BME Growth), which may act as a disincentive for emerging companies to go public.

A deduction in the IRPF for investments in BME Growth has been established in some Autonomous Communities (i.e., Madrid, Galicia).

Comparative situation

Table 15 - Comparative analysis: tax treatment of companies and investors in listed SMEs

Country	Taxation of start-ups in listed SMEs	Comment
 Spain	No	The start-up regime discourages the leap to trading.
 France	Yes	Incentive for individuals who maintain the investment for a certain period. Deductions and exemptions.

Country	Taxation of start-ups in listed SMEs	Comment
 Germany	No	
 Italy	Yes	Tax incentives for tax investors in innovative start-ups not listed on regulated markets (i.e., deductions).
 The Netherlands	No	Subject to certain specific requirements, venture capital investments provided to start-up companies may be partially tax deductible, both for listed (on regulated or alternative markets) and unlisted companies.
 Ireland	No	
 Luxembourg	No	There is a proposal for a regulatory amendment to include tax incentives for sustainable investments, digital entrepreneurship, R&D, digital transformation and environmental investments.
 United Kingdom	No	<i>Stamp duty</i> exemption only exists for investments of companies traded on alternative markets.
 Sweden	Yes	
 Switzerland	No	

Source: Own elaboration

Areas for improvement and proposals

To support young and growing companies, **the application of the tax incentives of the "start-up" law should be maintained also when companies start trading in a Multilateral Trading System (MTFs such as BME Growth**, which are specially designed for small and medium-sized growth companies), and article 68 of the Personal Income Tax (IRPF) Law should be amended accordingly.

Furthermore, we believe that an incentive to promote MTFs specialized in small and medium-sized companies (e.g., BME Growth) could be that the aforementioned tax benefits for emerging companies be applicable to any investor in other types of entities that are traded on this alternative market (e.g., through capital increases or public offerings).

In this respect, it is worth noting that some EU jurisdictions encourage investment in start-ups even when they are traded in MTFs (e.g., France, Italy and Sweden).

On the other hand, some Spanish Autonomous Communities, such as Madrid or Galicia, as mentioned above, do establish regional deductions for investments in Spanish alternative markets, so there are precedents in Spain on these measures.

Financial Transaction Tax

Spanish regulatory reference framework

On 16 January 2021, the Financial Transaction Tax ("FTT") came into force in Spain.

The tax is configured as an indirect tax whose taxable event taxes the onerous acquisition of shares representing the capital of Spanish nationality companies, regardless of the residence of the individuals or entities involved in the transaction, provided that the following conditions are met.

That the company's shares are admitted to trading on a regulated market in Spain, or in another EU Member State, or on a market considered equivalent in a third country, regardless of whether or not the transaction is executed on a trading venue.

That the market capitalization value of the company on 1 December of the year preceding the acquisition is more than €1 billion.

That the list of Spanish companies with a market capitalization on 1 December of each year of more than €1 billion is published in the Tax Agency's electronic office before 31 December of each year.

According to the above, the tax will be levied irrespective of whether such purchases are executed on a regulated market, on any other market or in a Multilateral Trading Facility or in an organized trading system or by a systematic internaliser or by means of direct agreements between the counterparties outside a trading venue.

The tax also affects:

- Onerous acquisitions of tradeable securities consisting of depositary certificates representing the aforementioned shares, subject to certain exemptions.
- Acquisitions of the aforementioned shares (or the aforementioned negotiable securities constituted by certificates of deposit) deriving from the execution or settlement of bonds or debentures convertible into or exchangeable for such shares. Acquisitions of shares arising because of the exercise or settlement of derivative financial instruments, such as options or futures on shares, as well as of any financial instrument or certain financial contracts provided for in securities market regulations, when they result in the acquisition of the underlying shares for the contracting party, are also subject to this tax.

The tax rate is 0.2%.

The unilateral adoption of the Financial Transaction Tax (FTT) by Spain creates distortions in the trading of taxed Spanish shares compared to counterpart companies in jurisdictions that do not have a similar tax to the FTT

Also, the structure of the tax disadvantages long-term investors who do not trade frequently more than high-frequency investors who trade intraday (the tax provides for a special netting calculation regime for intraday trading, subject to compliance with certain requirements).

Comparative situation

In the wake of the 2008 financial crisis and in the context of the debate on the taxation of the financial sector, in September 2011 the European Commission presented the Proposal for a Council Directive of 28 September 2011 on a common system of financial transaction tax and amending Directive 2008/7/EC to introduce a Financial Transaction Tax in the 27 EU Member States ("2011 EU FTT Directive proposal").

The objective of this proposal for a Directive was to achieve a coordinated and harmonized implementation of a Financial Transaction Tax by all Member States. The Commission considered that a unilateral application of such a tax by some Member States could lead to a shift of activity from higher to lower taxing Member States.

In May 2012, the European Parliament delivered a favorable opinion on the implementation of an EU Financial Transaction Tax, also suggesting some modifications to the Commission's initial proposal.

However, the absence of an agreement in favor of establishing a common EU-wide Financial Transaction Tax in the short term eventually caused the 2011 proposal for an EU FTT Directive to lapse.

As a consequence of the above, an enhanced cooperation procedure is created for the implementation of a common Financial Transaction Tax, of which 11 states, including Spain, are part, but whose application would no longer refer to the European Union as a whole, but only to the respective national territories of the Member States participating in the enhanced cooperation procedure.

However, to date this procedure has not reached an agreement, and Spain (like France and Italy) has adopted the tax unilaterally.

This creates a competitive disadvantage for the main Spanish listed securities with respect to those countries that do not have FTTs, damaging the trading volume in the securities markets of Spanish entities and the number of issuers present in our country.

Areas for improvement and proposals

Elimination of the Financial Transaction Tax (FTT) as it has been adopted unilaterally by Spain and not jointly by the European Union, which places Spanish companies whose shares are subject to the FTT in a worse position than their counterparts in jurisdictions that have not adopted the FTT.

Tax incentives on other investment vehicles

Spanish regulatory reference framework

Currently, the main investment vehicles with incentive tax regimes in our regulations are CISs and Private Equity Entities (1% taxation for CISs and 99% exemption for positive income obtained by Private Equity Entities).

In this respect, only the former, the CISs, include listed financial assets in their investment portfolios.

However, regarding unlisted investment instruments, ELTIF have recently been regulated at EU and Spanish level (through the "Ley crea y crece"), which, according to recent EU

regulatory amendments, can invest in securities with a market capitalization of up to €1.5 billion.

However, in Spain, corporate income tax regulations do not specifically regulate a special tax regime for ELTIF. In this regard, although the tax regime for Venture Capital Entities is limited to them, some doctrinal interpretation of the Directorate General for Taxation has in the past allowed its application to other entities regulated by Law 22/2014, which strictly speaking were not venture capital entities, such as European Venture Capital Funds (EuVECA). However, in the present case, without a regulatory amendment or express pronouncement by the Directorate General for Taxation, we would not be completely certain that the aforementioned special regime could be applied to ELTIF.






For example, in the provinces of Bizkaia and Alava, a tax regime similar to that of CISs has been regulated for these vehicles, i.e., taxation at 1% of corporate income tax.






For listed investment vehicles, following the modification of the tax regime for SOCIMIs, lowering incentives and tightening the minimum investment requirements for shareholders of SICAVs, the attractiveness of Spanish listed investment vehicles has been reduced.

An illustrative example is that of SOCIMIs whose incentivizing taxation (i.e., income deferral) based on being pure investment vehicles and their shareholders already taxed when receiving dividends has been negatively affected by the modification applied since 2021, with a tax rate of 15% on profits that have not been distributed as dividends. This change represents a loss of competitiveness, mainly when compared to other European markets that also incentivize this figure.

Comparative situation

Table 16 - Comparative analysis: tax incentives on other investment vehicles

Country	Tax incentives on other investment vehicles: SOCIMIs / REITs	Tax incentives on other investment vehicles: ELTIF and others	Comment
 Spain	Yes	No	In Spain there are different vehicles that articulate and channel investment in listed companies, but their tax regimes have become less attractive.
 France	Yes	No	In addition to CISs and private equity vehicles, tax incentives for SOCIMIs are maintained in France.
 Germany	Yes	No	For SOCIMIs.
 Italy	Yes	Yes	Incentives for SOCIMIs. Incentives for individuals investing in ELTIF.
 The Netherlands	No	No	

Country	Tax incentives on other investment vehicles: SOCIMIs / REITs	Tax incentives on other investment vehicles: ELTIF and others	Comment
 Ireland	Yes	No	
 Luxembourg	Yes	No	In relation to the tax regime applicable to ELTIF, there is currently a draft law on the modernization of certain Luxembourg fund regimes (e.g., RAIF, SIF) whereby to the extent that the funds qualify as ELTIF, they would be exempt from subscription tax.
 United Kingdom	Yes	No	Exemption for SOCIMIs.
 Sweden	No	No	
 Switzerland	No	N/A	

Source: Own elaboration

Areas for improvement and proposals

In the same way as there is a specific tax regime for Private Equity Entities or for CISs, it is proposed:

In this area we align ourselves with INVERCO's long-standing proposal to encourage indirect investment in Spanish SMEs through Investment Funds. Other jurisdictions have specific investment vehicles (e.g., in France, Italy or the UK) that have proven to be capital drivers for domestic markets.

It would also be consistent with this line of action to extend to the whole of Spain the incentives for direct investment in capital increases in SMEs negotiated in MTFs, which are already being applied with considerable success in some of Spain's Autonomous Communities (Madrid, Catalonia / or Galicia).

Establish a beneficial and competitive tax regime for listed investment vehicles or for unlisted investment vehicles investing in the Spanish Stock Exchange.

One example could be to establish an incentive tax regime for ELTIF that can invest in the stock market and are suitable for retail investors. In particular, it could be considered that ELTIF should be taxed at 1%, as is the case for CISs, or, where appropriate, the tax regime for private equity entities could be modified to include these vehicles.

In addition, it could be considered to maintain the tax incentives of the "start-ups" law for indirect investments made in emerging companies traded on BME Growth through an investment vehicle.

Re-establish the previous tax regime for SOCIMIs to make the Spanish figure competitive with regulated vehicles in neighboring countries.

Finally, and in line with other European countries such as Sweden or the United States, the creation of an **individual investment product or vehicle in the form of an "investment account" or "umbrella fund"** could be considered, **allowing transfers between eligible assets to be defined.**

In this respect, operations would be carried out through a financial institution through which orders for the acquisition, subscription and redemption of assets such as shares, short, medium and long-term fixed income, savings accounts, investment funds, ETFs, Investment Certificates, ETPs, life/savings insurance, etc. would be materialized

The proposed tax regime for this vehicle should be similar to that of Investment Funds with tax deferral for reinvestment. This means that the transfers of eligible assets forming part of the said vehicle would not be taxed as long as the proceeds from these transfers are reinvested in other eligible assets within the same vehicle. Therefore, the taxation would be deferred until the investor cancels all or part of their position in the aforementioned 'umbrella fund' or 'investment account'

Tax incentives for own resources financing

Spanish regulatory reference framework

In Spain there is a traditional problem, which is the lack of tax neutrality in business financing through own resources compared to financing through external resources or debt (the remuneration of external financing generates financial expenses that are tax deductible for corporate income tax purposes, as opposed to the non-deductibility of dividends paid to shareholders).

This asymmetry in the tax treatment between debt and equity could increase the financial vulnerability of banks. In addition, it may also have led to a lack of attractiveness for company listings on stock exchanges and less recourse to capital increases.

The proposal for a Directive known by the acronym DEBRA (Debt Equity Bias Reduction Allowance) aims to correct this scenario by fiscally favoring the equity financing of companies through a mechanism based on the use of notional interest. A tax incentive consisting of a reduction in the taxable base for corporate income tax of an amount calculated as a percentage (notional interest rate composed of the free interest rate plus a risk premium) on the increase in equity, limited for each year to 30% of EBITDA, and on the other hand, a 15% limitation on the deductibility of net financial expenses (in addition to that currently regulated in corporate income tax regulations), with the higher amount resulting from the calculation of both precepts being considered as a non-deductible expense.

Although it was expected that the Directive would be operational by 2024, the parliamentary procedure for approval of the Directive by the member states has been delayed, with no concrete deadline for its implementation.

Areas for improvement and proposals

Taking into account the stagnation in the approval of the DEBRA Directive Proposal, an appropriate measure to reduce the existing asymmetry in the tax treatment between external financing and own financing of companies, with the aim of reducing financial

vulnerability and promoting access to capital markets (e.g. stock market flotations), would be the implementation of the measures currently included in the aforementioned Directive Proposal in the Spanish Corporate Income Tax regulations.

In particular, i) the introduction of a tax incentive consisting of a reduction of the corporate tax base by an amount calculated as a percentage (notional interest rate composed of the free interest rate plus a risk premium) on the increase in equity, limited for each year to 30% of EBITDA, and ii) the establishment of an additional limitation of 15% on companies' net financial expenditure.

Tax incentives for investment in Spanish equities by taxable persons subject to personal income tax (IRPF)

Spanish regulatory reference framework

Personal income tax (IRPF) regulations do not allow for the correction of economic double taxation on dividends from listed shares.

It should be noted that in the past, personal income tax (IRPF) regulations allowed this correction to be made by different methods. One of them was by means of a system of imputation of the dividend for the full amount, taxed at the marginal rate of the scale, and subsequent deduction from the tax liability.

In practice and compared with the current taxation of the aforementioned income in the savings tax base, the main beneficiaries of the previous system were middle- and low-income earners, who were able to correct double taxation (which they could not do under the current taxation system). In contrast, high incomes were effectively taxed based on their final marginal personal income tax (IRPF) rate, so that for comparison purposes, taxation is similar in their case under the two systems.

In addition, a fixed exemption in the amount of 1,500 euros was subsequently regulated to correct part of the double taxation suffered.

In other words, at least as far as middle and lower-middle income earners are concerned, following the regulatory change, there may have been a certain disincentive to invest in listed equities.

Areas for improvement and proposals

An incentive measure to attract family savings to listed equities directly, and not through investment vehicles, would be the new inclusion in personal income tax (IRPF) regulations of mechanisms to correct economic double taxation of dividends received, either through a system of imputation and deduction in the tax liability, or through a system of exemption of a certain fixed amount.

Tax incentives for the channeling of savings into Spanish listed fixed income securities by personal income taxpayers

Spanish regulatory reference framework

In accordance with Personal Income Tax (IRPF) regulations, income derived from the transfer, redemption, amortization, redemption, exchange or conversion of securities is considered to be capital gains.

Therefore, in the case of investments in debt convertible into shares, the taxation of the taxable investor for personal income tax (IRPF) purposes will take place at the aforementioned moment, with the difference between the conversion or exchange value of the instrument and its acquisition or subscription value being computed as income.

Investors looking for medium-term investments could perhaps opt for products with more favorable taxation such as mutual funds, which allow tax deferral when redeeming their positions through the exempt transfer regime regulated in the IRPF regulations.

Areas for improvement and proposals

A clear incentive measure for channeling family savings directly into listed fixed income and indirectly into listed equities could be the establishment of a tax deferral system for personal income tax (IRPF), similar to that which exists for investment funds (transfers), in the event of conversion or exchange of convertible or exchangeable bonds into shares, deferring the income until the time of sale of the shares received as a result of the conversion or exchange.

5.4 Annex 4: Analysis of digital assets

Preparing for European regulation of crypto assets: the MiCA regulation

Spanish regulatory reference framework

Beforehand, it is essential to clarify that the Spanish legal system does not currently regulate the provision of crypto-asset services⁶⁷, nor does it establish an authorization process or the need to obtain a license for the provision of this type of service. In other words, the provision of crypto asset services in Spain at the date of issue of this report is not subject to the consideration of "regulated activity", with the risks and implications that this entails.

Thus, unless this matter is subject to imminent local regulation, it will not be until the future entry into force of the MiCA Regulation⁶⁸ that Spain will be required to obtain a license/administrative authorization for the provision of certain crypto asset services, such as the activity of cryptocurrency *exchange* platforms or the custody of cryptocurrencies.

Notwithstanding the above, there are certain aspects related to the provision of crypto-asset services in Spain that have been regulated, either by transposition of European regulations⁶⁹ or by national initiative. In particular, the following aspects have been regulated in Spain and are described below:

⁶⁷ Any reference in this report to the term "crypto-assets" shall be understood to refer only to crypto-assets within the scope of the MiCA Regulation. Accordingly, and for clarification purposes only, traditional financial instruments represented by distributed registration technology, which are regulated under existing European and national financial services regulations, are excluded.

⁶⁸ REGULATION (EU) 2023/1114 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 31 May 2023 on crypto-asset markets and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937

⁶⁹ Directive 2018/843 of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU.

- **Compliance with money laundering and terrorist financing ("PBC-TF") regulations:** by virtue of Royal Decree-Law 7/2021⁷⁰, Law 10/2010⁷¹ has been amended to include, amongst other issues, providers of virtual currency exchange services for fiat currency and electronic wallet custody services as obliged parties (Article 2.1.z) of Law 10/2010). Thus, the providers of these services must comply with the requirements and obligations set out in the AML/TF regulations, including the obligation to have means and processes in place to identify the identity of their customers and to draw up an AML/TF manual, which must comply with a minimum content.
- **Register of service providers for the exchange of virtual currency for fiat currency and the custody of electronic purses:** Royal Decree-Law 7/2021 also amended the second additional provision of Law 10/2010, which stipulates that the operators must register in the "register of service providers for the exchange of virtual currency for fiat currency and the custody of electronic purses". This register is under the authority of the Banco de España.
- In order to proceed with the registration, a series of requirements must be met, such as those relating to good repute and suitability, the availability of appropriate bodies in the area of PBC-TF, as well as the provision of the PBC-TF manual and the risk analysis document.
- **Crypto-asset advertising:** Royal Decree-Law 5/2021⁷² has introduced a new article 240 bis⁷³ in the previous Consolidated Text of the Securities Market Law⁷⁴, which empowered the CNMV⁷⁵ to develop, by means of a Circular, the mechanisms and procedures to be applied to crypto-asset advertising activities.
- With the entry into force of Circular 1/2022⁷⁶, certain rules, principles and criteria have been established to which advertising activity must be subject when crypto assets are presented as a potential investment object. The aforementioned Circular is limited solely to establishing certain rules on advertising activity but does not contain provisions regulating crypto assets themselves, nor crypto asset service providers. It also excludes specifically crypto assets that are considered to be financial instruments or those that, by their very nature, cannot be considered as investments, such as *utility tokens*⁷⁷.

⁷⁰ Royal Decree-Law 7/2021, of 27 April, on the transposition of European Union directives in the areas of competition, prevention of money laundering, credit institutions, telecommunications, tax measures, prevention and repair of environmental damage, posting of workers in the provision of transnational services and consumer protection.

⁷¹ Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing.

⁷² Royal Decree-Law 5/2021 of 12 March on extraordinary measures to support business solvency in response to the COVID-19 pandemic.

⁷³ Currently, Article 247 of Law 6/2023 of 17 March on Securities Markets and Investment Services.

⁷⁴ Approved by Royal Legislative Decree 4/2015, of 23 October.

⁷⁵ Comisión Nacional del Mercado de Valores (Spanish Securities and Exchange Commission)

⁷⁶ Circular 1/2022, of 10 January, of the Comisión Nacional del Mercado de Valores (CNMV), on the advertising of crypto assets presented as investment objects.

⁷⁷ Rule 3.2 of Circular 1/2022.

Two following regulatory issues are worth highlighting: (i) the authorization granted by the CNMV to BME Clearing (in its capacity as a central counterparty -CCC-) for the clearing of cryptocurrency futures intended for professional investors⁷⁸. This is a very remarkable milestone, as BME Clearing will be the first European CCC authorized to clear this type of complex financial instruments; and (ii) the decision to reduce the transitional regime under MiCA from 18 months to 12 months⁷⁹.

Comparative Situation

In December 2019, the EU institutions launched a public consultation on a legislative initiative aimed at creating a regulatory framework for crypto assets that fall outside the scope of EU financial services legislation⁸⁰.

In September 2020, with the publication of the first text of the proposed Regulation on crypto asset markets, a long legislative process began and culminated⁸¹ on 9 June 2023 with the publication in the Official Journal of the EU of the MiCA Regulation⁸², following the favorable vote by the European Parliament Plenary on the final text of the MiCA Regulation.

In light of the above, and as is the case at the local level, it is notorious that there is currently no harmonized regulatory framework at the European level. However, various European jurisdictions, such as Germany, France and Switzerland, in an attempt to address the corresponding risks associated with crypto-asset trading and to make their national markets more secure, have already adopted national legislative initiatives to regulate the provision of certain crypto-asset services, developing authorization and licensing regimes that seek to mirror the requirements of the MiCA Regulation.

This has led to the aforementioned jurisdictions positioning themselves as European benchmarks in this type of increasingly relevant activities, attracting investment, talent and innovation.

As an illustration of the above, Börse Stuttgart Digital Exchange, the multilateral trading system for digital assets of the Stuttgart Stock Exchange Group (Börse Stuttgart), announced on 30 March 2023 that it would start offering crypto asset custody services, having obtained a license as a crypto-asset custodian from the German Federal Financial Supervisory Authority (BaFin)⁸³.

In addition, these jurisdictions and providers authorized under their local rules will benefit from the transitional regime and simplified procedure provided for under the MiCA Regulation, as set out below.

⁷⁸ The CNMV authorises BME Clearing to clear cryptocurrency-linked futures for professional investors. 7 September 2023. <https://www.cnmv.es/WebServices/VerDocumento/Ver?t=%7B88086c57-a335-433e-b1b6-b5376953ac1b%7D>

⁷⁹ 20231026_ndp_reglamento MiCA_adelanto 6 meses aplicación.pdf (mineco.gob.es)

⁸⁰ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12089-Directive-regulation-establishing-a-European-framework-for-markets-in-crypto-assets_en

⁸¹ Note that the respective second and third level regulations have yet to be developed.





⁸² <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=OJ:L:2023:150:TOC>

⁸³ <https://www.boerse-stuttgart.de/-/media/files/gruppe-boerse-stuttgart/pressemitteilungen/en/2023/230330-mr-boerse-stuttgart-digital-crypto-custody-licence.ashx?la=en&hash=493B74F3E3996EA0DC0F8EF3AFDDB005>

Other countries have also expressed their intention to anticipate the entry into force of the MiCA Regulation, such as Italy⁸⁴.

Finally, the other European countries have not made significant progress in regulating this type of service, as is the case in Spain. It is true that on 7 September BME Clearing, the Central Counterparty (CCP) in Spain, received regulatory authorization from the CNMV to clear bitcoin and Ethereum futures traded in dollars under European regulation. This step brings to Spain a new segment for digital asset derivatives aimed at institutional investors that introduces digital assets in a secure and highly regulated environment, which will improve the trading, clearing and cash settlement of digital asset futures. Undoubtedly, in our view, a step in the right strategic direction for our economy.







Table 17 - Comparative situation: Future European regulation of crypto assets: The MiCA regulation

Country	Pre-adoption MiCA ⁸⁵	Comment
 Spain	No	Spain does not have <u>an authorization and licensing regime for the provision of crypto-asset services</u> , it has only implemented the EU's Fifth Anti-Money Laundering Directive (5MLD) and the CNMV published Circular 1/2022 on rules, principles and criteria to which advertising activity must be subject when crypto-assets are presented as a possible investment object.
 France	Yes	France has a strong regulatory framework for cryptocurrencies and effective oversight of related activities. France already has specific regulations for the provision of crypto-asset services and the obtaining of authorization and licenses (Article L. 54-10-3 of the French Monetary and Financial Code MFC) and even to ensure a smooth transition from the current French regime to the MiCA regime, specific legislation was passed on 9 March 2023 ⁸⁶ .
 Germany	Yes	Germany has specific regulations for the provision of crypto asset services and a process for obtaining authorization and licensing by BaFin (Federal Financial Supervisory Authority) under an established financial regulatory framework.
 Italy	No	Italy does not currently have a regulatory regime for authorizing and licensing the provision of crypto services. However, they have recently announced that they plan to pre-empt MiCA, although there is no formal proposal to do so.

⁸⁴ See page 9 of the speech by Mr Ignazio Visco, Governor of the Bank of Italy <https://www.bis.org/review/r230206a.pdf>

⁸⁵ Although the UK and Switzerland are not part of the EU and therefore the MiCA Regulation does not apply to them, it has been indicated that "Yes", in the sense that both countries have gone ahead to regulate crypto-asset services by establishing an authorization and licensing regime for the provision of crypto-asset services.

⁸⁶ Law 2023-171 of 9 March 2023 on miscellaneous provisions for the adaptation to EU law in the areas of economy, health, labor, transport and agriculture (<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000047281777>)

Country	Pre-adoption MiCA ⁸⁵	Comment
 The Netherlands	No	The Netherlands does not have a regulatory regime for the authorization and licensing of the provision of crypto services. It has only incorporated the 5MLD into its legislation.
 Ireland	No	Ireland does not have a regulatory regime for the authorization and licensing of the provision of crypto-asset services. It has only implemented the 5MLD
 Luxembourg	No	Luxembourg does not have a regulatory regime for the authorization and licensing of crypto-asset services. It only incorporates the 5MLD and there is a draft law to include DLT in financial instruments.
 United Kingdom	Yes	The UK has specific regulations for crypto asset services and a process for obtaining authorization and licensing from the FCA (UK financial authority).
 Sweden	No	Sweden does not have a regulatory regime for the authorization and licensing of the provision of crypto-asset services. It has only implemented the 5MLD
 Switzerland	Yes	Switzerland is one of the most advanced jurisdictions in this area, with specific regulations for the provision of crypto-asset services and an authorization and licensing process by FINMA (Swiss Financial Market Supervisory Authority).

Source: Own elaboration

Areas for improvement and proposals

In order to identify areas for improvement and potential measures, it is important to consider three key elements of the implementation of the MiCA Regulation:

- **Implementation and entry into force in the medium term.** A period of between twelve⁽¹²⁾ and eighteen⁽¹⁸⁾ months is foreseen for its implementation, starting from its entry into force on 30 June 2023.⁸⁷
- **Transitional regime**⁸⁸. Crypto-asset service providers that have a national authorization to provide any of the crypto-asset services covered by the MiCA Regulation may continue to operate under that authorization for a maximum period of eighteen months after the date of application of the MiCA Regulation.
- **Simplified procedure**⁸⁹. Similarly, crypto-asset service providers that have a national authorization and apply for an authorization under the MiCA Regulation within the first eighteen months of its implementation will be eligible for a simplified procedure.
- In view of the above and taking into account that the MiCA Regulation was published in the Official Journal of the European Union on 9 June 2023 and therefore entered into force on 30 June 2023, its full application would be 18 months later, 30 December 2024

⁸⁷ Article 149 of the MiCA Regulation.

⁸⁸ Article 143.3 of the MiCA Regulation.

⁸⁹ Article 143.6 of the MiCA Regulation.

and crypto asset service providers holding a national authorization for the provision of services under the MiCA Regulation could benefit from the transitional regime and the simplified regime until 30 June 2026, unless Member States decide to reduce the transitional regime (as would be the case for Spain).

This means, in general terms, that authorized providers in member states with local legislation will be in a better position to continue to carry out these activities, without relevant impacts on their business model, after the entry into force of the MiCA Regulation. This gives these member states a relevant competitive advantage over the rest.

Outside crypto assets, within the world of digital assets, there is one area where the application of distributed log technology (DLT) holds great promise. That area is capital markets.

It is now acknowledged in the European Union that financial instruments represented in DLTs have the same status as financial instruments represented in book-entry or securities. This representation process is commonly referred to as "tokenization". Tokenization involves the digital representation of assets and rights on a blockchain by means of tokens. These tokens represent ownership (in the case of financial instruments issued natively on a DLT) or rights to an underlying asset. This transformation facilitates buying and selling on DLT platforms (trading systems), increasing the potential liquidity and accessibility of certain assets.

This is possible in the European Union thanks to the entry into force in March 2023 of the Pilot Scheme Regulation (the "**Pilot Scheme**"⁹⁰).

The Pilot Scheme is part of the so-called "Digital Finance Package". The package aims at creating more competitive European markets offering investors innovative financial products, while ensuring investor security and fostering a digital single market for finance.

The Pilot Scheme is a prominent component of this package. The objective of the Pilot Scheme is to test the development of market infrastructures (multilateral trading systems and settlement systems, including a combination of both in a single entity⁹¹) for the trading, settlement and registration of DLT-based financial instruments, with the aim of creating a kind of regulated environment in which to test the presumed efficiencies of DLT, thereby improving the functionality, reliability and competitiveness of European markets, and the Pilot Scheme therefore represents a turning point towards the integration of DLT in the markets.

One of the most interesting issues to be explored in the Pilot Regime is the possibility of combining a trading and settlement system⁹² . This new market infrastructure can have multiple benefits. Among them, the most common ones are the following:

90 Regulation 2022/858 of 30 May 2022 on a pilot scheme for market infrastructures based on decentralised registry technology and amending Regulations 600/2014 and 909/2014 and Directive 2014/65/EU.

91 Under current financial services regulation, the same entity cannot offer both trading and post-trading services. The Pilot Regime introduces a novel feature, precisely because it is enabled by DLT, by creating a new market infrastructure that combines trading and settlement of securities. The so-called DLT-based trading and settlement system (DLT-based SNL).

92 Recital (14) of the recital of the Pilot Scheme Regulation sets out the rationale for allowing this derogation, pointing out precisely the potential benefits it can bring.

- First, operational efficiency can be increased by merging these two market infrastructures, which would facilitate and speed up operations.
- Second, the merger of these systems can minimize counterparty risk, which arises from the time lag between the execution and settlement of a trade. This is not only due to the combination of two market infrastructures into one, but also thanks to improvements in securities settlement, through what are known as "atomic swaps" which allow delivery versus payment to take place almost simultaneously. By shortening this interval, the probability of default by any of the entities involved is reduced.
- Third, the unified operation of these systems under a single entity could result in lower costs, benefiting from economies of scale and the elimination of processes.

Finally, an integrated system would improve transparency by facilitating regulatory oversight and compliance with *reporting* obligations in real time, even directly by the regulator itself, eventually eliminating the laborious task of data reconciliation, as the regulator itself would extract the data directly from the DLT and with the added security that a DLT offers regarding the integrity of the data represented therein. The possibility of tokenizing traditional assets is overly broad and is not limited only to tradable securities or financial instruments. Even the Bank for International Settlements ("**BIS**") is looking into the possibility of tokenizing bank deposits⁹³. Indeed, a trustworthy tokenized digital money, issued by a regulated and supervised entity (such as credit institutions), which allows the cash settlement leg of a tokenized securities transaction to be unlocked, is required to make the benefits of near-instant settlement against payment via DLT a reality.

The efforts made in Spain regarding tokenization are remarkable, as not only has Law 6/2023 been modified to reflect the legal recognition of financial instruments represented in DLT (Distributed Ledger Technology), but also a genuine legal framework has been established for these financial instruments in DLT. This includes recognition of the possibility of creating real rights, liens, judicial executions, as well as a regime of opposability against third parties. All of these measures aim to establish legal certainty.

Further steps have been taken, including modifications to other regulations such as the Capital Companies Law, adapting the possibility of representing the shares of a corporation in DLT or the issuance regime of bonds through DLT by a commercial company. Likewise, modifications have been made to the Civil Procedure Law to recognize the value of an enforceable title to the certificates issued by the entity responsible for the registration and record-keeping of securities represented in DLT (known as the "ERIR" entity).

This could lead to the development of new business models and services. Spain, following the example of other European jurisdictions, should take advantage of this opportunity and the developing regulatory framework in Europe to position itself within the European markets as a benchmark jurisdiction for the tokenization of financial instruments, as well as for crypto asset service providers, taking advantage of the fact that regulatory security is always a vector that attracts capital and talent to an economy.

⁹³ <https://www.bis.org/publ/bisbull73.htm>

- **Streamlining the mechanisms for collaboration and promotion of market operators and authorities to develop innovative initiatives.** The aim is to facilitate and simplify the steps for launching pilot projects or initiatives to achieve a more precise knowledge of the modern technologies applied to the Spanish market. This is intended to ensure better positioning and timely provision of new services to both the national and international financial community.
- On the other hand, the only supervisor in Spain that has contact with crypto asset providers currently having to register is the Bank of Spain. While the added information requirements and procedures that would have to be imposed on these providers in order to receive the relevant authorizations (and supervision by the CNMV), it would be advisable to avoid imposing duplicate administrative burdens on these providers in this transfer. In other words, to prevent the new requirements from acting as a disincentive by overburdening and repeatedly imposing conditions that have already been accredited.as has been the case to date.
- **Speed up the creation of structures to take advantage of the simplified MiCA regime.** Promote the creation of national regulations to develop and implement an authorization and licensing regime for the provision of crypto-asset services provided for in the European MiCA (Market in Crypto Assets) Regulation, in order to take advantage of the simplified regime and thus attract providers of these services to Spain.
- **Establish an incentive tax regime for digital asset activities** in Spain, which would facilitate the development of a local industry of reference in the field of financing, trading and custody of this type of financial instruments.

6 Appendix


















6.1 Scope of analysis

The analysis compares the Spanish capital markets with those of **seven** other **European countries** (Germany, France, Italy, the Netherlands, Ireland, Luxembourg and Sweden), which are also under the same European regulatory framework, and with **three international markets** (the United States, the United Kingdom and Switzerland). The reasons why this selection of countries has been considered in the analysis are as follows:

- **Comparison with similar economies** (Germany, France, Italy and the Netherlands): European countries with a similar size to Spain in terms of GDP.
- **European Reference Markets:** (Sweden, Ireland and Luxembourg): Smaller European countries with a number of relevant capital markets.
- **Global reference markets** (United States, United Kingdom and Switzerland): international benchmark countries in capital markets.

The following table shows the scope of the specific markets in each country that have been considered in the quantitative analysis carried out in the diagnostic chapter, as well as in the rest of the document.

Chart 28 28- Scope of capital markets analysis

Market	 Spain	 Germany	 France	 Italy	 Netherlands	 Ireland	 Luxembourg	 Sweden	 Switzerland	 UK	 USA
 Variable Income	<ul style="list-style-type: none"> Continuous market BME Growth Latibex 	<ul style="list-style-type: none"> Deutsche Börse (XETRA) 	<ul style="list-style-type: none"> Euronext Paris Euronext Growth Euronext Access 	<ul style="list-style-type: none"> Euronext Milan Euronext Growth Milan Professional Segment Euronext STAR Milan Euronext MIV Milan 	<ul style="list-style-type: none"> Euronext Amsterdam 	<ul style="list-style-type: none"> Irish Stock Exchange Euronext Dublin Euronext Growth Dublin 	<ul style="list-style-type: none"> Luxembourg Stock Exchange (LuxSE) 	<ul style="list-style-type: none"> Nasdaq Nordic & Baltics Regulated Market Nasdaq Nordic & Baltics First North 	<ul style="list-style-type: none"> SIX Swiss Exchange 	<ul style="list-style-type: none"> LSE AIM LSE Main Market 	<ul style="list-style-type: none"> NYSE NYSE American Nasdaq
 Fixed Income	<ul style="list-style-type: none"> AIAF MARF SENAF 	<ul style="list-style-type: none"> Deutsche Börse Berlin Börse Düsseldorf Börse Hamburg Börse Hannover Börse Stuttgart Börse Eurex 	<ul style="list-style-type: none"> Euronext Paris Euronext Growth Euronext Access 	<ul style="list-style-type: none"> MOT ExtraMOT Bond-X 	<ul style="list-style-type: none"> Euronext Amsterdam 	<ul style="list-style-type: none"> Euronext Dublin 	<ul style="list-style-type: none"> Bourse de Luxembourg Euro MTF LuxSE SOL 	N/A	N/A	N/A	N/A
 Investment Certificates	<ul style="list-style-type: none"> SIBE 	<ul style="list-style-type: none"> Stuttgart Stock Exchange 	<ul style="list-style-type: none"> Euronext Paris 	<ul style="list-style-type: none"> SeDex 	<ul style="list-style-type: none"> Euronext Amsterdam (AEX) 	N/A	N/A	<ul style="list-style-type: none"> Nasdaq Stockholm – Derivatives Market 	<ul style="list-style-type: none"> SIX Swiss Exchange 	<ul style="list-style-type: none"> London Stock Exchange (ORB) 	N/A
 ETFs	<ul style="list-style-type: none"> SIBE 	<ul style="list-style-type: none"> Xetra 	<ul style="list-style-type: none"> Euronext Paris NextTrack 	<ul style="list-style-type: none"> ETF plus 	<ul style="list-style-type: none"> Euronext Amsterdam 	<ul style="list-style-type: none"> Euronext Dublin 	<ul style="list-style-type: none"> Luxembourg Stock Exchange 	<ul style="list-style-type: none"> Nasdaq Stockholm – Main Market, First North 	<ul style="list-style-type: none"> SIX Swiss Exchange 	<ul style="list-style-type: none"> London Stock Exchange 	<ul style="list-style-type: none"> NYSE Arca NASDAQ ETF Market
 Derivatives	<ul style="list-style-type: none"> MEFF 	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
 Digital Assets	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

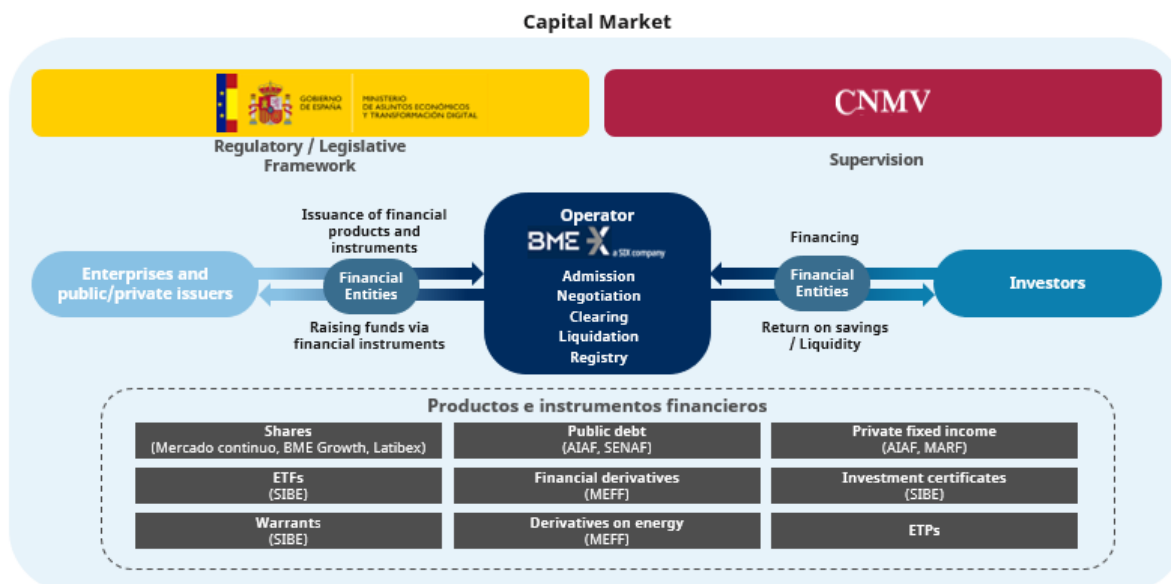
Source: Own elaboration

6.2 Stakeholders involved in the Spanish capital markets

Having established the cardinal importance of capital markets in the economy and their impact on society, it is necessary to identify and understand the role played by each of the main factors that influence and shape their functioning.

The following illustration identifies the main actors that are essential for the efficient and balanced functioning of capital markets in Spain.

Chart 2929 - Relational map of agents in Spanish capital markets



Source: Own elaboration

The **main capital market operator** (in the case of Spain, Bolsas y Mercados Españoles, **BME**) represents the backbone of the financial and operational infrastructure of the capital market. It is the agent that facilitates the infrastructure of the different markets in which the different financial instruments are found (equities, fixed income, derivatives, etc.) and which acts as an intermediary between issuers and investors.

Issuers, mainly **private companies seeking financing**, are the *raison d'être* of capital markets. By issuing financial instruments in the various markets, companies obtain the necessary resources to finance projects that allow them to grow, expand and become more competitive with their competitors.

Investors, both **retail and institutional**, are vital players in this ecosystem as they come to the markets to provide the necessary capital that companies need to make a return on their savings.

In Spain, the **Ministry of Economic Affairs and Digital Transformation** as the **regulatory agent** and the **National Securities Market Commission**, CNMV, as the **supervisory and regulatory agent**, have critical roles in maintaining market integrity, protecting investors and fostering fair competition, creating a safe and reliable investment environment. Their work is essential in ensuring an efficient and transparent securities market that inspires confidence and attracts both domestic and foreign investment.

Finally, the figure of the **depository/clearing agent** (in the case of Spain, **Iberclear**) ensures the efficiency and security of transactions in the capital markets as well as the process of settlement and registration of operations, guaranteeing that each transaction is carried out safely and efficiently, strengthening confidence in the system and in its overall functioning.

6.3 Information sources

The analyses presented in this report are based on data and information from publicly available databases and information supplemented by data extracted from the BME Group's private databases. The following tables contain an exhaustive list of the sources of information analyzed, grouped according to their type:

Table 18 - Breakdown of information sources used in the report

List of the main markets of the analyzed countries	
Bolsas y Mercados Españoles (ESP)	Borsa Italiana (ITA)
Börse Stuttgart (DEU)	Deutsche Börse (DEU)
Euronext (FRA; IRL; NL)	London Stock Exchange (UK)
Luxembourg Stock Exchange (LUX)	Nasdaq (USA)
Nasdaq Nordic (SEE)	New York Stock Exchange (USA)
SIX Swiss Stock Exchange (SUI)	XETRA (DEU)
Public databases of government agencies	
Bank of Spain	Swiss National Bank
United States Federal Reserve	Comisión Nacional del Mercado de Valores (Spanish Securities and Exchange Commission)
Official statistics from official public sources	
Eurostat	Organisation for Economic Cooperation and Development (OECD)
UK Office for National Statistics	US Bureau of Labor Statistics
Statistical bases of capital market federations	
World Federation of Stock Exchanges (WFE)	Federation of European Securities Exchanges (FESE)
Information and data from recognised private institutions	
Morgan Stanley Capital Investment (MSCI)	Spaincap
STOXX	
Private access platforms	
Refinitiv Workspace	Pitchbook
Statista	

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6.7 Glossary and acronyms

Glossary of terms

Term	Definition
BME Growth	This is BME's marketplace for SMEs. A platform that allows small and medium-sized growing companies to access the capital markets.
Capital markets	A financial market in which companies and savers meet their financing and investment needs by exchanging money and investment instruments in the form of securities.
Capital raised	Financial resources provided by investors to a company in order to become its owners or increase their stake in it. If the company is listed, they can be raised during the IPO process and/or through capital increases before or after the IPO.
Custodian / clearing	Entity responsible for settling transactions in the capital markets, as well as for safekeeping and guaranteeing the security of the securities involved. In Spain, this entity is Iberclear
Dividends	Distribution of part of a company's profits to its shareholders
Dual listing	Situation where a company is listed on two different stock exchanges at the same time
ELTIF	European long-term investment funds provide long-term financing for various infrastructure projects for unlisted companies or small and medium-sized listed companies that issue equity or debt instruments for which there is no readily identifiable buyer.
Emitters	Companies or entities that issue securities to raise or raise funds. The main ones are present on public securities markets such as stock exchanges.
Equity Products	Financial instruments issued by companies or entities whose profitability is subject to market movements. The most popular are shares representing a part ownership of a company.
ETC	Investment vehicles that replicate the performance of a single commodity
ETF	Funds whose portfolio replicates an index (equities, bonds, commodities, etc.) and are listed on an exchange.
ETN	A senior subordinated debt instrument issued by a financial institution with the objective of replicating the performance of an underlying security or index. Unlike other ETPs, it is a note and does not own any of the securities it replicates.
ETP	Exchange-traded funds are passively managed investment vehicles that mimic the performance of a selection of related assets.
EURO STOXX 50	Stoxx company stock index comprising 50 of the most traded and largest companies by market capitalization in the Eurozone.
Fixed Income Products	Financial instruments issued by companies or entities to raise external financing in exchange for a promise of a fixed return in the short, medium and/or long term.
IBEX 35	Stock market index that includes 35 of the most liquid and largest companies listed on the Spanish stock exchange.
IPO	A transaction whereby many companies start their stock market debut by selling all or part of their shares to a larger or smaller group of new investors.
Market capitalisation	Market value that a company obtains by listing its shares or ownership interests on public securities markets such as stock exchanges.
MiCA	The MiCA (Market in Crypto-Assets) regulation is a regulatory framework proposed by the European Commission that aims to provide greater legal clarity and security for crypto asset transactions in the European Union. This regulation covers a wide range of aspects, from transparency and transaction requirements to consumer protection measures.
SICAVs	Collective investment vehicles with legal personality (limited companies) with a minimum capital of 2,400,000 euros and a minimum number of shareholders of 100, in which investors contribute their money to be jointly managed.
SOCIMIs	Listed public limited companies whose main activity is the acquisition, development and refurbishment of urban assets for lease, either directly or through holdings in the capital of other SOCIMIs.
SPACs	Listed companies created specifically to raise capital for the purpose of acquiring an existing company and facilitating its listing on the public securities markets (stock exchanges).

Acronyms

AIFs	Alternative Investment Funds	LIRPF	Law 27/2014 of 27 November 2014 on corporate income tax
AIM	Alternative Investment Market	LIS	Law 27/2014 of 27 November 2014 on corporate income tax
AuM	Assets under management	LMV	Securities Market Law
BaFin	German Federal Financial Supervisory Authority	M&A	Mergers & Acquisitions
BME	<i>Bolsas y Mercados Españoles</i>	MARF	Alternative Fixed Income Market
CIS	Collective Investment Schemes	MiCA	Markets in Crypto Assets
CMU	Capital Markets Union	MiFID II	Markets in Financial Instruments Directive II
CNMV	<i>Comisión Nacional del Mercado de Valores</i> (Spanish Securities and Exchange Commission)	MTF	Multilateral Trading System
CSDR	Central Securities Depositories Regulation	OAM	Autonomous Organism of Markets
DCV	Central Securities Depository	OECD	Organisation for Economic Co-operation and Development
DGT	Directorate-General for Taxation	PBC-FT	Prevention of Money Laundering and the Financing of Terrorism
ELTIF	European Long-Term Investment Funds	PIR	Individual Risk Insurance Plans
EMEA	Europe, Middle East and Africa	R&D	Research and development
ESMA	European Securities and Markets Authority	RIRPF	Royal Decree 439/2007, of 30 March 2007, approving the Personal Income Tax Regulations
ETC	Exchange Traded Commodities	RIS	Royal Decree 634/2015, of 10 July 2015, approving the Corporate Income Tax Regulations
ETF	Exchange Traded Funds	SICAV	Open-ended Investment Companies
ETN	Exchange Traded Notes	SIL	Free Investment Scheme
ETP	Exchange Traded Products	SMES	Small and medium-sized enterprises
EU	European Union	SOCIMI	Listed public limited companies investing in the real estate market (REIT)
FCPI	<i>Fonds Communs de Placement dans l'Innovation</i> (Common Innovation Placement Fund)	SPAC	Special Purpose Acquisition Companies
FIL	Hedge Fund	T2S	TARGET2-Securities
GDP	Gross Domestic Product	TS	Supreme Court
ICSD	International Central Securities Depositories	UCITS	Undertakings for Collective Investment in Transferable Securities
IFP	<i>Fonds d'Investissement de Proximité</i> (Proximity Investment Fund)	UCITS	Undertakings for Collective Investment in Transferable Securities
IPO	Initial Public Offering	UCITS Directive	Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
IRNR	Non-resident income tax	WFE	World Federation of Exchanges
LIRNR	Royal Legislative Decree 5/2004 of 5 March 2004, approving the revised text of the Law on Non-Resident Income Tax		



BME

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