WHITE PAPER ON

FINTECH2.0

SPANISH FINTECH & INSURTECH ASSOCIATION

THE SPANISH FINTECH INDUSTRY AND ITS REGULATORY FRAMEWORK. CHALLENGES, OPPORTUNITIES AND TRENDS THAT WILL SHAPE THE FUTURE OF THE SECTOR.

cecabank

CMS law·tax·future

finReg360

ontier

RocaJunyent

Sponsored by:

cecabank

In partnership with:

With the participation of:

CMS law·tax·future

finReg360

ontier

RocaJunyent

December 2024 - Madrid, Spain

www.asociacionfintech.es

FINTECH 2.0 WHITE PAPER

Contents

Welcome Letter

The AEFI began its journey in 2016, when a small group of FinTech companies met to discuss the challenges, barriers and difficulties they faced in launching their projects, their companies, and ultimately, to help them grow. That group of entrepreneurs, to which I am proud to belong, created the Spanish FinTech and InsurTech Association (*Asociación Española de FinTech e InsurTech*), with the aim of creating a community, supporting each other and achieving the necessary communications with the Public Bodies they would be dealing with.

Today, the AEFI is made up of more than 150 companies in the financial industry, and continues to pursue, with enthusiasm and professionalism, its commitment to representing its members and fellow travellers before the various players in the industry and society. The key pillar is to raise awareness of the FinTech ecosystem in its broad scope and application. This dissemination and outreach work aims to create a favourable environment in terms of regulation, investment and attracting talent. Thanks to these roadmaps, we are succeeding in fostering innovation, accelerating digital transformation and improving financial and insurance inclusion in society. The guidelines we follow to achieve these objectives are based on solid corporate governance, implementing best practices in the FinTech and InsurTech industry, and client and end-user protection and information, all using technological innovation as what sets us apart.

As a starting point, in 2017, the AEFI developed the first FinTech White Paper, which became the reference document in the financial innovation sector in Spain. Since then, the sector, regulation and the market have evolved significantly. That is why in 2024 we are launching an updated and renewed version that brings together all the active FinTech sectors and lays out the current situation so that the necessary measures can be taken to help bolster the Spanish ecosystem.

This white paper has two main objectives:

First, to obtain the Spanish government's commitment to the FinTech ecosystem, contributing to its development and expansion, fostering financial innovation. The ultimate aim is to benefit citizens through more efficient, more competitive and more transparent financial services. To this end, a series of legislative proposals, both cross-cutting and specific, should be rolled out to encourage the amendment of current legislation to adapt it to the current situation of the industry and foreseeable future needs, and the interpretation and application of regulations, directives and recommendations from the European Union as diligently as possible. In addition, properly reviewing and updating the regulatory aspects could serve to improve financial client protection and the quality of the industry's services and products for the benefit of all sectors and society at large

The second objective of the White Paper is to update the document published by the AEFI in 2017 to make it a truthful, transparent and useful reference for the FinTech ecosystem in Spain and in Europe, and to make it the essential guide for understanding it.

The AEFI trusts that this document will serve to analyse the current rules and standards of the financial industry and establish lines of work between all the industry's players, based on the proposals put forward by the AEFI in the last section of the document under the heading "IMPROVEMENT MEASURES AND RECOMMENDATIONS".

Finally, on behalf of the AEFI, I would like to convey my sincere thanks to everyone on the team, whose constant and rigorous work has allowed this white paper to see the light of day.

First of all, we would like to convey our sincere thanks to Carla Díaz Álvarez de Toledo, Director General of the Treasury and Financial Policy at the Ministry of Economy, Trade and Enterprise, and Ana Puente, Deputy Director General for Sustainable and Digital Finance at the Treasury Ministry for her participation and support for the FinTech sector. We would also like to thank Juan José Gutierrez, Corporate Director of Technology Services, and Julio César Fernández, Director of the Business Development and Operational Support Division at Cecabank; Alejandro Banegas, Head of Digital Partners, and Alberto López, VP of Intelligent Solutions for Cybersecurity and AI at Mastercard and their teams, for their sponsorship and support for their commitment to this document. We would like to make a special mention to our legal sponsors CMS Albiñana & Suárez de Lezo, and Jaime Bofill, to Roca Junyent and its partners Xavier Foz, Beatriz Rodríguez and José Luís Pita, to FinReg360 and Gloria Hernández, partner, Mariona Pericas, expert in financial regulation and her team, and to Gonzalo Navarro, director of financial regulation at Ontier. And of course, thanks are due to all our associate members, who helped structure and shed light on the historical justifications of the sector.

I encourage readers to dive into the contents of this document to better understand the FinTech environment and the limitless possibilities that innovation and technological development applied to the financial sector opens up.

ARTURO GONZÁLEZ MACDOWELL

Chair of the Spanish FinTech and InsurTech Association

Foreword

I would like to thank the AEFI for having the Directorate General of the Treasury and Financial Policy provide the foreword to this book. It is a pleasure to write these lines and to take this opportunity to underline the importance of public-private collaboration in an area as new as digital finance. While it is up to the private sector to drive innovation and develop new business models, technologies and services, it is up to the public sector to establish a framework that encourages this innovation, fostering competition and taking advantage of opportunities, but mitigating risks, so that the ultimate goal is a more competitive financial sector that has the confidence of its users and where financial stability is preserved. Channels of dialogue and cooperation are essential to this end.

The process of digitalising the economy is bringing about unprecedented changes in all sectors, particularly in the financial sector, where the emergence of new technologies has brought with it the emergence of:

- **New players**, such as FinTechs, that are driving competition and innovation, improving the quality and variety of financial services and helping reduce costs for consumers and businesses. In Europe, initiatives such as open banking and its continuation and extension in the future with open finance aim to contribute to the emergence of these new players by establishing safeguards for the adequate protection of personal data. At the same time, financial inclusion must be ensured, with a special focus on the most vulnerable population groups, so that they are not left behind in this process of digital innovation.

- **A new, truly digital, instant, pan-European payments environment.** EU legislation is fostering innovation and competition in payment services with the revision of the Payment Services Directive, the adoption of the EU's Immediate Payments Regulation and the development of a digital euro. The Spanish financial sector, through Bizum, has become a benchmark in instant payments in Europe, turning them into an instrument of daily use, and is well positioned to take advantage of the opportunities in the European instant payment market. The development of a digital environment for payments increases the importance of appropriate measures to prevent fraud, so that consumer confidence in the system is preserved.

- **New products** such as cryptoassets, which have gained importance as investment assets in recent years. Regulation is necessary to ensure proper investor protection and financial stability. Spain has been a pioneer in the regulation of cryptoassets: first, with the implementation of national measures, such as the powers granted to the CNMV on advertising cryptoassets; and second, by shortening the transitional period of application of the European Regulation on Markets in Crypto-assets ("MiCA") to 6 months. From the end of next year, all cryptoasset service providers will have to be registered with the competent authority.

We are currently finalising the implementation of the MiCA Regulation at national level to ensure all the safeguards foreseen in the regulation, notably bolstering, among others, the anti-money laundering regime related to cryptoasset service providers.

- **New technologies** such as distributed ledger technologies (DLTs). While the best known application of this technology is cryptoassets, its potential goes beyond that. This technology could revolutionise capital markets by increasing the efficiency, transparency and security of settlement and exchange processes. In May 2022, the European Union adopted a DLT-based Market Infrastructure Pilot Regime Regulation to boost innovation in this area while maintaining safeguards for financial stability. As a sign of the Ministry of Economy, Trade and Enterprise's commitment to innovation, last year the possibility of representing financial assets in blockchain technology was added to the Spanish Securities Markets Act [*Ley de los Mercados de Valores*]. This possibility is currently being developed in a new Royal Decree.

- In this context, **cyber resilience** is essential to preserve the stability of the financial system in the face of disruptions in new technologies, including the possibility of cyber-attacks. The final touches are being made to adapting Spain's regulatory framework to the DORA Regulation, including a regime of infringements and sanctions appropriate to each of the sectors concerned.

Thus, the challenge for regulators is to drive digitalisation, innovation and competition while preserving users' trust in the financial system, so that greater benefits can be achieved in terms of economic growth, integration and security. To this end, it is crucial to mitigate risks to the financial stability or cybersecurity of firms and to ensure adequate consumer protection, fostering financial inclusion and promoting the safe development of new financial services and instruments.

To keep our framework up to date and to foster a competitive and secure financial sector, I would like to highlight the role of the financial sandbox as a fundamental tool that illustrates Spain's commitment to cultivating innovation. Spain's 2020 Sandbox Act [*Ley 7/2020, de 13 de noviembre, para la transformación digital del sistema financiero*] has placed it at the cutting edge of international practice by establishing a safe and controlled space to incubate financial innovation. Since the first cohort in 2021, a total of 111 projects have been submitted to the sandbox in various fields and using various technologies. This tool encourages a fluid dialogue with supervisors to take advantage of the opportunities of these new technologies. As a result of the experience acquired within the sandbox, various regulatory changes have been promoted with the aim of adapting Spanish law to the new needs that are arising as a consequence of constant financial innovation. One example is the possibility introduced in the new Spanish Securities Markets and Investment Services Act [*Ley de los Mercados de Valores y de los Servicios*] of representing financial instruments by means of distributed ledger technology (DLT).

We are currently working on the Draft Bill for the Digitalisation and Modernisation of the Financial Sector [*Ley de Digitalización y Modernización del Sector Financiero*], accompanied by two Royal Decrees, with many of these reforms necessary to adapt Spain's legal framework: implementation of MiCA and DORA, adaptation of payment services legislation, representation of financial instruments in blockchain technology, and upgrading the sandbox to keep it as an up-to-date tool.

In this context, the second edition of the FinTech White Paper, like its 2017 predecessor, is an invaluable document for providing a comprehensive overview of the latest technological innovations and disruptive tools in the field of digital finance. It is being published precisely at a time when this Draft Bill is moving through parliament and at a key moment for several European negotiations: i.e., at a complex and exciting time for regulators, in the continuous search for the perfect balance between boosting financial innovation and minimising risk for the sector as a whole. I am sure that this 2024 FinTech White Paper and its proposals will contribute very positively to enriching this debate and the steps taken by the government.

CARLA DÍAZ ÁLVAREZ DE TOLEDO

Director General of the Treasury and Financial Policy of the Ministry of Economy, Trade and Enterprise

1. Introduction

The FinTech White Paper 2.0 is an initiative of the Spanish FinTech and InsurTech Association (AEFI) that revives the spirit of change and progress of the first FinTech White Paper, published in 2017. This document highlights the current situation of the Spanish FinTech ecosystem in a spirit of evolution and improvement for the entire financial industry under the prism of regulation.

The term “FinTech” has already been defined many times but it is pertinent for the Spanish FinTech and InsurTech Association to revisit it: “FinTech” is a contraction of two words, "Finance" and "Technology". The AEFI’s Articles of Association define a FinTech as "an innovative technology-based undertaking (created with the potential to grow on a large scale) that, with the required administrative authorisations, offers products or services related to the financial sector".

FinTech companies made their first foray into the financial industry when, after the 2008 financial crisis, employees of banks and insurers started up companies that solved problems that banks could not fix, and that met needs with innovation. These new business models seemed to challenge the traditional structures of the financial industry and the way things were done. However, time has proven how the partnerships and synergies that arose between the two have been very fruitful for everyone. Banks have been able to develop fast and applicable solutions thanks to the agile development of FinTechs, and FinTechs have specialised in specific business models.

With regard to financial clients and users, FinTechs have covered their needs that the banking sector proved unable to solve adequately, for example: access to investment and savings products in which small savers deposit their money with expectations of profitability; the possibility of obtaining consumer credit faster; the ability to compare financial products and/or services in a matter of seconds; and a long list of others.

In AEFI's main area of focus (regulation), both Spanish and EU legislation have brought new rules and substantial changes to the financial industry.

2. Mission

The mission of this document, and that of the association, rests on five pillars:

1. **Bringing together the interests of the FinTech ecosystem**
2. **Awakening the interest of the Spanish Government**
3. **Engaging regulators**
4. **Working together with supervisors**
5. **Transmitting knowledge to society**

3. Verticals of the FinTech ecosystem

The association groups FinTech and InsurTech companies into verticals under common criteria of similar companies, homogeneous business models in contrast to the heterogeneity of the sector.

Today, the AEFI recognises 12 different business models plus the InsurTech vertical, which this white paper will not address because the AEFI has published two InsurTech White Papers and a report on the digitalisation of the sector. These 12 classifications are also grouped into larger groups that share the same oversight authority, face common barriers, are affected by the same EU laws or regulations and/or must meet the same milestones due to legislative changes or regulatory moments.

These groups are:

1	**PayTech.** This group comprises companies active in the payments industry, either from the B2B side, such as TPPs, or from the B2C side, such as neobanks.
2	**WealthTech.** This group represents investment companies that have democratised access to investment products for the majority of citizens.
3	**Crowdfunding.** Crowdfunding platforms form a group in their own right, because of their specific and clear legislation, both at the EU and Spanish level.
4	**Market infrastructures and digital assets.** These two sectors are closely linked due to EU regulations.
5	**Personal Finance, Marketplace & Online Lending.** This group is focused on citizens and their needs.
6	**RegTech & Digital Onboarding.** These companies ensure regulatory compliance, security, transparency and reliability of all the above business models.

This chapter will then be divided into the six sections corresponding to the business models discussed and will explain what they do, their value chain, the regulatory situation they are currently going through and the proposals made for their improvement.

1 PAYTECH, CHALLENGER BANKS AND NEOBANKS, PAYMENT SYSTEMS AND FOREIGN EXCHANGE

This section will analyse four different verticals within the payments sector: Payments ("**PayTech**"), Challenger Banks and Neobanks, Payment Infrastructures and Foreign Exchange. This grouping is due to the fact that they are subject to the same legislation and the same oversight authority, and share common historical justifications.

1. Definition and value chain

1.1 PayTechs

PayTech companies are companies that use technology in an innovative way to develop disruptive payment solutions that enhance the capabilities of existing payment methods and provide a better user experience.[1] In the FinTech landscape, they represent a growing sector with a representative share of 25% and are valued at USD 240 billion.[2]

The evolution of means of payment has progressed from barter systems to modern technology-based payment methods. Although coins and banknotes have maintained their basic function over time, the introduction of the first credit card in 1949 (Diners Club) marked a sea change in financial transactions and translated into a success for the payments ecosystem. However, in Spain, it was not until 1978 that the first credit card was issued.

Subsequently, technology has played a key role in the evolution of means of payment to improve security and efficiency: from the first credit card imprinters that allowed card data to be copied onto paper to provide the information to the bank so that the transaction could be recorded and the payment settled with the merchant, to more secure technologies such as Europay Mastercard Visa (EMV) chips and, finally, contactless payments that have made it possible to pay using payment instruments from mobile phones and other devices with the use of electronic wallets.

Moreover, economic and technological developments have led to the emergence of new players in the payments market, challenging traditional banks to adapt to more innovative and competitive business models. These developments include the SEPA scheme[3] and the Payment Services Directive (EU) 2015/2366 of 25 November 2015 ("PSD2"), which have driven the emergence of new business models in the PayTech landscape, as shown in the table below:

[1] Spanish FinTech and InsurTech Association. (2020). Paytech White Paper.

[2] EY. (2023). The rise of PayTech, seven forces shaping the future of payments. Retrieved from https://www.ey.com/es_es/financial-services/ the-pay-tech-revolution

[3] Single Euro Payments Area

ISSUANCE	ACQUIRING	OTHER SERVICES LINKED TO PAYTECH
Banking as a service	Acquirers	Payment initiation service providers
Person-to-Person ("P2P") Payments	Payment Gateways	Payment Aggregators
Neobanks	Value-added services for retailers (VAS)	

Along these lines, an important part of the future of payments will come from innovations developed by PayTech that will redefine, make more flexible and facilitate the payment experience. Among the initiatives and business models taking shape in the PayTech sector are: open banking and open finance, instant payments, Business to Business ("**B2B**") cross-border transactions, and e-wallets, along with digital currencies.

1.2 Challenger Banks and Neobanks

Challenger Banks and Neobanks emerged after the 2008 crisis and have grown exponentially in the last decade. Both are revolutionising traditional banking by offering users a fully digital experience that simplifies procedures and significantly reduces costs.

Challenger Banks are FinTech companies that have a banking licence, allowing them to offer all traditional banking services, but applying new technologies and at a lower cost. The term is a newly coined phrase with marketing connotations that brings innovation and digitalisation to its definition.

Neobanks are also FinTech companies that offer a 100% digital experience, with fast, efficient, transparent solutions and lower fees. The term "neobank" is a neologism that does not refer to a category of entity licensed under an oversight authority. To operate as a neobank, companies must (I) hold an e-money or payment institution licence, which only allows them to carry out e-money or payment institution business, and limits them to providing other services such as deposit-taking; or (II) operate under the licence of a third party.

The term "neobank" is commonly used in the PayTech sector to refer to the provision of traditional banking services in a new way, but it is not a term recognised or accepted by the national oversight authority, the Bank of Spain. In other words, the term "neobank" is not a concept described by law, but it is being used increasingly and includes financial companies

that only operate through online channels (apps and web platforms) to offer a variety of financial products and services from payment accounts to cards and loans.

Within the FinTech ecosystem, neobanks can operate with different licences or authorisations granted by the Bank of Spain, either as credit institutions, e-money institutions, payment institutions or providers of account information or payment initiation services. The applicable legislation varies depending on the model chosen, which influences the type of laws and the registration process to be followed.

Here is a brief explanation of these terms:

- **Credit institutions ("CIs"):** These institutions receive money from the public and use it for lending and similar transactions. They are reserved exclusively for deposit-taking, except for issuing securities market instruments. They may carry out all types of financial transactions except providing insurance, although they may market policies.

- **Electronic money institutions ("EMIs"):** These institutions' business consists of issuing electronic money accepted as a means of payment by undertakings other than the issuer. This activity is reserved to CIs, EMIs, the Spanish State Post and Telegraphs Company, the Bank of Spain and the Central Government.

- **Payment institutions ("PIs"):** These institutions provide and execute regulated payment services[4] such as: deposits, withdrawals and execution of orders in payment accounts, issuing payment instruments and acquiring payment transactions, money remittance, and payment initiation and account information services.

- **Payment initiation service providers (PISPs):** PISPs are payment service providers that perform professional activities to initiate financial transactions from a payment account opened with a financial institution that acts as an account manager.

- **Account information service providers (AISPs):** These are payment service providers that perform professional activities to access the payment accounts held by the consumer with their bank(s) to provide a consolidated view of the consumer's financial situation.

Challenger Banks and Neobanks offer a number of advantages thanks to their intensive use of technology, by focusing their operations on online channels. Thus, this business model offers users a high level of accessibility and flexibility, as they can carry out transactions at any time and place with an internet connection. On the other hand, their operating costs are lower as they do not have physical branches, which allows them to offer financial products at more competitive rates without additional costs. Furthermore, the account opening process is simple

[4] Royal Decree-Law 19/2018, of 23 November, on payment services and other urgent financial measures [*Real Decreto-ley 19/2018, de 23 de noviembre, de servicios de pago y otras medidas urgentes en materia financiera*].

for clients, and the level of security is sufficient because technologies such as blockchain and biometrics are integrated into the authentication and transaction processes.

Neobanks, on the other hand, focus a large part of their business model on being Business to Consumer ("**B2C**") service providers. The reason is that they have created a business model that generates client value. Thus, Neobanks have focused on streamlining banking processes, creating intuitive platforms for day-to-day operations, and improving the accessibility of the financial services and products they offer their users.

1.3 Payment infrastructures

Payment infrastructures are entities which, through their software, networks and technologies, facilitate the efficient execution, settlement and clearing of financial transactions and enable the transfer of funds between various payment system participants, be they individuals, companies or financial institutions.

Given their importance, financial authorities, including central banks, supervise and monitor these infrastructures to ensure their proper functioning and financial stability.

The Spanish payment infrastructures of note, which support many Neobanks and PayTech companies, include:

Cecabank, which is the leading Spanish B2B bank providing wholesale services. As a bank, it is subject to all bank payment legislation. It is a one-stop shop for payments that can process, always under a "proprietary label" of the institutions, both card payments and inter-account payments, as it is connected to all Visa, Mastercard, AmEx, Discover, UPI, JCB, Bizum schemes and to the Spanish and European clearing houses.

Cecabank is approved as a Swift Service Bureau, which allows it to host third-party BICs in its Swift infrastructure and to channel international payments through its network of branches.

On the other hand, there is Iberpay, which manages the national electronic clearing system in Spain ("**SNCE**"). Legally, Iberpay is subject to the Spanish Payment Services Act enacted by Royal Decree-Law 19/2018 of 23 November [*Real Decreto-ley de servicios de pago*] and has its own Regulation[5].

The SNCE is a centralised system that processes: SEPA credit transfers, SEPA direct debits, cheques, bills of exchange and other transactions. Operationally, it is structured into various sub-systems in which its member institutions exchange all the relevant information on payments. This clearing system was initially open only to banks, but since SNCE Instruction

[5] The Spanish Regulation on the National Electronic Clearing System managed by Sociedad Española de Sistemas de Pago, S.A. (Iberpay) [*Reglamento del Sistema Nacional de Compensación Electrónica gestionado por la Sociedad Española de Sistemas de Pago, S.A. (Iberpay)*].

SNCE/CE/01/061: "*New SNCE Regulation: access by Payment Institutions and Electronic Money Institutions through a Direct Participant*" was published, participation is also open to PIs and EMIs, through a direct participant.

Redsys, born from the merger of the Servired and 4B processors, is the leading provider in the field of card processing, with its solutions covering the entire value chain of both physical and virtual payments. It provides both issuing and acquiring services. In recent years it has played a leading role in the development of the Bizum scheme.

On the other hand, to avoid incidents in the system, Royal Decree-Law 8/2023 of 27 December applies certain obligations and requirements of the DORA Regulation[6] to payment system operators, payment scheme operators, electronic payment arrangement operators, payment processors and other technological and technical service providers. This EU Regulation aims to achieve a high common level of digital operational resilience and establishes uniform requirements for the security of the networks and information systems underpinning the business processes of financial institutions. Credit institutions, payment institutions and electronic money institutions are subject to this Regulation, which will be fully enforceable as from 17 January 2025.

1.4 ForEx

Foreign exchange (ForEx) refers to using foreign currencies (i.e., official currencies other than the legal currency in one's home country), which are used in international financial transactions and play various roles in the global economy. In this regard, when making a transaction in a currency other than the local currency, one must also consider the exchange rate, which can fluctuate daily and varies depending on whether one is buying or selling the currency.[7]

Two key aspects of the use of ForEx are explored below:

(i) ForEx as an auxiliary service

Payment, e-money and credit institutions often offer ForEx as an ancillary service to their clients. This service lets clients make transactions in foreign currencies, such as international transfers or purchases abroad, using their local currency. The institutions provide up-to-date exchange rates and may charge fees for this service. Transparency on exchange rates and fees is crucial to ensure that users can make informed decisions when using this service.

Of particular note is the Dynamic Currency Conversion ("**DCC**") service, which is a solution that allows clients making purchases abroad to choose between paying in their own

[6] Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector.

[7] Bank of Spain (2020), *"Cambio de divisas: cómo comparar las distintas opciones para saber cuál te conviene"* ("Foreign exchange: how to compare the various options to find out which one is right for you"). Retrieved from https://clientebancario.bde.es/pcb/es/blog/cambio-de-divisas.html

currency or in the local currency. This service is currently available for bank cards, and users are shown both options when they present their card at a Point of Sale ("**POS**"). The main advantage is that users can know exactly how much money will be debited from their payment account by selecting the payment option in their local currency. For merchants in Spain, payment through the DCC service is made in euros regardless of the option chosen by the user, which simplifies the settlement of transactions. However, providing this service improves the image of the business, increases client satisfaction and loyalty, and for the business it is just a simple addition to its daily processes.

(ii) Use of ForEx as a form of investment:

Foreign exchange is also used as a form of investment in financial markets. Investors may speculate on the value of one currency relative to another, seeking to profit from changes in exchange rates.

This type of investment involves risk and requires a thorough understanding of the factors affecting the foreign exchange market, such as economic indicators, monetary policies and geopolitical events. Some investors also use ForEx as part of a portfolio diversification strategy to reduce risk.

The popularity of this option is on the rise, as evidenced by the Triennial Central Bank Survey of Foreign Exchange and OTC Derivatives Markets[8] conducted by the Bank for International Settlements in Basel. That survey found a 39% increase in the average daily volume traded in the Spanish foreign exchange market between 2019 and 2022, reaching USD 39 million per day. Globally, this volume is estimated at USD 7.5 billion per day.

2. Applicable legislation and standards

2.1 Overview of the current situation

At the European level, the four verticals described above, which are grouped in the PayTech landscape, mainly hinge on the PSD2, Directive 2009/110/EC of 16 September 2009 on EMIs ("**EMD2**"), and Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (the "**Fifth AML/CFT Directive**").[9]

Furthermore, the four verticals fall within a complex legislative landscape, due to the variety of complementary rules that apply to them, such as Regulation 2023/1114 of 31 May 2023 on markets in cryptoassets ("**MiCA**"), Delegated Regulation (EU) 2018/389 with regard to regulatory technical standards for strong client authentication and common and secure open standards

[8] Triennial survey of OTC foreign exchange and interest rate derivatives markets (2022), Bank of Spain. Retrieved from https://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/NotasInformativas/99/presbe2022_94.pdf

[9] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

of communication, and Directive 98/26/EC on settlement finality in payment and securities settlement systems (the "**Finality Directive**").

On the other hand, at the national level, the main legislation governing the PayTech sector are the Payment Services Act and the Electronic Money Act 21/2011 [*Ley 21/2011 de dinero electrónico*], which transposed the corresponding EU directives. These two acts have been implemented respectively by two Royal Decrees which form the main regulatory landscape for PayTech.

However, in recent years the PayTech market has expressed the need to adapt the EU's legal framework to the new requirements of the sector. Consequently, and to improve the shortcomings of PSD2, a new proposal for a third Payment Services Directive ("**PSD3**") has been published to provide uniform regulation of PIs and EMIs in the EU's single market.

PSD3 is not the only regulation being developed in the PayTech sector, as the Commission has detected certain problems in the transposition of PSD2 at the EU level, which affect competition and promote regulatory arbitrage and forum shopping.[10] As a solution, a complementary Regulation on payment services in the Single Market ("**Payment Services Regulation**")[11] has been proposed to regulate transparency and the rights and obligations of users and providers of payment and e-money services.

In addition to this regulatory landscape, the recent publication of the Euro Instant Payment Regulation (the "**Instant Payment Regulation**")[12] ensures that bank transfers in the EU are made immediately without additional costs. This initiative is part of the EU's strategy to establish a single EU-wide capital market and to facilitate the movement of investment and savings between all Member States.

The main objective of the Instant Payments Regulation is to harmonise the system for instant payments in the SEPA area, to ensure that all SEPA users can make payments in euros instantly and without additional costs, and to promote competition and the development of new payment products. In the latter, the transitional modification of the Finality Directive to allow PIs and EMIs direct access to clearing systems (Iberpay in the case of Spain), plays a fundamental role.

The Instant Payment Regulation will apply to all payment service providers that already offer the service of sending and receiving standard credit transfers in euros. Thus, all of them will be obliged to offer the service of sending and receiving immediate payments in euros.

---

10 Forum shopping: A Legal term referring to the practice of seeking the most favourable jurisdiction.

11 Proposal for a Regulation of the European Parliament and of the Council on payment services in the internal market and amending Regulation (EU) No 1093/2010. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0367

12 Regulation of the European Parliament and of the Council amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro.

In addition, the Fifth AML/CFT Directive will be repealed by the Sixth Anti-Money Laundering Directive[13] once it has been passed by the Council of the EU. The Sixth Anti-Money Laundering Directive is part of a package of EU legislation that the EU Parliament passed in April 2024. This legislative package includes, in addition to the Sixth AML Directive, a proposal for a Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism, and a proposal for a Regulation on preventing abuse of the financial system for money laundering and terrorism purposes.[14]

In relation to the above, on 9 April 2024 the Ministry of Economy, Trade and Enterprise announced the public consultation on the draft bill and draft royal decree for the digitalisation and modernisation of the financial sector.[15] Both legislative proposals aim to transpose EU directives and implement provisions of key EU regulations to adapt the existing financial legislation to today's digital environment. The aim is to promote the digitalisation and modernisation of the financial sector; to increase security, efficiency and innovation in the Spanish market; and to strengthen the competitiveness and resilience of the financial sector.

In relation to the current landscape outlined above, the main barriers of concern for the PayTech sector include:

(i) The need to streamline the process of obtaining operating permits. This process should be more streamlined and fluid in terms of communications with authorities regarding requirements, requests for additional information and official responses. The same applies to any changes in permits (e.g., in takeovers of significant shareholdings).

(ii) The regulatory requirements are high and stringent, including reserve levels and suitability criteria which, while there is discretion on the part of the oversight authority to apply them proportionately, in practice it would be desirable for the application of these proportionality principles to be more precise and accurate.

(iii) The pace of evolution of the market and the financial industry is very fast, so the development of the Bank of Spain must be sped up. The challenge lies in trying to streamline the definition of new business models, prioritising the final objectives of the activity rather than strictly sticking to what was codified in the past, which is often an obstacle, in particular where development and evolution affect innovation and competition. This latter aspect may be affected by the role of the Bank of Spain as the prudential oversight authority. For on the one

[13] European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849. Retrieved from: https://www.europarl.europa.eu/doceo/document/TA-9-2024-0364_ES.pdf

[14] European Parliament "New EU rules to combat money-laundering adopted", 24 April 2024. Retrieved from: https://www.europarl.europa.eu/news/en/press-room/20240419IPR20586/new-eu-rules-to-combat-money-laundering-adopted

[15] Prior public consultation on the preliminary draft bill and draft royal decree for the digitalisation and modernisation of the financial sector. Retrieved from: https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/consulta/ficheros/ECO_Tes_20240430_ CP_Digitalizacion_sector_financiero.pdf

hand, prudential supervision and its objective, which is the stability of the financial system, takes precedence over the objectives of innovation and competition. On the other hand however, these objectives can be contradictory, since innovation requires certain proofs of concept and a departure from what was established in the past.

(iv) The "Safeguarding of Users' Funds method" is another barrier that has been identified. Current legislation require PIs and EMIs to keep a safeguard account at another credit institution for their users' funds. More active cooperation by banks in opening safeguard and current accounts would encourage the development and advancement of PayTech in the market, thus facilitating its growth and success. Moreover, the players' experience also indicates that, even when these rules are complied with, clients' funds may not be adequately protected if the bank where the safeguard account is held fails. Addressing these areas of regulatory improvement and establishing more effective mechanisms would ensure greater protection of users' funds and strengthen confidence in the system.

(v) Legacy constraints limiting payments: credit institutions as the only type of PSP authorised to make certain payments. For example, payments to certain public administrations or capital contributions to companies. This situation makes it difficult for many public administrations to understand the concept of a "partner entity", which in practice may imply discrimination towards national and EU IBANs, or the obligation to pay certain fees in cash, such as customs fees at post offices.

(vi) Restricted SEPA area access for payment systems: Another barrier identified in the sector is that participation in the Iberpay SNCE is limited to "partner entities" (direct participants) and "represented entities" (those with access through a partner institution), which entails a significant restriction of access to the SEPA area. **In the same vein, Iberpay's governance, in which only credit institutions (direct participants) are involved, makes it difficult to open it up to other types of institutions (mainly EMIs and PIs).**

However, as will be detailed below in this White Paper, one of the most relevant changes of the new EU regulations (PSD3 and PSR) is that PIs and EMIs will be allowed to participate directly in payment systems for any type of transaction, not only for immediate transfers. This means that PIs and EMIs in Spain will be able to become direct participants in Iberpay, gaining direct access to the SNCE and overcoming this limitation.

(vii) Shared responsibility and collaboration in the prevention of payment fraud with TELECOMs: At present, the responsibility for preventing fraud mainly rests with PSPs. To address this issue more effectively, future legislation should encourage comprehensive collaboration along the entire payment chain, including telecommunications companies. This would allow for (i) a more equitable distribution of responsibility; and (ii) coordinated action for early detection and prevention of fraud.

2.2 Implementation of the new regulations

a) PSD3, the Payment Services Regulation and the FiDA Regulation

The implementation of PSD3 and the Payment Services Regulation will have a significant impact on payments in the European Union and the SEPA area. Among the changes expected, first and foremost, is the improvement in the security and efficiency of digital payments and secure data management, which will increase protection for users. The second is increased competition in the PayTech sector by improving regulatory compliance and optimising access to payment systems for consumers and non-bank payment service providers. Related to this point, the publication of PSD3 will have an impact for e-money token providers: it states that e-money tokens will be considered as e-money. This implies that issuers of these tokens will have to comply with all the obligations of EMIs, including obtaining a licence as an EMI in the Member State where they primarily operate.

MiCA already includes the possibility to be an issuer of e-money tokens when an institution is authorised as an EMI, but PSD3 underlines the link between the concept of e-money and e-money tokens. Therefore, since they will need to be authorised as an EMIs, e-money token providers will be able to carry out e-money and payment services activities, as PSD3 equates the authorisation of PIs with EMIs. As a result, issuers of e-money tokens will be subject to new capital and safeguard requirements, including the obligation to raise EUR 400,000 of initial equity capital to conduct their business.

PSD3 will also introduce uniform regulation for independent ATM operators in all EU Member States. PSD2's scope excludes the services of some ATM providers, which encouraged the growth of independent ATMs, especially in rural areas. Moreover, this exclusion generated certain ambiguities. To address this, PSD3 provides that this exclusion applies to providers that do not operate payment accounts, which will be subject to a specific prudential regime. Under this regime, providers will be exempt from the authorisation requirements for payment institutions and will only need to register with the competent authority of the home Member State before starting their activity, by submitting certain documentation.

In addition, a key aspect of PSD3 is its emphasis on combating and mitigating payment fraud. PSD3 allows payment service providers to share fraud-related information with each other, raising consumer awareness, strengthening client authentication standards, extending refund rights for fraud victims and mandating verification that beneficiaries' IBANs must match their account names on all transfers to prevent fraud and improve security.

Finally, PSD3 will entail including PIs and EMIs on the list of entities that can participate directly in payment systems for any type of transaction (not just for immediate wire transfers). As a result, it will be possible for PIs and EMIs established in Spain to become direct participants in Iberpay, i.e. to have direct access to the SNCE.

In conclusion, with the adoption of PSD3, in addition to an increase in the security and efficiency of digital payments, issuers of e-money tokens will be able to access payment systems, safeguard users' funds at the central bank of their Member State (if the competent central bank allows this possibility), and face fewer difficulties in opening bank accounts in CIs.

b) The Instant Payments Regulation

The Instant Payments Regulation, adopted in February 2024, has significant implications for the financial industry. It aims to make it easier for all bank clients to access instant transfers not only within their country of residence, but also to other EU Member States.

The Instant Payment Regulation has a number of implications:

(i) Obligation for payment service providers: All PSPs must offer the service of sending and receiving instant payments in euros, improving the speed and efficiency of financial transactions within the EU.

(ii) Fast transfers of funds: The Regulation stipulates that transfers must take place within 10 seconds, even outside business hours, both domestically and between EU Member States.

(iii) Amendment of the Finality Directive: The Directive now allows all PIs and EMIs to access all available payment systems, broadening the options for consumers and businesses. As a result, these institutions will be subject to the obligation to offer the service of sending and receiving instant wire transfers, after a transitional period.

(iv) Greater accessibility and flexibility in making payments: The internal market has been made more dynamic by allowing transfers to be made through a variety of channels, such as online banking, mobile applications, ATMs and branches.

(v) Improved strategic autonomy: The dependence on infrastructure and financial institutions in third countries has been reduced, which benefits citizens and businesses and promotes innovative services.

(vi) Fee cap: A cap on fees, which may not exceed those of normal transfers, has been established, with a review clause to assess their evolution.

(vii) Enhanced security: Providers are required to implement robust fraud detection and prevention measures, including verifying that the IBAN number and the name of the beneficiary match.

c) The FiDa Regulation

The payment services market in the EU has evolved significantly due to the growth of electronic payments and the entry of new digital providers. The PSD2 Directive introduced Open Banking in 2015. However, it decided not to extend it directly to Open Finance, but to create a sector-specific framework with the Financial Data Regulation ("FiDa"), presented by the European Commission in June 2023.

The new proposed Regulation establishes a framework for accessing financial data, extending the data that clients can share and fostering new business models in the financial sector. FiDa also establishes rules for accessing, responsibly using and organising client data, ensuring transparency and clear permissions. FiDa adopts an approach that promotes public/private collaboration. It requires financial institutions and data users to establish common standards and secure APIs, including contractual liability. Open finance resulting from FiDa will strengthen competition, facilitate horizontal integration of financial services and foster a new business model, Embedded Finance.

These measures aim to improve the efficiency, security and accessibility of financial transactions in the EU. In addition, these regulatory changes could significantly impact certain business models related to instant payments at the national level, while promoting further financial integration within the EU.

Ultimately, the development and implementation of all the legislation described above demonstrate the commitment of EU authorities to stay at the forefront of regulation and adapt to the growth and evolution of the PayTech industry.

3. Trends, challenges and opportunities

3.1 Trends

PayTech is positioning itself more attractively to users in younger age groups by offering a range of more innovative and cost-effective products and services, more accessible and intuitive platforms, and a disruptive value proposition based on constant improvements to user experience.

Consequently, increased competition has energised the industry from the point of view of new technologies and market demands. As this transition involves intense investment in capital and resources, it is crucial for it to be carried it out strategically.[16] In addition, it is worth mentioning that the European passport benefits PayTech in a considerable way as it allows financial institutions authorised in any member state of the European Economic Area to offer their equivalent services in other member states without the need to obtain separate licences,

[16] Neobanks are the banking of the future Funds Society

subject to compliance with a series of regulated requirements. In this way, the competitiveness of the EU market is boosted and increased, facilitating the operation of the players in this sector.

Payment infrastructures are central to the growth and efficiency of the B2B payments ecosystem and will continue to play a key role in the development of new business lines and solutions to ensure the resilience of the entire payment chain.

On the ForEx side, the enhancement of international cross-currency payments through instant payments is emerging as one of the major trends in the payments industry. Companies such as Iberpay are at the forefront, implementing systems in their business model that facilitate these cross-currency payments. By pursuing a strategy of interconnecting instant payment systems in various currency areas, cross-border payments will be streamlined.

On the other hand, PSD3 will seek to remove the main barrier to the participation of "represented" entities. PSD3 allows payment service providers, specifically PIs and EMIs, to have direct access to payment systems. In addition, the costs for these institutions' direct access will be capped and passed on to the payment systems themselves. This will therefore determine the new configuration of payment systems in Spain and the equitable participation of all the payment service providers in the payment ecosystem.

3.2 Challenges

PayTech faces some key challenges that will result in a clear evolution of the sector, if they are overcome in a way that addresses the existing frictions and provides better services to users.

These challenges arise not just do to incipient and novel regulatory changes, but also due to the constant technological evolution in the PayTech sector that is supported by the most disruptive technological developments such as Artificial Intelligence, Internet of Things, and blockchain technology.

The challenges faced by entities in the PayTech world include:

1. Financial exclusion. PayTech improves access to financial services through the use of technology and process optimisation, although some groups lack access to this technology and may be at risk of exclusion. Therefore, the preservation of cash is key, as is the creation of business models in the PayTech sector that will not exclude vulnerable groups, by integrating cash as part of the solutions provided to users.

2. Continuous evolution of cybersecurity. The use of the most disruptive technological advances goes hand in hand with an increased risk of cyber-attacks and fraud both to PayTech and to PayTech users. This creates the need for protection and cyber-security measures to advance simultaneously with technological developments. It is crucial for the technology and telecommunications sectors to stay engaged in the fight against fraud, without which it is very difficult to combat the latest threats.

3. The role of BigTechs in the PayTech ecosystem. BigTechs are emerging as key players in the PayTech ecosystem, with significant technology investment capacity that represents both a challenge and an opportunity for established players in the payments sector. There is an increasing reliance on software programmes developed by BigTechs, which are widely used in the PayTech industry. In addition, BigTechs are introducing new technological solutions in the payments market.

To ensure fair and equitable competition, it would be beneficial for the oversight authorities to take a proactive approach with all market players, paying particular attention to BigTechs and facilitating their regulatory compliance, especially with regard to client authentication.

4. Regulatory adaptation. Any technological development and progress in an industry entails an evolution of regulations so that the competent authorities can adequately supervise and regulate the PayTech sector. For example, PSD3 denotes confidence and support from lawmakers in the PayTech sector, and the need to fill regulatory gaps and contradictions to foster the evolution of PayTech business models.

5. Greater action and agility on the part of the Spanish National Markets and Competition Commission **(CNMC)**. The complaints from FinTechs represent concerns in the financial sector about certain actions and activities that leave FinTechs defenceless. More active attention must be paid to possible unfair trade practices.

6. The progress of the digital euro project. The digital euro has been conceived as the EU Central Bank's digital currency and a means of electronic payment to facilitate payments in the euro area. It is conceived as an easily accessible system, capable of functioning without the need for an internet connection in part of its functionalities and with high standards of security and privacy.

4. Proposals and recommendations

The FinTech sector is proposing a "partnership" that will within the FinTech's field of action thus improve and implement financial relations with the traditional sector. The benefits for the banks themselves of addressing the industry's complaints would include strengthening the confidence of their users, reducing the risk of fraud by increasing the security of their operations, having a more efficient system and fostering innovation. A clear example is that implementing biometric authentication homogeneously in banking apps will improve usability and security, but it is not very widespread despite the fact that any mobile phone supports it.

Having said all of this, the recommendations are to:

1. Promote agility in the transposition of PDS3 in Spain to gain a competitive advantage. Spain should be the first country in the EU to transpose PSD3. And this should generally be the objective in subsequent transpositions of directives.

2. Simplify licensing and authorisation processes with the financial oversight authority, ensuring greater clarity on the documentation and information requirements necessary for financial institutions to obtain licences and registrations.

3. Make partnering with government bodies accessible to any service provider, allowing universal access from all payment possibilities. To achieve universality in bank transfer services, it would be desirable to be able to establish relationships with public bodies on a broad basis, without being restricted to specific payment service providers, for example, by offering the possibility of paying taxes, fines, and/or fees through PIs and EMIs.

4. Remove barriers so that any national or foreign entity can be constituted as a "partner entity" to allow payments to be made from any IBAN, including foreign ones. This proposal is essential to promote financial inclusion and accessibility by simplifying processes. In this sense, by removing the restrictions associated with partner institutions and allowing the use of foreign IBANs, access to financial services will be broadened, competition in the market will be fostered, and the payment process will be simplified by facilitating international transactions.

5. Create a regulation that guarantees the correct identification of users in all the sectors that manage identity authentication (BigTech, telecoms, among others). This measure would therefore encompass all players that have a direct impact on users' security and privacy, thus strengthening data protection and trust in digital services.

6. Develop a regulatory framework that supports digital transformation, enabling the adoption of innovative technologies without compromising the security of the banking and payment system, taking into account environmental, social and governance aspects.

7. Review regulatory costs to ensure that they are proportionate and do not adversely affect operational efficiency.

8. Promote greater transparency and communication between PayTech, legislators and supervisors, both at national and EU level.

9. Adjust rules and regulations to allow all industry players, including non-banks, to have direct access to settlement entities. This access will be offered on equal terms with banks, following the principle of proportionality and assessing their integration.

10. Adapt the suitability criteria for managers and owners of external PIs, EMIs and PSPs. It is essential to establish clear and up-to-date criteria that reflect the competencies and skills needed to run these entities efficiently and safely.

11. Implementation of a Twin-Peaks oversight model. This model involves separating prudential supervision from conduct of business supervision, allowing for more specialised and effective oversight. Prudential supervision focuses on the financial stability and

soundness of financial institutions, while conduct of business supervision ensures that companies act ethically and in the interest of consumers. This separation allows for more effective regulation tailored to the specific needs of each area.

2 WEALTHTECH

1. Definition

WealthTech companies are all those companies that offer financial services related to short, medium and long-term savings and investment using technology and new business models, and those that offer the systematisation of any processes or services linked or related to it. Its main objective is harness technology to transform the wealth management, investment and analysis industry by providing efficient, accessible and personalised financial services in the field of wealth management and personal finance. These developments reflect the growing demand for cutting-edge technology solutions in wealth management, driving the emergence of start-ups and the adoption of disruptive technologies by established financial institutions.

WealthTech's distinguishing features include its automation capability, which is based on the use of algorithms and advanced technology to perform tasks that traditionally required human intervention. This automation encompasses several areas, such as an offer tailored to the profile of each client, thus enabling highly personalised and efficient financial advice. To achieve this, WealthTech's platforms employ sophisticated predictive analytics tools, which analyse large volumes of financial data in real time to identify market patterns and trends. These tools provide users certain information to help them in their investment decisions so they can maximise their returns and mitigate their risks.

Financial start-ups in the WealthTech sector operate primarily through digital platforms and mobile applications, providing users the ability to access and manage their investments remotely and in a highly accessible way. Similarly, many WealthTech companies have joined forces with other players in the ecosystem to offer a greater diversity of services, including electronic payments, lending services and insurance. This synergy expands the options available to users and fosters further innovation in the digital financial landscape.

The WealthTech sector includes automated asset management systems, commonly known as "robo advisors". This type of platform is entrusted with automatically managing a portfolio of investment products that the client previously selected after answering various questions and following the relevant analysis of their risk profile and income level. This whole process is carried out through investment opportunity analysis using algorithms whose main objective is to maximise the clients' investment and reduce their losses. In this way, these types of platforms offer diversified and customised investment portfolios. However, they only provide information and facilitate contact between the parties, but in no case do they market or manage the product to be purchased, recommend a specific product, or take charge of the client's investment decisions.

Also of note in the automated advisory sector are quant advisors, who specialise in investment management through the development of algorithms based on Artificial Intelligence (AI). These algorithms are designed to predict and execute optimal investment strategies using

advanced mathematical modelling and data analysis. These platforms specialise in providing guidance on actively managed quantitative strategies, with the aim of achieving positive results to maximise returns and manage risk effectively. Quant advisors are therefore presented to the market as tools to diversify and optimise the return and risk levels of an overall portfolio. However, the main distinction between the two automated management models is that quant advisors (as opposed to robo advisors) focus on implementing non-indexed, active management strategies, with the objective of seeking positive, stable returns that are independent of financial market fluctuations.

Undoubtedly, the evolution of the WealthTech sector has revolutionised the financial industry, enabling users to make their wealth management more accessible, sophisticated, efficient and personalised. As a result, the range of users to whom various financial services can be offered has expanded, as have the alternatives for the different types of investors.

2. Value chain

The WealthTech sector has a direct impact on the financial system, but it also has an important impact on society itself. WealthTech firms collect and analyse data about clients to understand their needs, financial objectives, risk tolerance, etc. In this way, they provide tools and personalised financial advice to clients to help them achieve their financial goals, including, for example, retirement planning, tax management and comprehensive estate planning.

WealthTech companies have expanded access to financial services that were previously reserved for high net worth individuals through the assessment, use and implementation, where appropriate, of emerging technologies to optimise their support systems, and to improve the confidentiality and consistency of transactions by processing them through bleeding-edge platforms with proven financial solutions. As a result, there has been a growth in investment by small investors in financial products, markets and services traditionally only accessible to sophisticated high net worth investors, thus democratising financial services. Through this democratisation, it is possible to offer investment products to all types of investors, without them needing large sums of money to invest or having to have major economic capacity. This market trend is leading to increased investment, contributing to better financial inclusion, and avoiding and reducing intermediaries, while ensuring investor transparency.

The automation of financial processes through the introduction of these new technologies and disruptive business models has enabled the provision of financial services to become more agile and flexible, as it can now adapt faster to changing market demands and individual client needs and thereby driving innovation and the generation of new investment opportunities that were previously unavailable.

The WealthTech sector is one of the sectors in which there is the greatest collaboration between FinTech entities and financial institutions, given that it is common for the FinTech entities to rely on the custody, depository, ancillary services and market access of wholesale financial

institutions, so they can offer their clients greater guarantees and security of control over their investments. This completes the value chain of WealthTech companies by offering the best possible service to their clients.

3. Applicable legislation and standards

Certain activities, due to their impact or risk for users, are reserved or restricted to be exercised only by certain entities that require prior authorisation and registration by the competent public body. The following is a summary of the main reserved activities that may affect companies in the WealthTech sector, and the entities authorised to engage in them and the main requirements for obtaining the relevant authorisation or licence.

a) Investment services

WealthTech companies can offer a variety of investment services that combine cutting-edge technology with wealth management and personal finance. These companies use algorithms, AI and other technologies to provide customised and efficient investment solutions, including:

- Automated financial advice.
- Digital portfolio management.
- Custom financial planning.

In this type of services, WealthTech companies are subject to a series of specific legislation governing their activities, which are detailed below:

i. EU level:

→ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

ii. Spanish level:

→ Securities Markets and Investment Services 6/2023 of 17 March.

→ Royal Decree 358/2015, of 8 December, which amended Royal Decree 217/2008, of 15 February, on the legal regime of investment firms and other entities providing investment services [*Real Decreto 217/2008, sobre el régimen jurídico de las empresas de servicios de inversión y de las demás entidades que prestan servicios de inversión*].

b) Specific activities of credit institutions

In addition to providing innovative and technological advances in asset management and wealth planning, WealthTech companies are expanding their offerings to include certain financial services. However, most WealthTech companies aiming to expand their offerings

choose to partner with financial institutions so that they can provide financial services under their own brand. In this way, WealthTech companies manage the direct relationship with their clients and the financial institutions take care of the financial operations, taking advantage of the financial institutions' consolidated experience and infrastructure. This approach, known as Banking-as-a-Service (BaaS), allows WealthTech companies to offer their users a comprehensive and individually tailored financial experience.

i. EU level:

→ Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, and amending Regulation (EU) no. 648/2012.

ii. Spanish level:

→ The Credit Institution Regulation, Supervision and Solvency Act 10/2014 of 26 June [*Ley de ordenación, supervisión y solvencia de entidades de crédito*].

→ Royal Decree 84/2015, of 13 February, implementing the Credit Institution Regulation, Supervision and Solvency Act 10/2014 of 26 June.

c) Open banking

A paradigm shift is currently underway in which WealthTech companies are increasingly present in the provision of personalised financial services through the adoption of Open Banking. This approach implies that financial institutions, under the explicit consent of users, share their financial data to enable greater interoperability and accessibility of diversified financial services tailored to individual needs. This open sharing of data facilitates the integration of various financial services and promotes innovation within the financial technology sector by enabling closer collaboration between service providers and greater personalisation of financial product offerings.

In the WealthTech sector, Open Banking can be used to offer more personalised services to users, such as automated financial advice ("robo advisors"), more accurate investment analysis, and more efficient portfolio management. In addition, Open Banking can facilitate the aggregation of financial statements from various institutions on a single platform, giving users a more complete view of their financial situation and helping them to make more informed decisions. Through their expertise in technology and financial management, WealthTech companies offer users innovative solutions to their financial needs through algorithms and AI to provide them detailed information about their spending, financial habits and personalised recommendations to optimise their money management. This client-centric, technology-backed approach is enabling WealthTech companies to create more complete, agile and accessible financial experiences

4. Trends, challenges and opportunities

WealthTech firms are in a state of continuous evolution, looking to integrate emerging technologies such as artificial intelligence (AI) and machine learning to improve the personalisation of investment recommendations and provide users more sophisticated analytics. Using disruptive technologies undoubtedly represents a great opportunity for WealthTech companies, since incorporating this type of technological tools into their services and products allows them to combine a large volume of data with the automation of decision-making and management of certain financial decisions.

Although WealthTech companies are experiencing significant growth and have transformed the way users manage their wealth, they also face multiple challenges. The financial industry is subject to a complex and demanding legislative environment encompassing a variety of regulations. This regulatory framework imposes a number of specific obligations and requirements on companies in the WealthTech sector that they must comply with comprehensively to ensure the rights of their users and the integrity of the financial system as a whole, which inherently involves high investment in security technology, and an ability to adapt to the regulatory landscape and market expectations.

In recent times, financial institutions have shown an increased interest in digital assets, a space traditionally covered exclusively by FinTech. This new challenge has led them to make progress in some areas such as distribution and custody, but their development is sure to bring with it partnerships between financial institutions and FinTech.

Another challenge is the financial education of users. It is essential to promote sound financial literacy among investors to enable them to fully understand both the risks and benefits inherent in the wealth management services provided by WealthTech companies. This education should address specific aspects related to portfolio diversification, risk assessment, investment strategies and the principles of prudent financial management, with the objective of strengthening informed decision-making and protecting investors' interests in the context of wealth management. WealthTech platforms must therefore implement effective risk management strategies to protect investors' interests and avoid significant capital losses through awareness campaigns and educational programmes, while highlighting the long-term benefits of wealth management through these platforms to build clients' trust.

Therefore, it is safe to say that including technology and applying it in the financial sector is not without risks, which have to be monitored with particular care. In particular this refers to potential fraud and cybercrime: i.e., improperly using data very often provided by users by obtaining their consent very easily, the actual complexity of products that are often marketed as simple, and the immediacy of purchasing without proper consideration and without sufficiently clear mechanisms to revoke authorisations and consents.

5. Proposals and recommendations

1. Continue to foster collaboration between WealthTech companies and traditional financial institutions to promote synergies and improve practices, bringing clients security and control in their investments.

2. Encourage regulators to work with the industry to understand and adapt to emerging technologies, ensuring that legislation is adapted to the evolving technological landscape.

3. Encourage the inclusion of investment and personal finance education programmes on WealthTech platforms to improve clients' understanding of their risks and benefits.

4. Leverage Open Banking initiatives to enable greater integration of financial services and provide users direct access to their financial data.

3 CROWDFUNDING

1. Definition

Crowdfunding is an alternative online model for channelling funding and savings for starting-up and developing projects through capital investments without the need for financial intermediaries. Its objectives include giving economic impetus to potential projects through contributions from third parties. These investments are made through what are commonly known as crowdfunding service providers ("**CSPs**" or a "**CSP**").

CSPs are entities regulated by Regulation 2020/1503 and by the Spanish Create and Grow Act (as defined below) and they are authorised and supervised by the Spanish National Securities Market Commission ("**CNMV**"). Their primary activity consists of bringing together, in a professional manner and through websites or other electronic means, a number of natural or legal persons who offer funding in exchange for an economic return (called investors), with natural or legal persons who request funding for themselves for a specific project (called promoters). In this way, CSPs provide an online space where promoters can present their projects to potential investors and request funds to launch them.

The following Crowdfunding models can be distinguished, among others:

1. Rewards-based crowdfunding.
2. Donation-based crowdfunding.
3. Equity crowdfunding.
4. Lending crowdfunding or crowdlending.

The main difference between the various crowdfunding models lies in how the funds are managed and the return expectations of the investors, giving promoters flexibility by allowing them to choose any of these alternatives according to their needs or objectives.

The first modality to note is reward-based crowdfunding, a form of alternative financing that involves raising funds for projects or initiatives with no expectation of a direct financial return. In this modality, investors contribute funds to back a project without expecting money in return, but with the possibility of receiving products or services related to the project in question. On the other hand, there is a similar modality known as donation crowdfunding, where the investor participates altruistically, driven by solidarity, empathy or the desire to support a specific cause, without expecting any consideration in return. Neither of these two types of crowdfunding require authorisation as a CSP.

One of the types of crowdfunding that deserves special attention and that CSPs do carry out is equity crowdfunding. In this type of crowdfunding, in return for their financial contribution,

investors gain a direct equity stake in the company they are investing in, implying not only a financial relationship but also a direct link between the investors and the potential growth and success of the company in question.

Finally, there is the alternative financing modality known as crowdlending or peer-to-peer (P2P) lending, which is also carried out by CSPs and in which the promoters (as borrowers) obtain financing directly from individual investors, by signing a loan agreement, where the promoters take responsibility for repaying the funds together with the interest agreed according to the specific terms established with each of the investors participating in the project.

It can be argued that crowdfunding has proven to be much more than a simple collective lending tool, fostering the democratisation of funding, and creating communities around shared ideas and causes. This phenomenon reflects not only the growing global interconnectedness, but also the capacity of collective power to drive innovation and change in our society, marking a new paradigm in collaborative lending that continues to play a crucial role in getting projects off the ground.

2. Value chain

In recent years, crowdfunding has had a great impact on alternative financing, opening up the possibility of obtaining capital directly from investors, leaving aside the traditional financing model where promoters depended on banks or other financial institutions to obtain the necessary funds to start up their projects. Generally speaking, this can significantly reduce costs and increase the efficiency of each project. This allows developers on the one hand to request, and investors on the other hand to make investments, easily and swiftly, giving them a competitive advantage that allows them to respond quickly to market conditions or capitalise on new opportunities before their competitors.

In addition, crowdfunding makes it possible to carry out a validation procedure for projects before their market launch since, when the projects are submitted to the CSPs, investors have the possibility to provide feedback on the project, including suggestions and/or comments, which contributes to the improvement of the proposed products and services. As a result, promoters obtain significant support for projects that are innovative or at an early stage of development. In this way, promoters can access opportunities that would otherwise have been unavailable to them, thus facilitating greater diversification of investment portfolios for investors. By participating in portfolios of projects across industries and sectors, they can mitigate the risk inherent in investing while maximising return opportunities in the crowdfunding context.

In short, crowdfunding has transformed the way projects are funded and developed by providing a collaborative and democratised approach to financing, opening up the possibility for anyone to contribute to projects, regardless of the size of their investment, boosting

community participation and the economic development of the market, and making room for profitable projects without the need for large initial outlays.

3. Applicable legislation and standards

a) EU level:

→ Regulation (EU) 2020/1503 on European crowdfunding service providers for business ("**Regulation 2020/1503**"). Regulation 2020/1503 has been a turning point for crowdfunding service providers, incorporating some of the sector's historical demands for fairer and more transparent regulation. The most significant include:

→ Implementation of the EU passport so that CSPs can operate across the EU on a level playing field with one (1) single authorisation, thus allowing these providers to operate cross-border without having to deal with regulatory divergence and service provision at the EU level.

→ Establishment of a public register of authorised CSPs.

→ Distinction between experienced and inexperienced investors.

→ Increased investor protection, as the CSP is obliged to (a) issue a standardised prospectus detailing both the project in question and the associated risks and costs; and (b) an obligation to carry out a suitability test that assesses the investor's capacity to take on risks.

b) Spanish level:

→ i. The Spanish Corporate Financing Act 5/2015 of 27 April [*Ley de fomento de la financiación empresarial*], in particular Title V (which complements the new regime set out in Regulation 2020/1503).

→ ii. The Spanish Create and Grow Act 18/2022 of 28 September [*Ley Crea y Crece*].

4. Trends, challenges and opportunities

Currently, the market is seeing a notable increase in crowdfunding activity aimed at projects with a focus on sustainability and social benefits, with certain platforms dedicated exclusively to crowdfunding with a social impact. However, it is imperative to establish clear and transparent indicators to build investors' confidence and ensure that their contributions actually have a positive impact. These crowdfunding campaigns present a unique opportunity to generate visibility and public awareness around socially and environmentally relevant issues.

Small and medium-sized enterprises have also joined the crowdfunding community, particularly equity crowdfunding, as an alternative option to traditional funding methods for start-ups and smaller businesses. However, ensuring robustness and transparency in assessing the viability of promoter companies is essential to mitigate risks and maintain investor

confidence. Despite these challenges, crowdfunding provides these companies an alternative way to secure funding, which represents a considerable opportunity for the development and expansion of potential projects.

The marked expansion of the sector in response to the growing demand for alternative financing options reflects a diversification of opportunities for both start-ups and innovative projects. This type of crowdfunding thus provides a more effective funding channel for start-ups and innovative projects through a wide range of investors, both nationally and internationally, promoting global participation. This phenomenon is driving cross-border collaboration and fostering the diversification of investment opportunities across Europe. On that basis, breaking down borders fosters connectivity and collaboration between market players globally, which can lead to the creation of more innovative solutions and the exchange of knowledge and experience in the FinTech field.

However, while regulation of CSPs at the EU level has evolved to accommodate this growth, challenges remain in terms of regulatory harmonisation and cross-platform compatibility at the international level. It is therefore essential to continue working to develop a coherent regulatory framework and promote collaboration between the various players in the sector to further boost the internationalisation of projects and EU participation in the global crowdfunding market.

Recent years have seen the expansion of various forms of alternative finance, in particular the stellar growth of non-fungible tokens ("NFTs") and cryptocurrencies. This movement reflects the convergence between blockchain technology and finance, generating new paradigms in the financing landscape, and regulatory challenges that require careful attention from FinTech players. Along these lines, large companies in the financial sector are working to start launching pilot models and offer, among others, digital payment services using this technology in a novel way.

5. Proposals and recommendations

1. Streamline permitting processes, cutting the red tape of the licences issued by the CNMV.
2. Maintain and improve measures to support small and medium-sized enterprises' access to finance through crowdfunding, including support programmes and collaboration between government institutions.
3. Grant tax exemptions or tax reductions for investors and companies that actively participate in CSPs, which would not only stimulate investment and business growth.
4. Continued to develop and promulgate legislation that will make CSPs a real and competitive financing alternative for practical purposes, through continuous monitoring and evaluation of the regulatory framework.
5. Relax the cap on crowdfunding contributions, currently set at a maximum of EUR 5,000,000, to provide greater flexibility to promoters.

6. Encourage standardisation of practices at the European level and promote cross-border collaboration to facilitate global participation of investors and projects.
7. Encourage transparency in the presentation of projects, including details on the purpose of the funding, the use of the funds and the risks associated with each project.
8. Implement public financial education programmes aimed at both promoters and investors, including, among other issues, information detailing the risks associated with various crowdfunding models, the importance of diversification and understanding regulatory obligations.
9. Make CSPs' contributions to social and environmental sustainability visible, promoting the sharing economy and even encouraging investment in projects that make it possible to meet international goals and the 2030 Agenda.

4 MARKET INFRASTRUCTURES & DIGITAL ASSETS

The next chapter deals with two relevant EU Regulations that have been adopted in the last two years in the EU, and the enactment Spain's new Securities Market and Investment Services Act 6/2023 of 17 March [*Ley de los Mercados de Valores y de los Servicios de Inversión*] and that regulate and enable the application of distributed ledger technology, on the one hand, in the securities and financial instruments markets and, on the other hand, in cryptoasset markets, which are not considered financial instruments and that are not subject to the entire regulatory package of MiFID 2, MiFIR and the rest of the legislation that apply to the financial sector.

The first of these Regulations is Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (the "Pilot Regime Regulation") which enables the establishment of securities market infrastructures in distributed ledger technology to allow for trading in financial instruments represented by this technology. In addition to this Regulation, in the field of financial instruments represented by distributed ledger technology, the new Spanish Securities Market Act has been a very important regulatory milestone as it has given a legal status to financial instruments represented by this technology.

The second of these Regulations is Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in cryptoassets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (the "MiCA Regulation"), which finally regulates, on a general basis, both the issuance of assets represented by distributed ledger technology that are not considered financial instruments and the service providers of this type of assets.

These new regulatory packages are particularly relevant since, on the one hand, they provide security and legal certainty to the application of this technology both in the area of issuing financial instruments and new infrastructures created for the registration and trading of these instruments, and for issuing digital assets that are not considered financial instruments and for providing services related to them, and, on the other hand, they enable the emergence of new players in the sector and new use cases and business models, precisely thanks to this new regulation.

In relation to the above, one of the main points to bear in mind will be, precisely, to categorise the digitised asset being issued, since depending on whether it is a financial instrument or not, one regulation or the other will apply to it, and it will have to be issued and registered through an Entity Responsible for Registration and Reporting ("ERIR") or traded on an infrastructure built with distributed ledger technology and intended for the recording and trading of assets that are considered financial instruments and are represented by this technology and that is authorised under the Pilot Regime Regulation or, on the contrary, it will have to be recorded on the blockchain and, potentially, traded on a platform authorised under the MiCA Regulation. In

both cases, cryptoassets, whether subject to MiCA or LMV, may be held in the end client's self-hosted wallets or through third parties, which must be custodians regulated by those regulations.

SECURITIES MARKET INFRASTRUCTURES AND THEIR RELATIONSHIP WITH FINANCIAL INSTITUTIONS

1. The current Securities Markets infrastructures and their relationship with financial institutions

1. Introduction

The purpose of this chapter is to carry out a general analysis of all the financial infrastructures and institutions that make up the current securities markets on which book-entry financial instruments are traded, to then compare them with the new market infrastructures based on distributed ledger technology that may be created under the new EU Pilot Regime Regulation.

It will also address the new opportunities that the Pilot Regime Regulation opens up for traditional investment services firms already authorised, and for FinTechs wishing to carry out new projects under the regulation.

2. General outline

The functioning of securities markets is a complex web of a diverse set of trading and post-trade infrastructures and interconnected financial institutions that allow any investor to purchase securities on a trading venue and dispose of them once they are recorded in a securities account with a financial institution two days after purchase. In European markets that settle in TARGET2-Securities ("T2S"), settlement cycles are D+2 (where D is the trading day), so that from the time an investor places a purchase transaction on a trading venue, it takes two days before the transaction is settled and the investor receives the securities in their securities account. In this respect, T2S is a single pan-European platform that facilitates the centralised settlement of securities transactions in euros or other currencies in central bank money and is owned by Eurosystem.[17]

In the general scheme of securities markets, the following market infrastructures can be distinguished, in order of intervention:

1. Trading venues: first, there are the infrastructures known as trading venues, which will be defined below, and that are the centres that allow investors to trade or buy and sell financial instruments;

[17] https://www.bde.es/wbe/es/areas-actuacion/sistemas-pago/sistemas-liquidacion-compensacion-valores/target2-securities/

2. The central counterparty: second, a central counterparty is involved in the clearing of trades, which, with some exceptions, is mandatory for equity financial instruments (shares and share options); and

3. The central securities depository: third and lastly there is the central securities depository, whose function is to settle transactions and settle the securities involved in them to the corresponding securities accounts opened at the financial institutions.

Each and every one of these market infrastructures involves a large number of financial institutions (credit institutions and investment services firms), which are members of the trading venues and of the central counterparty, and participants in the central securities depository.

The role of credit institutions and investment firms on trading venues is essentially to receive trade orders from investors and execute them on the markets, since investors who are natural persons cannot trade directly on "traditional" trading venues (those not based on distributed ledger technology), but have to do so through intermediary entities known as market members, which are the financial institutions in question.

On the other hand, the role of credit institutions and investment services firms in central securities depositories is to complete the settlement of transactions and reflect each investor's final securities balance in their securities account and, where applicable, they are also responsible for making the corresponding entries if the securities are encumbered in any way.

3. Trading Venues

It is relevant at this point to clarify which trading systems fall within the category of "trading venues". For this purpose, the definition applies that is provided in Article 4(24) of *Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU* ("MiFID2"), which categorises trading venues as: (i) regulated markets; (ii) multilateral trading facilities; and (iii) organised trading facilities.

These three systems are part of the first stage of trading mentioned above: i.e., the first stage in which an investor accesses these systems to buy financial instruments admitted to trading in the market. It should be recalled in this respect that for financial instruments to be admitted to trading on trading venues, they must necessarily be represented either by book entries or by systems based on distributed ledger technology, as provided for in section 6(2) of the new Securities Market and Investment Services Act 6/2023 of 17 March. A book entry is a mere computerised note that arose from the process of separating the right to an asset from its physical title. It was Spanish Royal Decree 505/1987 of 3 April 1987, providing for the creation of a Book Entry System for the State Debt [*Real Decreto 505/1987, de 3 de abril, por el que se dispone la creación de un Sistema de Anotaciones en Cuenta para la Deuda del Estado*] that

actually created the book entry system[18]. The book-entry system was developed to avoid the problems of handling and depositing physical securities, thanks to the electronic documentation system on which it is based, built on the basis of mere computer data stored in a computer and managed in the same way as a database.[19] Representation using systems based on distributed ledger technology will be dealt with in the next section.

The difference between the types of two trading venues lies in the definition contained in the applicable legislation, which helps to disentangle the few differences between the two.

In this regard, according to Article 4(1)(21) MiFID2, a regulated market is a *"multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive".*

For its part, according to Article 4.1(22) of MiFID2, a multilateral trading facility, (MTF) is a *"multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of this Directive".*

Finally, according to Article 4.1(23) of MiFID2, an organised trading system, referred to as an OTF, is a *"multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of this Directive".*

As can be seen from the above definitions, which are practically identical, the three systems share the characteristic that they are designed to enable investors to buy and sell the financial instruments admitted to trading in them, which the regulation calls *"bringing together... buying and selling interests".*

The difference, therefore, is that regulated markets and multilateral trading facilities are intended for trading in bonds and equity financial instruments, while organised trading facilities differ in that they are intended only for trading in bonds, financial instruments, emission allowances or derivatives. On the other hand, regulated markets differ from multilateral trading facilities in that MTFs are aimed at smaller capitalised companies and the

---

[18] NAVARRO RUIZ, G., "El Sistema del Registro Contable de Valores Admitidos a Negociación" ["*The Accounting System for Recording Securities Admitted to Trading*"], TAPIA HERMIDA, A. and COLINO MEDIAVILLA, J.L. coordinators, doctoral thesis, Complutense University of Madrid, 2017, p. 31.

[19] GARCÍA-PITA Y LASTRES, J.L., "Derecho de los Títulos-Valores. Parte General" [*Titles/Securities Law. General Section*], Santiago de Compostela, 2006, p. 821.

regulatory requirements to which they are subject are somewhat lower than those of regulated markets.

The purpose of all trading venues is to enable investors to access, buy and sell equity and debt financial instruments, in cooperation with the financial institutions that are members of these trading venues and that are necessary to enable investors to submit and execute buy or sell orders on these instruments.

The following regulated markets and multilateral trading facilities are currently authorised in Spain:

NAME	TRADING VENUE CATEGORY
AIAF Fixed-Income Market	Regulated markets
Madrid, Barcelona, Bilbao and Valencia Stock Exchanges	Regulated markets
Electronic Financial Assets Trading System (SENAF)	Multilateral Trading Facility
Alternative Fixed-Income Market (MARF)	Multilateral Trading Facility
BME Equity MTF	Multilateral Trading Facility
Latin American Securities Market (Latibex)	Multilateral Trading Facility
CAPI OTF	Organised trading facility
CIMD OTF	Organised trading facility
Portfolio Stock Exchange	Organised trading facility
DOWGATE MTF	Organised trading facility
Tradition España Organized Trading Facility	Organised trading facility

4. The Central Counterparty

The purpose of a central counterparty as referred to in Article 2(1) of *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories* is to interpose itself between the counterparties to contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

In Spain, the authorised central counterparty is BME Clearing. Article 2(1) of its Operating Rules[20] states that BME Clearing's function is to act on its own behalf in respect of the obligations arising from transactions in the various financial instruments admitted to it for trading.

The role of the central counterparty is very important when it comes to securities market infrastructures and the entire process of trading and settlement of transactions in financial instruments admitted to trading, since its intervention is generally mandatory, as provided for in section 142 of Royal Decree 814/2023 of 8 November, on financial instruments, admission to trading, registration of negotiable securities and market infrastructures [*Real Decreto 814/2023,*

[20] BME CLEARING, "Reglamento Entidad de Contrapartida Central. BME Clearing" [*"Central Counterparty Rules. BME Clearing*], 20 November 2023.

de 8 de noviembre, sobre instrumentos financieros, admisión a negociación, registro de valores negociables e infraestructuras de mercado], in the case of transactions in shares and share options traded in the multilateral trading segments of regulated markets and multilateral trading facilities.

However, the new Royal Decree 814/2023, enacted in implementation of the new Securities Market and Investment Services Act, introduced two logical exceptions to this necessary intervention, namely:

1. Where transactions are executed on multilateral trading facilities based on distributed ledger technology that have been authorised under *Regulation (EU) No 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU* (the "Pilot Regime Regulation").

2. When the transactions are carried out in regulated markets and multilateral trading facilities in which the terms of authorisation stipulate that the intervention of a central counterparty is not necessary because the admission of the corresponding orders is conditional upon prior verification that the originator has the securities or cash necessary to guarantee their execution, and the settlement of the contracted transactions takes place immediately upon their execution.

Finally, it is important to note that the intervention of the central counterparty is voluntary in the case of transactions in debt instruments.

5. Central Securities Depositories

The primary purpose of a central securities depository is to operate a settlement system as referred to in Article 2(1)(1) of *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 on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012* and, additionally, to provide the basic services of the system for initially recording securities in a book-entry system ("notary service"); and the provision and maintenance of securities accounts at the top tier level ("central maintenance service").

In Spain, the authorised central securities depository is Iberclear, also called “Sociedad de Sistemas”. Financial institutions also play an essential role in this infrastructure, as they are responsible, together with Iberclear itself, for keeping the detailed accounting ledger, as stipulated in Article 19 of its operating rules[21]. The detailed accounting ledger, managed by the

[21] IBERCLEAR, "Reglamento de la Sociedad de Sistemas” [*Rules of Sociedad de Sistemas*], 22 December 2015. It incorporates the amendments approved by the CNMV’s Board at its meetings of 27 July 2016 and 6 September 2017.

participating recording entities, is where the securities held by investors are recorded, along with any encumbrances on them.

In relation to the detailed accounting record, it is appropriate to mention a very relevant modification made by the Securities Market and Investment Services Act, which, in section 13, has legally recognised a situation that had been occurring in practice previously but that was not expressly recognised in the regulation. This amendment involved expressly recognising as the rightful registered holder of the relevant financial instruments not only the ultimate beneficial owner listed in the accounting records or in systems based on distributed ledger technology, but also an entity that is authorised to provide custody and asset management services and that holds the relevant financial instruments on behalf of its clients.

2. Future Securities Markets infrastructures and the new opportunities they will generate

1. Introduction

It is worth starting this section by clarifying why it will discuss "future infrastructures" of securities markets. This term refers to all those infrastructures that will be built on distributed ledger technology for the trading of financial instruments represented by this technology and that will be created under the Pilot Regime Regulation.

Distributed ledger technology is defined in Article 3(1) of *Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in cryptoassets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937* (the "MiCA Regulation") which, in subsection 3(1)(1)(1), defines it as "*a technology that enables the operation and use of distributed ledgers*", while subsection (2) refers to a distributed ledger as "*an information repository that keeps records of transactions and that is shared across, and synchronised between, a set of DLT network nodes using a consensus mechanism"*. Finally, "network nodes are defined in subsection (4), as *"a device or process that is part of a network and that holds a complete or partial replica of records of all transactions on a distributed ledger"*.

It should be specified at this point that, in the case of financial instruments represented by distributed ledger technology but not admitted to trading, their recording and management will not be carried out by a market infrastructure under the Pilot Regime Regulation, but by an entity referred to in section 8 Securities Market and Investment Services Act as the *"entity responsible for managing the posting and recording of securities in the system"* which is authorised to carry out the securities custody and administration activity provided for in section 126(a) Securities Market and Investment Services Act.

2. Financial instruments covered by the Regulation

The Pilot Regime Regulation applies to infrastructures which are intended to be traded on infrastructures only and exclusively in financial instruments represented by systems based on

distributed ledger technology. The financial instruments eligible under these infrastructures are, in accordance with Article 3(1) of the Regulation: (i) shares; (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities, or money market instruments; and (iii) units in collective investment undertakings.

The legal recognition of the fact that financial instruments admitted to trading on trading venues may be represented by systems based on distributed ledger technology has come about with the new Securities Market and Investment Services Act, in its section 6(1); and by MiFID2 which, in its Article 4 (15), which regulates the definition of a "financial instrument", expressly states that financial instruments are considered to be all those specified in section C of Annex I, including those issued by means of distributed ledger technology. With this legal recognition, a third form of securities representation has been created, in addition to the existing forms of book-entries and physical securities.

3. New business opportunities for financial institutions and start-ups

The Pilot Regime Regulation provides an opportunity for the emergence of new infrastructure projects based on this technology carried out both by financial institutions already authorised as investment services companies or credit institutions, and by new start-ups in the FinTech sector that want to create and apply for authorisation for this type of infrastructure, for the reasons set out below:

a) The Regulation is intended to be permanent over time and to encourage this type of infrastructure to be created, to remain in place and, in the future, to replace "traditional" infrastructures, as stated explicitly in the Regulation's recitals. Thus, the end of recital (53) provides that: *"It would not be desirable to have two parallel regimes for DLT-based and non-DLT-based market infrastructures. If the pilot regime is successful, it could be made permanent by amending relevant Union financial services legislation to establish a single coherent framework";*

b) The Regulation provides for a number of regulatory exemptions precisely to encourage the creation of these infrastructures, as stated in recital 6 of the Regulation, *"The pilot regime should allow for certain DLT market infrastructures to be temporarily exempted from some of the specific requirements of Union financial services legislation that could otherwise prevent operators from developing solutions for the trading and settlement of transactions in cryptoassets that qualify as financial instruments";*

c) The Regulation provides for a novel infrastructure, called *"distributed ledger technology trading and settlement systems"* (DLT TSS). This is an absolute novelty because it allows trading and settlement services to be brought together in a single infrastructure, something that was not possible until now in "traditional" market infrastructures where, as we saw at the beginning, there are separate trading venues on the one hand, and clearing (central counterparty) and settlement (central securities depositories) infrastructures on the other;

d) The Regulation does not envisage the need for a central counterparty, which is required in "traditional" market infrastructures. The fact that it is not mandatory to have a central counterparty throughout the trading system undoubtedly reduces the complexity of setting up such an infrastructure and, as a consequence, reduces implementation and operating costs, which should translate into lower costs for investors who want to trade in these markets;

e) The Regulation provides for the possibility for any investment firm authorised as such, or any investment firm authorised to operate a regulated market under MiFID2, to apply directly for a specific authorisation to set up a multilateral trading facility based on distributed ledger technology, or to set up a trading and settlement system based on distributed ledger technology;

f) Finally, another of the relevant new features introduced by the Regulation is the possibility for individuals to directly access this type of infrastructure without the need for intermediaries (i.e., without the need for the members or participating entities referred to at the beginning of this chapter), in a clear attempt to bring the situation into line with what happens with platforms where cryptoassets other than financial instruments are traded and where individuals (retail investors) can directly access them to be able to trade on their own account without the need for intermediaries. This direct access is, however, subject to the establishment of certain safeguards to protect these investors and to their compliance with certain conditions[22] and, additionally, to the infrastructure operator complying with the protection measures imposed on it by the competent authority (recital 26 of the Regulation).

g) The existence of the Financial Sandbox, in which there are several projects of this type, undoubtedly constitutes a very good testing environment between the oversight authority (the CNMV) and the FinTechs that are regulatory testing these projects in conjunction with the CNMV to determine the regulatory requirements for this type of infrastructures about which there are regulatory doubts and to facilitate their authorisation.

3. Proposals and recommendations

This section will focus on a couple of regulatory restrictions that we consider may limit the development of this type of infrastructure and that, therefore, if necessary, could be brought to the attention of the competent authorities in the periodic reports provided for in the Pilot Regime Regulation and that must be drawn up by the operators of these infrastructures to identify practical proposals for creating an appropriate regulatory framework (Recital 6 of the Regulation).

[22] These requirements include the requirement that these investors must be of "sufficient good repute", and have a sufficient level of trading ability, competence and experience regarding settlement and trading (depending on the type of infrastructure concerned), and with respect to the operation of decentralised ledger technology and risk assessment. (The latter is only required in the case of settlement systems based on distributed ledger technology.)

1. The restrictions preventing retail investors from having direct access to the markets

1. The first would be to assess the current restrictions imposed on retail investors' ability to trade directly in the market. In this regard, the requirement that they must be of "sufficient good repute" is a very ambiguous requirement, lacks precision, and obliges institutions to implement processes to verify this, which entails an additional cost and, on the other hand, is difficult to implement if the regulator has not identified the purpose of this criterion. Nor do we believe that this requirement adds safeguards for retail investors.

2. The other requirement mentioned, that investors must have competence and knowledge of the functioning of distributed ledger technology and of trading and settlement, we do not believe that this is a measure that contributes to increased protection for retail investors, especially given the regulator's repeated argument that regulation is technology-neutral. The fact that investors understand in detail how the technology works does not, we believe, add anything to their protection as investors, but rather we believe that the emphasis should be placed on knowing what rights they have with respect to the assets under custody or self-custody, regardless of whether they have some notion of how the technology works. As regards knowledge of clearing and settlement, just as investors are not required to know how existing "traditional" securities markets work (the whole trading and settlement circuit mentioned above or, for example, that securities are represented by book entries), they should not be required to know how these activities work through the use of distributed ledger technology. Ultimately, what will really matter to investors will be to see that their trade is credited in their electronic wallet or address instantly.

If restrictions are to be placed on direct access to this type of infrastructure, it would be more useful, to achieve the protectionist aim pursued, to make it mandatory for investors to take the relevant tests on their knowledge of the traded instruments in question before they are allowed to trade financial instruments negotiated on the markets, to assess whether they actually can understand the risks inherent to them.

2. Caps on volumes issued, traded or recorded

This point relates to the caps imposed in Article 3(1) of the Pilot Regime Regulation on the volume of market capitalisation for shares (EUR 500,000,000), of issuance for bonds (EUR 1,000,000,000), and of assets under management in the case of collective investment undertakings (EUR 500,000,000), as this undoubtedly implies a limitation on attracting issues in the market and it should be remembered that, if there are no issues, there will be no such infrastructures and they will not be profitable.

Another limit is the aggregate market value of all financial instruments admitted to trading or registered, which may not exceed EUR 9,000,000,000 (Article 3[3] of the Pilot Regime Regulation). In this case, if this cap is exceeded, the measure required by the Regulation is that provided for in its Article 7(7), which is reducing the operator's activity or, as the case may be,

having it transition/revert to a "traditional" market infrastructure. From our point of view, it is not realistic to think of a reversion to a "traditional" infrastructure as a viable solution, after having invested so much time and economic resources in setting up an infrastructure of this type and, on the other hand, we also do not consider it appropriate to limit the operator's activity, since what is ultimately being done is to limit the capacity for this type of infrastructure to be profitable. Rather than setting quantitative limits, the measures should involve higher capital and safety requirements as the volume of financial instruments recorded and admitted to trading increases, and in any case, these requirements should be proportionate to the volume of financial instruments recorded and admitted to trading.

Finally, it would also be important to consider extending the catalogue of financial instruments referred to in Article 3(1), as it is currently very restrictive, to include other financial instruments that could benefit from this type of infrastructure. This limited scope paralyses or prevents already existing infrastructure development projects for other types of financial instruments than those covered by the current Article 3.

Timelines for issuing oversight reports

It is recommended that the report provided for in Article 14 of the Pilot Regime Regulation should be submitted during the first half of 2025, as this will provide greater legal certainty to infrastructures that are already operating by resolving pending legal questions or doubts and, above all, it will facilitate new projects in this type of infrastructure, for example, by expanding the catalogue of financial instruments that can be issued or recorded, as referred to above. We believe that on the basis of the experience accumulated now and up to that point, it would be reasonable to have such a report already.

CRYPTOASSETS AND DIGITAL ASSETS

1. Definition

Throughout history, money has had various forms of representation and use. On 31 October 2008, Satoshi Nakamoto published the *Bitcoin Whitepaper*, with the aim of creating a new currency to respond to, among other problems, the lack of trust in the financial system, through a technology that will revolutionise the way value is represented: the blockchain, a mechanism that allows a totally decentralised financial system to operate and reinforces trust.

Bitcoin was created as a means of payment, however, its behaviour has led it to be considered by many as an investment product or a safe haven against inflation.

In 2014, Ethereum, the second most famous cryptocurrency, was launched. Ethereum was created to take advantage of all the functionalities that blockchain technology offers, allowing the creation of applications on its own network. Ethers are issued for the primary purpose of

raising funds to build a platform for executing smart contracts[23] and decentralised applications and has its own utility on platforms over its network.

It was in 2017 that the boom took place in cryptoassets issued with the emergence of initial coin offerings or ICOs[24]. These ICOs opened the floodgates to a new way of obtaining financing, and a new way for companies to relate to their ecosystem, clients, suppliers, etc. However, many of these tokens offer functionalities, rights and characteristics that required an analysis of their legal nature to identify the regulatory framework in which they should be framed.

In 2018, many supervisors and regulators were concerned about the legal nature of these cryptoassets, trying to distinguish them into three broad categories: (i) those serving as a means of payment or exchange; (ii) those serving as a form of financing; and (iii) those serving as a form of investment. However, many of these cryptoassets have common characteristics that made it impossible to categorise them in absolute terms.

In 2019, Meta (formerly Facebook) announced that it was going to issue a cryptoasset called Libra that would serve as a means of payment while keeping its value stable by referencing it to a basket of international currencies. In the wake of this announcement, regulators' concerns about establishing a regulatory framework to protect financial stability in the face of the emergence of a cryptoasset that could be used by a multi-billion user base became all consuming, as did central banks' rush to issue digital currencies.

On the other hand, two relevant issues were identified in the framework of financial instruments: (i) the impossibility of being able to admit financial instruments on the Blockchain to trading on organised secondary markets because they did not comply with book-entry systems; and (ii) the numerous advantages that blockchain technology offers in terms of its form of representation facilitating transactions or reducing costs. Thus, new ways began to be explored of trading cryptoassets and how market infrastructures and investment services firms could reduce intermediaries in transactions.

In this context, the legal classification of all types of cryptoassets that emerge over time is complex, given that, as a digital representation of a right or value, they can take different forms and consequently different legal natures.

Faced with this legal challenge, the MiCA Regulation,[25] which regulates cryptoasset markets, defines cryptoassets as "a digital representation of a value or of a right that is able to be transferred and stored electronically using distributed ledger technology or similar technology"

---

[23] Smart contracts are computer programmes stored on the blockchain that are executed when predetermined conditions are met.

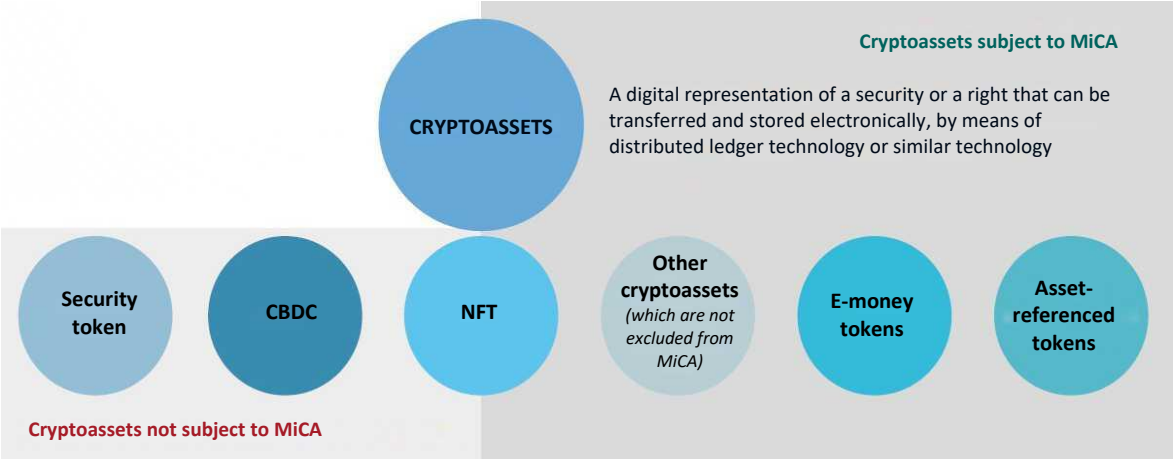
[24] In an "ICO", a company or individual issues coins or tokens and offers them for sale in exchange for traditional currencies, such as the euro, or more commonly for cryptocurrencies, such as bitcoin or ether. CNMV, ESMA ALERTA A LOS INVERSORES POR EL ALTO RIESGO DE LAS "INITIAL COIN OFFERINGS [*"ESMA WARNS INVESTORS ABOUT THE HIGH RISK OF INITIAL COIN OFFERINGS"*].

[25] Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in cryptoassets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937.

and includes within its scope three categories of cryptoassets, which it intends to include within its scope any type of cryptoasset, except those which, due to their legal or underlying nature, are already regulated, regardless of their form of representation, such as securities market legislation for security tokens or financial instruments issued in DLTs or tokenised deposits. In this case, MiCA, in the EU's digital strategy regulatory package, published the Pilot Regime Regulation that explores how blockchain technology can help market infrastructures.

1. Cryptoassets subject to MiCA

MiCA includes three categories of cryptoassets in its scope of application and expressly excludes those that are already regulated in their own right. To illustrate a little better the regulations that cryptoassets are currently categorised under, the following image has been included:



The terms shown in the table above correspond to:

- **Security tokens:** digital assets considered as financial instruments and regulated under MiFID II.

- **CBDC:** Central Bank digital currencies, which are digital currencies issued by central banks as a digital alternative. Work on the Digital Euro Regulation is underway in the EU

- **NFT:** Non-fungible tokens that are unique cryptoassets and not fungible with other cryptoassets. The value of unique, non-fungible cryptoassets is attributable to the unique characteristics of each cryptoasset and the utility it confers on the holder of the token. Criteria will be published to identify tokens that by their nature can be considered truly unique and non-fungible.

- **E-money tokens:** a type of cryptoasset that, to maintain a stable value, is referenced to the value of an official currency.

- **Asset-referenced tokens**: a type of cryptoasset that is not an e-money token and is intended to hold a stable value referenced to another security or right, or a combination of both, including one or more official currencies.

- **Other cryptoassets:** any other type of cryptoassets that are not e-money tokens or asset-referenced tokens and that are not expressly excluded from MiCA, such as Bitcoin.

The cryptoassets subject to MiCA are e-money tokens, asset-referenced tokens and other cryptoassets.

In relation to "other cryptoassets" these pose, as mentioned in the introduction to this chapter, a legal challenge in terms of their classification, as many of them could be considered security tokens. In turn, NFTs that are expressly excluded from MiCA also pose a challenge in terms of classification, as many do not meet the uniqueness and non-fungibility required for them to be excluded under MiCA.

That is why in January 2024, the European Securities and Markets Authority (ESMA) published a consultation paper to help elucidate when a cryptoasset can be considered a financial instrument (an NFT), or should be placed in other categories that are debatable and will not have clear criteria until the debate is resolved. Once published, these criteria will be reviewed to ensure that they help the industry categorise the cryptoasset and apply the regulation accordingly.

2. Value chain

For some years now, the FinTech industry and the financial sector in general have been exploring the value proposition provided by cryptoassets, not only as a new asset to offer their clients, but also as an evolution or reformulation of some of their business models and how blockchain technology can transform many processes, the economy in general and the way we relate to each other in the various ecosystems. This is due to the different functionalities that these and the technology that supports them, the blockchain, provide.

The many value propositions offered by cryptoassets include several examples such as:

1. Improved efficiency and transaction costs (e.g., for immediate payments or settlement of transactions);

2. Reformulation of some of its business models such as remittances or payments through cryptoassets (especially with stablecoins that maintain a stable value);

3. New ways of managing and making the products offered more efficient, eliminating intermediaries, as in the case of granting loans or receiving compensation from insurance policies through smart contracts;

4. Increased security and traceability of transactions, bringing confidence and transparency to the economy;

5. New forms of financing for companies, and new formulas for financing and client loyalty through utility tokens (which are used to access goods, services or platforms).

Due to the tremendous potential of cryptoassets and the new opportunities that are emerging over time, entities are still exploring new business models, and more use cases will arise soon in the years to come.

3. Applicable legislation and standards

Regulation of cryptoassets began to take shape in 2017, when EU supervisors began to worry about these assets' risk following their growing adoption. This concern is reflected in the issuance of a number of risk warnings in which the authorities have pointed out that cryptoassets have a high investment risk due to (i) their dubious acceptance as a means of payment; (ii) their limited circulation; and (iii) the strong fluctuation of their value.

On 8 March 2018, the European Commission presented its FinTech Action Plan to boost the Capital Markets Union and the Digital Single Market, with the aim of turning the EU into a global hub for the FinTech sector, thus initiating a debate on how current legislation can address the various cryptoassets and the entities that provide services linked to them, or whether new legislation needs to be passed to regulate them.

A few months later, on 30 May 2018, Directive (EU) 2018/843 on the prevention of money laundering and terrorist financing (also known as the "**Fifth AML/CFT Directive)** was published, which incorporates as regulated entities providers of exchange services of "virtual currencies" for fiat currencies and providers of electronic wallet custodian services. The publication of the Fifth Directive highlighted the international and EU concern over ensuring that this new reality of cryptoassets will be subject to AML/CFT obligations.

The transposition of the Fifth AML/CFT Directive was introduced in Spain in 2021 through Royal Decree 7/2021, and therefore providers of virtual currency for fiat currency exchange and electronic wallet custody services became obliged entities. In turn, the regulation created a register supervised by the Bank of Spain[26] in which all providers of such services must be registered before starting to provide their activity, provided that:

- These suppliers, whatever their nationality, offer or provide the services described above in Spain.

[26] Registration in this register does not imply the granting of a licence or authorisation, but merely registration for AML/CFT purposes.

- These providers--natural persons who provide these services--have their base, direction or management of these activities in Spain, regardless of the location of the recipients of the service.

- These providers--legal persons established in Spain who provide these services--irrespective of the location of the recipients.

To register with the Bank of Spain, institutions are required to prepare or update their AML/CFT Manual to add the measures corresponding to the new services and to prepare a Risk Analysis Document (RAD) assessing the AML/CFT risk of the new activity, the cryptoassets allowed, the channels of activity, the client profile, the geographical scope of action and the characteristics of the transaction or business relationship, among others. As of March 2024, more than 90 entities are registered in the register.

On the other hand, the MiCA regulation is already in force, which is the name given to the EU regulation on markets in cryptoassets that created the first legal framework for these assets. On 9 June 2023, more than two years after the initial draft of the MiCA was first published, the final version of the text was published in the *Official Journal of the European Union*.

MiCA includes three categories of cryptoassets in its scope of application: (i) e-money tokens, (ii) asset-referenced tokens; and (iii) other cryptoassets not excluded from the Regulation itself. For them, MiCA regulates:

→ Their issuance: the offering and admission to trading of cryptoassets

→ Their functioning: the organisation and governance of issuers

→ Consumer protection for the issuance

In turn, MiCA also regulates the provision of services on these cryptoassets, mainly:

→ Their authorisation and supervision of cryptoasset service providers

→ The operation, organisation and governance of cryptoasset service providers

→ Consumer protection for the provision of cryptoasset services

→ Measures to prevent market abuse

MiCA is a regulation that was conceived under the same regulatory logic as MiFID, the regulation that governs the securities markets and, therefore, many of the issues it regulates follow the principles that already govern the world of traditional finance. For example, the types of services regulated are very similar to MiFID services, such as custody, reception and transmission of orders, order execution, advice and portfolio management.

MiCA entered into application in two phases which were divided into (i) the authorisation regime for issuance of e-money tokens and asset-referenced tokens (30/6/2024); and (ii) the

authorisation regime for issuance of other cryptoassets and for service providers, together with the other applicable conduct of business rules (30/12/2024). It should also be noted that MiCA contains a large number of implementing regulations and second level regulations that expand on the requirements of the regulation. Therefore, as of December 2024, any provider providing or offering cryptoasset services will be considered a cryptoasset service provider under MiCA and will have to obtain a licence to operate in the EU (already benefiting from the EU passport). In Spain, the oversight authority in charge of supervising the issuance of e-money tokens or asset-referenced tokens will be the Bank of Spain, while the CNMV will be in charge of issuing MiCA licences to service providers and managing the passports of European players that want to provide services in Spain and are licensed in other Member States, or vice versa if a MiCA provider wants to provide licences in another Member State.

However, there is a competitive advantage for providers that were registered at that date in the register of the Bank of Spain referred to above compared to providers that are not registered, and this is that they benefit from the transitional period granted by MiCA, so that those entities that had been providing services before the entry of MiCA into force (December 2024) can continue to provide them until they obtain their licence for a certain period of time.

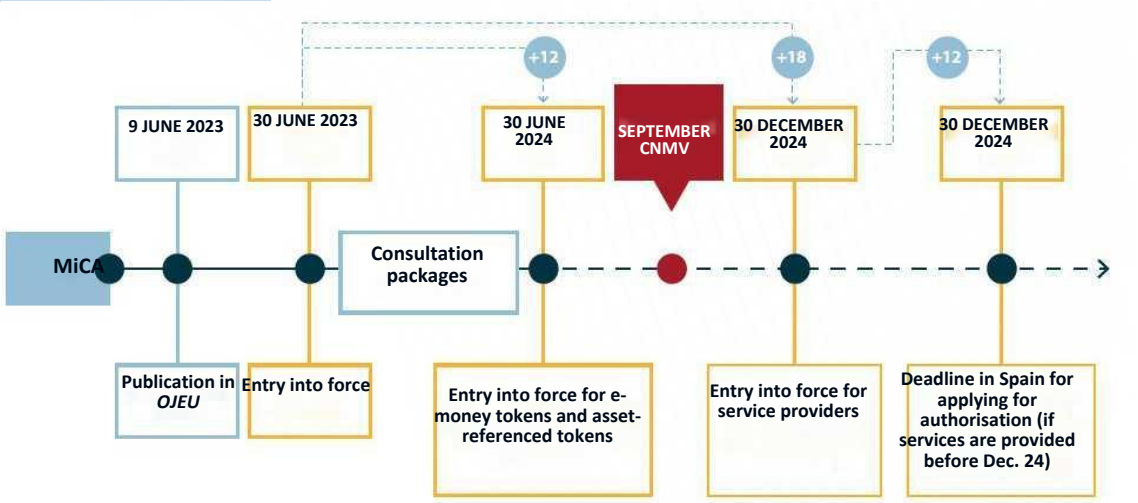
Spain was the first EU country to issue its own rules for this transitional period and determined that it will last until December 2025. Therefore, in Spain, any suppliers that were providing their services in accordance with the applicable law before December 2024 will **be able to continue to do so until December 2025.** In Spain, the only way to prove that the service is being provided in accordance with the applicable law is to be registered in the Bank of Spain's register of crypto providers. This is a major advantage as it allows providers to continue to provide services without having to cease operations as long as they obtain a licence before December 2025, which gives them longer to adapt to MiCA without ceasing to attract or serve existing clients.

Below is an illustrative timeline of key dates under MiCA:

KEY DATES

- **Entry into force:** 30 June 2023 (20 days after publication)
- **Partial entry into force:** 30 June 2024 (+12 months) for e-money tokens and asset-referenced tokens
- **Full entry into force:** 30 December 2024 (+18 months)
- **Transitional period:** to continue to provide services in Spain: December 2025
- **CNMV dates:** MiCA applications can be submitted from 2 September onwards
- **Consultation packages:** 3 ESMA and EBA consultation packages on MiCA implementing regulations (1st: 12/7/2023; 2nd: 5/9/2023; 3rd: IT 2024)

SCHEDULE



In parallel to MiCA, the Transfer Information Regulation has been updated by extending its scope to cover transfers in cryptoassets. This regulation comes into force in December 2024 and will require all cryptoasset transfer providers to share and verify payer and payee information, which until now has only been regulated for the transfer of fiat currencies and requires providers to make certain technological adaptations. The practical application of this regulation, known as the “Travel Rule”, is probably one of the biggest challenges facing the industry.

4. Trends, challenges and opportunities

The adoption of cryptoassets is growing and is perhaps at its peak since their emergence, mainly because, after years in which they were assets that retail investors acquired to diversify their portfolios or take risks taking into account price fluctuations, institutions have now seen their potential and have become involved in the ecosystem.

After a period of unease and continued price declines, known as the "crypto winter", cryptoassets are regaining their appeal and establishing themselves as an increasingly attractive investment option. This interest is not only limited to young investors and those familiar with blockchain technologies who initially ventured into this space, but has also caught the attention of institutional investors and financial institutions.

This upward trend has been driven by, among other things:

- Growing institutional adoption for the provision of cryptoasset services;
- The US Securities and Exchange Commission (SEC)’s approval of Bitcoin ETFs (investment funds that replicate an index and are listed on a regulated market), which allows investment in bitcoin through these assets;

- The Bitcoin halving;[27]
- The entry into force of MiCA and its implementing legislation, hence legal certainty;
- A lively M&A market in the crypto sector due to growing institutional adoption and a desire to accelerate time-to-market.

The challenges and risks of this type of asset explain why adoption is not yet widespread and why there is still public reticence. This situation is caused by:

1. Lack of education on this technology and its uses;
2. Market volatility;
3. Distrust regarding cybersecurity;
4. Regulatory issues; or
5. The malfeasance of certain crypto players

These are some of the challenges that the sector must address in the coming years.

One of the biggest and most important regulatory challenges facing the sector is the opening of safeguard accounts, reflected in the first paragraph of Article 70(3) of the MiCA Regulation. This first paragraph states that cryptoasset service providers must place funds other than e-money tokens that they have received from clients with a credit institution or a central bank. However, the Eurosystem Policy published in July 2024 explicitly states not to grant the possibility to safeguard funds in Eurosystem central banks. This provision is of great concern to CASPs because it promotes greater reliance on accounts offered by competing private banks, at a time when there is no market for these services and increases the cost for providers. It also leaves out the possibility for safeguard funds to be deposited in payment institutions, which are also obliged to safeguard their funds in commercial banks. This Eurosystem policy, assumed by all central banks, contradicts Article 10(1) PSD2/the future Article 9 PSD3, as Eurosystem central banks would be obliged to reject safeguarding requests without considering the individual request of each institution.

As a result, CASPs will be at a disadvantage by relying solely on the discretion of commercial banks both to open and maintain safeguard accounts. This Eurosystem policy should be reviewed and amended, as the ability of CASPs to open central bank accounts would be positive for the sector.

[27] Bitcoin Halving: a predefined process in the Bitcoin protocol that halves the reward miners receive for adding new blocks to the blockchain. Originally 50 Bitcoins, this reward was set to be progressively halved from the start in 2009: the first (in 2012) left it at 25 Bitcoins; the second halving (in 2016) lowered it to 12.50 and the third (in 2020) to 6.25; the fourth halving is expected to take place in April 2024. This cyclical process, together with the maximum amount of Bitcoins that will be issued, reinforces the idea that scarcity will maintain the value of Bitcoin over time, as advocated by monetary theory, and, as was the case with the last halvings, it is foreseeable that this factor will also contribute to the rise in Bitcoin's price in 2024.

In terms of opportunities, while the lack of uniformity in crypto regulation was a challenge for the cryptoasset industry, as companies must comply with disparate legal requirements in various regions, with the implementation of MiCA there is a clear, coherent and above all harmonised legal framework, which is essential to encourage investment and sustainable development in this space. The legal certainty provided by MiCA will pave the way for the entry of institutional acts and thus widespread adoption, offering, in turn, partnership opportunities to native entities, and the trust and confidence it generates for investors that will lead to their widespread use.

5. Proposals and recommendations

MiCA is a great leap forward for the industry, but there are still issues of uncertainty and it is therefore essential for regulators to continue to make progress studying them. Here are the issues where greater certainty is urgently needed:

1. Categorising the different types of cryptoassets and consequently determining whether they are subject to MiCA or other regulations. The criteria issued by the EU authorities still do not provide complete clarity, which makes entities uncertain when issuing, marketing or admitting cryptoassets to trading.

2. Defining and determining the characteristics of the various stablecoins, in particular e-money tokens and asset-referenced tokens.

3. Defining the criteria for determining what decentralised finance (DeFI) is and the factors that would require compliance with certain regulatory obligations, if they are ultimately required under the principle of "same activity, same risk, same regulation".

4. Legally defining "staking" and similar services that cryptoasset providers offer their clients.[28]

5. Applying standard solutions to be able to identify the parties involved in transactions in compliance with the "Travel Rule" that all other financial transactions comply with, to avoid money laundering and terrorist financing.

6. Promoting the provision of safeguards accounts by the Eurosystem, in accordance with EU law.

Many of these issues are foreseen in MiCA with the mandate for supervisors to issue position papers. Given the supervisory activity and developments in this market, these issues are

[28] "Staking" is characterised by blocking cryptoassets in an e-wallet for a period of time through a smart contract. The greater the number of cryptoassets blocked, the higher the probability of being chosen by the system to validate the blocks and of being rewarded, generally, with the same type of cryptoasset. Spanish General Directorate of Taxes (DGT) Consultation V1766-22.

expected to be clarified and decided in coming months through industry responses to the implementing regulations that the ESMA and the EBA have published.

As a final conclusion, it is clear that the lack of consensus in the Spanish Parliament is delaying Spain's adaptation to EU regulations that are fundamental for the financial industry. This is jeopardising the possibility for Spanish companies to advance and develop, and their European competitors are taking advantage of this. Among the main problems, there is a legislative gap in Spain to shorten the 18-month transitional period, while in other Member States local legislation allowing for faster authorisation was negotiated well in advance. It is essential for Spain to speed up and pay attention to the legislative and regulatory changes coming from the EU to be able to compete in the European market.

5 PERSONAL FINANCE, MARKETPLACE & ONLINE LENDING

This heading brings together B2C business models whose primary objective is to improve user experience and bring financial products and services closer to end consumers.

It is appropriate to start with personal finance because through its very definition, the other models can be fully understood.

The field of personal finance is a FinTech vertical that encompasses various business models aimed at covering specific user needs other than the more classic lines of activity such as financing, savings and investment, but that in some way contribute to these purposes in an auxiliary way.

In particular, companies providing some of the following services are included in this area:

1. Personal finance optimisation services: These services enable individuals to manage their wealth more efficiently through tools to create spending budgets or to set savings targets or by rounding up card charges to save for investment. Many of these initiatives are targeted at the younger segment of the population, which is generally less disciplined about saving, and less knowledgeable about where to invest their extra cash for a higher return.

2. Marketplace or comparators of financial products: depending on their scope, they can allow investors to merely compare the terms of various financial products or can even carry out brokerage work for purchasing these products.

3. Account information service providers. Although its named here for its importance in the personal financial management of individual financial users, this aspect is explained and discussed in the PayTech chapter of this White Paper.

4. Consumer lending and/or financing entities when acquiring a producer (e.g., the well-known "Buy Now Pay Later (NBPL) scheme)" which allows buyers to opt to pay in instalments when they make a purchase. Of particular importance is the role of companies that offer small loans to consumers to purchase a good or service at a specific point in time.

Sometimes several of these business models (mainly the last two) can be offered simultaneously by the same entity, either directly or through integration with third-party providers offering these capabilities. In this sense, although it is common to talk about “B2C services”, there are also some providers of account information services or personal finance optimisation services that have focused on the B2B market.

Lastly, it should be noted, as developed below, that activities subject to authorisation or registration are intermingled under this heading with others that are not regulated as such.

1. Personal finance optimisation services

1.1. Definition

As explained above, these services are offered through tools and applications to help financial users achieve short- or medium-term financial goals, such as saving a certain amount per month to spend on a leisure trip.

1.2. Value chain

All personal finance optimisation service providers offer tools for detailed tracking of spending and income, which help clients manage and control their finances through spending classifiers linked to an account, also to their associated card(s), and they can quickly analyse what and how their money is spent on over a specific period of time, typically a month. This helps clients identify areas where they can save money or improve their financial management. Allowing clients to set and manage personalised budgets for different categories of expenditure also helps them monitor their spending, set financial goals and make adjustments as necessary to stay within their budget.

1.3. Applicable legislation and standards

Beyond the general rules on e-commerce and personal data protection, the companies that carry out this activity are not themselves subject to specific financial regulation, as the financial services they offer are effectively provided by credit institutions, payment institutions or investment services firms that have their own authorisations and are subject to the relevant regulatory framework.

1.4. Trends, challenges and opportunities

It is clear that the digitisation of the population is a driver for the promotion and use of these applications, not only by young people but by all segments of the population.

The application of artificial intelligence not only to these, but to all business models, is becoming increasingly widespread and represents an opportunity to make them more efficient. However, as discussed below, regulation on AI will set the pace for how it can be applied.

1.5. Proposals and recommendations

1. Promotion of test spaces, such as the Financial Sandbox, where these business models can mix with traditional companies and entities to carry out proofs of concept to improve user experience and financial client management.

2. Creation of innovation forums in trusted and supervised environments to share ideas, proposals and problems regarding innovation.

2. Marketplace or financial product comparators

2.1. Definition

Marketplaces are considered to be digital platforms that connect users to a wide range of financial services offered by multiple providers. These platforms act as intermediaries, helping investors search for, compare and purchase financial products in a convenient and efficient manner. By providing an intuitive and transparent interface, marketplaces simplify the financial decision-making process, allowing investors to find the best option for their needs and preferences.

In addition, these platforms foster competition and transparency in the market by offering a wide variety of options and letting investors compare prices and features. Thus, marketplaces bring together financial institutions, which reduce their profit margins to reach a large mass of users, and buyers, who enjoy a wide variety of financial alternatives of various natures through a single platform.

Many of these companies have been growing through agreements with authorised third parties (through partnership, subscription, agency, brokerage agreements, etc.) or have started their journey with simpler licences so they can grow further. Many of these began to emerge in Spain in 2015 in response to an accelerated process of digitalisation that in recent years has extended to the financial needs of clients. Digital clients are now looking for alternative financial services and want access to comparative information or a more personalised offering. Clients are looking for an easier way to invest with an offering that is adapted to their needs: more digital and demanding with new technologies.

Comparators may specialise in a wide range of products or services. From insurance products, personal loans to mortgages. Mortgages, in particular, have been widely adopted by financial users because of the complexity and tedious process of comparing mortgage products from various banks and their implications. This is because mortgages are probably the most common and also the most important product that a financial user takes out in the course of their financial life.

2.2. Value chain

Marketplaces are an essential component of today's financial ecosystem. This process encompasses a number of stages, from user acquisition to the ongoing provision of financial services. Initially, marketplaces focus on attracting users through digital marketing strategies, online advertising and strategic partnerships with other financial and non-financial platforms or entities.

Once inside each platform, the information is presented in a very visual way through comparative tables, graphs and summaries that help users understand and evaluate the various alternatives available.

In addition, many of these comparators provide additional tools and resources to facilitate informed decision-making on financial products (such as loan calculators, investment simulators, etc.). In mortgage products, comparators play a very important role in showing the terms requested by banks to take out mortgages from them, for example the need to take out all the insurance policies from them, the requirements to access better interest rate terms, and the differences between fixed, variable or mixed-rate mortgages.

It is also worth noting the effort made by these comparators to contribute to the financial education of users by making educational resources available on finance in general and the characteristics of financial products in particular. Once again, mortgage products are complex for everyday financial users, but thanks to the explanation and simplification of the comparators, users can understands the obligations involved.

As for those comparators that also perform brokerage tasks, they make it possible to obtain offers from various entities to purchase the financial product in question, and they collaborate significantly in the whole contracting process. They also contribute decisively to financial democratisation and play a significant role in the entire purchasing process.

All these functions of comparators also have the potential to be a catalyst for increased competition, which is in the interest of consumers, as transparency of information on various products encourages the improvement of economic terms and stimulates the emergence of other types of such products.

Lastly, the marketplace can facilitate the delivery and ongoing management of selected financial services by staying in constant communication with users and providing support and assistance. To ensure client continuity, it is common for marketplaces to incorporate some product of their own or in partnership with a single regulated entity to anchor the user and give added value to the purchasing of other financial products (such as through financial aggregation services or a prepaid e-money card).

2.3. Applicable legislation and standards

Marketplaces as such do not have their own legislation, but are subject to certain laws depending on the type of products or services they provide, the way in which they offer or present them, and the type of relationship they establish with the financial institution that owns the financial products. However, the general advertising legislation and competition law do apply to them. Among other issues, the comparison of products should be unbiased and objective, without favouring some competitors over others, and transparent vis-à-vis the users

of these platforms, especially with regard to the commercial agreements entered into with the financial institutions.

However, it should be noted that, in some cases, these activities may be subject to the new Securities Markets and Investment Services Act 6/2023 of 17 March.

On the one hand, if a marketplace does not just compare products but also provides recommendations on them, this could entail provision of a regulated financial advisory service, provided that it is not simply a generic recommendation addressed to the public, but the recommendations are being given on transactions related to specific financial instruments and on an individualised basis (i.e., taking into account the client's financial situation, investment objectives, risk tolerance and other relevant circumstances).

On the other hand, it is important to distinguish purely advertising activities from those that may involve a client acquisition channel. Revenue share models in which a fee is paid for putting up banners or other ads for investment firms on the basis of the number of clients attracted may involve unauthorised client acquisition since, under section 129 Securities Markets and Investment Services Act, the platforms would have to be agents of the investment firms in question. On the other hand, when the payment for advertising takes into account only the audience parameter, this qualification would not apply, although this advertising must in any case comply with CNMV Circular 2/2020 of 28 October on the advertising of investment products and services [*Circular de la Comisión Nacional del Mercado de Valores, sobre publicidad de los productos y servicios de inversión*]. The same would be true in the case of opinions that were not neutral.

Apart from advertising legislation, when brokerage functions are carried out for the conclusion of loan or credit agreements, whether mortgages or otherwise, of for insurance or activities reserved for credit institutions and investment services companies, the following rules will apply, both at EU and national level (in the case of Spain), which are designed to protect the interests of users and guarantee the stability and integrity of the financial system.

<u>At EU level (among others):</u>

→ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution ("IDD").

→ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC ("PSD2").

→ Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic

money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.

→ Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents ("Agents Directive").

→ The General Data Protection Regulation sets standards for the security of financial transactions and the protection of personal data privacy ("GDPR").

In Spain (among others):

→ Royal Decree Law 3/2020 of 4 February on urgent measures transposing various EU directives in the field of public procurement in certain sectors; private insurance; pension plans and funds; taxation and tax litigation into Spanish law [*Real Decreto-ley 3/2020, de 4 de febrero, de medidas urgentes por el que se incorporan al ordenamiento jurídico español diversas directivas de la Unión Europea en el ámbito de la contratación pública en determinados sectores; de seguros privados; de planes y fondos de pensiones; del ámbito tributario y de litigios fiscales*].

→ Royal Decree-Law 19/2018, of 23 November, on payment services and other urgent financial measures [*Real Decreto-ley 19/2018, de 23 de noviembre, de servicios de pago y otras medidas urgentes en materia financiera*].

→ The Spanish Credit Institution Regulation, Supervision and Solvency Act 10/2014 of 26 June [*Ley de ordenación, supervisión y solvencia de entidades de crédito*] and Royal Decree 84/2015 of 13 February that enacted it.

→ The Spanish E-Money Act 21/2011 of 26 July [*Ley de Firma electrónica*].

→ The Spanish Consumer Credit Act 16/2011, of 24 June [*Ley de Contratos de Crédito al Consumo*].

→ The Revised Text of the Spanish Consumer Defence Act [*Ley General para la Defensa de los Consumidores y Usuarios*] enacted by Royal Legislative Decree 1/2007 of 16 November.

→ Spanish Royal Decree 736/2019 of 20 December on the legal regime of payment services and payment institutions and amending Royal Decree 778/2012 of 4 May on the legal regime of e-money institutions and Royal Decree 84/2015 of 13 February enacting the Credit Institution Regulation, Supervision and Solvency Act 10/2014 of 26 June [*Real Decreto 736/2019, de 20 de diciembre, de régimen jurídico de los servicios de pago y de las entidades de pago y por el que se modifican el Real Decreto 778/2012, de 4 de mayo, de régimen jurídico de las entidades de dinero electrónico, y el Real Decreto 84/2015, de 13 de febrero,*

por el que se desarrolla la Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito].

→ Royal Decree 778/2012 of 4 May on the legal regime for e-money institutions [*Real Decreto 778/2012, de 4 de mayo, de régimen jurídico de las entidades de dinero electrónico*].

→ Royal Decree 217/2008 of 15 February on the legal regime for investment firms and other entities providing investment services and partially amending the Regulation of the Collective Investment Undertakings Act 35/2003 of 4 November, enacted by Royal Decree 1309/2005 of 4 November [*Real Decreto 217/2008, de 15 de febrero, sobre el régimen jurídico de las empresas de servicios de inversión y de las demás entidades que prestan servicios de inversión y por el que se modifica parcialmente el Reglamento de la Ley 35/2003, de 4 de noviembre, de Instituciones de Inversión Colectiva, aprobado por el Real Decreto 1309/2005, de 4 de noviembre*].

→ Bank of Spain Circular 4/2010 of 30 July to credit institutions on agents of credit institutions and agreements entered into for the regular provision of financial services [*Circular del Banco de España a entidades de crédito, sobre agentes de las entidades de crédito y acuerdos celebrados para la prestación habitual de servicios financieros.*].

→ Questions and answers for FinTech companies on activities and services that may have a bearing on the CNMV

Depending on the type of intermediation carried out by these marketplaces, they must also comply with all legislation related to areas such as AML/CFT, transparency and advertising.

It should be noted that when intermediation functions are performed to enter into loan or credit agreements, whether for mortgages or not, or for insurance or activities reserved to credit institutions and investment services companies, the following rules apply:

a) Financial intermediaries: Spanish Law 2/2009 of 31 March regulating the contracting with consumers of mortgage loans or credit and intermediation services for the conclusion of loan or credit contracts [*Ley 2/2009, de 31 de marzo, por la que se regula la contratación con los consumidores de préstamos o créditos hipotecarios y de servicios de intermediación para la celebración de contratos de préstamo o crédito*] applies, section 2(2) of which defines intermediation as the presentation, proposal or performance of preparatory work for the conclusion of non-mortgage loan or credit agreements, including, where appropriate, making those agreements available to consumers for them to sign. Financial intermediaries must be registered in the relevant register of the Directorate General for Consumer Affairs.

b) Mortgage intermediaries: the Spanish Mortgages Act 5/2019 of 15 March [*Ley reguladora de los contratos de crédito inmobiliario*] applies, section 4 of which defines intermediation as the activity of directly or indirectly bringing a natural person into contact with a lender,

and also performing any of the following functions with respect to loan agreements with mortgage guarantees on residential properties or for the acquisition of real estate, when the borrower, guarantor or co-signor is a consumer:

(i) presenting or offering the mortgages to borrowers;

(ii) assisting borrowers by carrying out pre-contractual or other formalities before the signing of the mortgage;

(iii) entering into loan agreements with a borrower on behalf of the lender.

Mortgage intermediaries must be registered in the relevant register of the Bank of Spain.

2.4. Trends, challenges and opportunities

The marketplace landscape is constantly evolving, driven by a number of trends, challenges and opportunities.

One of the most prominent trends is the personalisation of the user experience, driven by the use of technologies such as artificial intelligence and machine learning. These technologies allow marketplaces to offer more accurate and relevant recommendations based on individual users' behaviour and preferences.

Another important trend is the expansion into new market segments, such as open banking and digital payments, which allow marketplaces to offer a wider range of financial services. In this respect, it is worth noting the rise of partnerships between traditional credit institutions and FinTech.

One of the major developments that is expected to be key in the sector is the draft EU Regulation on access to financial data ("FIDA"). This regulation arises hand in hand with the draft of the new payment services directive (PSD 3) and regulates the right of access to a set of payment account data different from those processed by PSD 2 (securities accounts, savings, insurance, cryptoasset positions, etc.), and is based on the right to personal data portability, which is recognised by the GDPR, and defines data intermediation services and the altruistic transfer of data with respect to non-personal or anonymised data, in line with the legislation on data governance.

However, along with these trends also come significant challenges, such as data security and user privacy, and compliance with financial and consumer protection legislation. As a sector with certain inherent risks, institutions must comply with a comprehensive set of laws and regulations; hence regulators will seek to intensify risk management. Their objective is to ensure the financial soundness of these institutions and their ability to safeguard their clients' money.

In terms of opportunities, in economic situations with certain degrees of uncertainty or very high levels of uncertainty, the number of people looking for payment solutions adapted to their current economic situation is increasing.

Marketplaces also have the potential to democratise access to financial services, especially for those segments of the population that have traditionally been furthest away from the conventional financial system. In addition, the scale and flexibility inherent in marketplaces' business models allow for greater innovation and experimentation in the offer of new products and services, thus boosting competitiveness and differentiation in the market.

One of the challenges for marketplaces is the legislation they have to comply with, as discussed above.

2.5 Proposals and recommendations

1. Leverage open banking initiatives to enable greater integration of financial services and provide users direct access to their financial data.

2. Establish a clear regulatory framework on the remuneration models allowed to financial product comparators to enable them to monetise "leads" without incurring disproportionate regulatory burdens.

3. Homogenise the requirements for financial intermediaries with those of mortgage intermediaries.

4. Promote initiatives that foster financial education and digital inclusion, to improve understanding of the risks and benefits.

5. Promote collaboration between various actors in the financial ecosystem, including technology companies in this sector, to address common challenges and seize emerging opportunities.

6. Maintain a flexible and adaptable regulatory framework that fosters innovation and competition, while protecting the interests of users and the stability of the financial system.

7. Improve the controls on the professionalism of the staff involved in intermediation of financial products.

3. Entities providing account information service

As indicated in the introduction, this business model is included under PayTech.

4. Online lending

4.1. Definition

Online lending encompasses institutions that offer loans to consumers and businesses using advanced technology as an alternative to traditional financing. It includes business models such as crowdfunding, crowdlending, crowdfactoring and online consumer credit. We will focus particularly on the latter, given the importance it has gained in recent years, especially in its role in stimulating private consumption.

Consumer credit[29] can be defined as credit that, in the form of a deferred payment, loan or any other payment facility, is granted to natural persons, and is intended to finance expenditures to acquire goods or services for personal and family use, through a person, normally a legal entity, operating in the credit market. This definition includes, without limitation, credit granted to individuals through credit cards, personal loans, opening of credit lines, revolving credit, and instant online credit.

The types of companies in this sector have evolved from traditional banking towards FinTech companies, which are characterised by operating mainly with technology and using their own resources. They stand out for their strong investment in technology and their ability to innovate in products and services.

4.2. Value chain

Since the 2008 financial crisis in Spain, consumer credit has been an alternative source of liquidity and financing to traditional banking. These online loans, including those for personal and family expenses, stand out for their speed, accessibility and customisation. On the other hand, they generally have higher interest rates than loans offered by banks due to the lack of repayment guarantees from the consumer.

The online lending sector focuses, both at national and EU level, on consumer protection, based on the principles of responsible lending. These principles imply a commitment on the part of the lending institutions to provide support and advice to consumers in the event of non-payment, seeking fair solutions and refinancing their debts on favourable terms. Other principles underpinning responsible lending include: assessing the creditworthiness of the client; ensuring a safe and workable transaction; providing full, clear and accurate information; responsible advertising; fair communication with the client; transparent costing; regulating distance contracts; complaints mechanisms; the right of withdrawal; and preventing over-indebtedness.

The advantages associated with consumer credit have generated a notable increase in demand for it in Spain, as revealed by data from the Risk Identification Centre[30] for the last half of 2023.

---

29 Spanish FinTech and InsurTech Association. (2022). Online Lending White Paper

30 Bank of Spain. (2023). Informe de la situación financiera de los hogares y las empresas. [*Report on the financial situation of households and enterprises*]. Retrieved from:

In fact, online lending makes up a considerable part of the total amount of credit granted in the country. This increase is particularly notable among middle-income households, reflecting an increase in the number of new borrowers.

4.3. Applicable legislation and standards

1. Overview of the current situation

The consumer credit sector in Spain is currently regulated but not supervised.

It is governed by the Consumer Credit Act 16/2011 of 24 June [*Ley de créditos al consumo*], which transposed Directive 2008/48/EC on consumer credit agreements ("CCDI"). Later, in October 2023, Directive (EU) 2023/2225 of 18 October 2023 ("CCDII") was published, which replaced the CCDI and is pending transposition. The CCDII represents a legislative change, as it requires lending institutions and credit intermediaries to be registered and supervised, with the exception of credit institutions and payment or e-money institutions, which have their own regulatory scope.

In this context, although the current legislation protects consumers of consumer credit and promotes a homogeneous EU market to ensure equal protection and access to credit, the increasing digitalisation of this sector and the need to unify and harmonise consumer credit contracts in the EU have prompted the enactment of the new CCDII.

The objective of CCDII is to create a regulated environment that will promote stability and confidence in consumer financial services related to consumer credit across the EU. Its transposition must be effective by 20 November 2025. However, the transposition of CCDII in Spain could be delayed, as it depends on national political consensus.

2. Transposition of CCDII

As mentioned above, CCDII has been developed with the digitisation of the sector in mind to ensure greater consumer protection. It introduces changes to the caps on consumer credit contracts subject to regulation, as it will apply to all those whose total amount does not exceed EUR 100,000. In the same vein, CCDII regulates consumer credit agreements more cautiously, including new information and advertising requirements, to avoid market abuses that occur in some Member States, and to clarify existing loopholes in this area.

Some of the mechanisms put forward by CCDII to strengthen consumer protection are as follows:

https://www.bde.es/f/webbe/SES/Secciones/Publicaciones/Informesituacionfinancierafamiliasyempresas/2023/S2/Fich/SituacionFinanciera_022023.pdf

- The introduction of measures to prevent abuse and ensure that consumers cannot be charged excessively high borrowing rates, annual percentage rates of charge or total cost of credit by setting clear ceilings;

- The inclusion of disclaimers in advertising associated with consumer credit that point out the risk associated with applying for it; and

- The possibility of requiring the consumer to take out an insurance policy to avoid over-indebtedness.

4.4. Trends, challenges and opportunities

Some of the main trends that have been observed in the online lending landscape include:

(i) Users prefer to manage and control their finances through the use of applications on their mobiles, with attendance in person at financial institutions being lower than in the recent past. For this reason, companies such as online lenders are finding a high willingness among their clients to access their services online.

(ii) Open Banking is emerging as a disruptive trend in the online lending sector, offering new opportunities to improve risk scoring models.

Traditionally, financial institutions have relied on the various credit bureaus: registries that compile credit information on consumers, to assess the creditworthiness of applicants. However, this system has certain limitations, as it is not able to reflect individuals' most up-to-date and complete financial situation.

In this context, Open Banking presents itself as an innovative solution, allowing lenders to access real-time financial data such as income, spending and consumption habits. This not only provides a comprehensive and up-to-date view of the applicant's financial profile, but also allows lenders to offer more personalised credit products tailored to the needs of each client, thus enhancing financial inclusion and accurate risk assessment.

(iii) The EU is aiming to establish effective harmony between Member States by creating common rules, such as the Credit Directive.

(iv) EU regulation, although more complex, opens the door to being able to develop similar business models under equal conditions of competition in the rest of the Member States.

(v) National legislation in certain cases tends to ring-fence innovation through disproportionate and excessive rules, such as the Spanish Customer Service Act [*Ley de atención a la clientela*].

(vi) Growth of peer to peer (P2P) lending: this allows investors to directly provide loans to other individuals or companies through online platforms. This model eliminates traditional intermediaries such as banks, resulting in higher returns for investors and lower interest rates for borrowers. In Spain, the P2P market has experienced significant growth.

(vii) Financial inclusion of historically marginalised segments of the population.

(viii) The "Buy Now, Pay Later" (BNPL) model is also positioning itself as a major trend in the online lending business, differing significantly from the traditional online credit model. Unlike classic online loans, which typically involve more extensive credit assessment processes and a greater financial commitment, BNPL allows consumers to purchase goods immediately with little or no down payment and pay off the balance in four or fewer payments. This approach not only facilitates access to credit for a broader base of consumers, including those with limited or no credit history, but also boosts e-commerce by removing barriers to immediate payment. The simplicity and convenience of BNPL has led to its rapid adoption, revolutionising the way consumers finance their purchases and how merchants structure their payment offerings.

The main challenges facing the online lending industry can be summarised in the following main points:

(i) Information requirements for consumers: The entity has to provide consumers certain pre-contractual information in a durable medium, in a clear and accessible manner so that they can take an informed prior decision.

(ii) In the case of Spain, adaptation to the registration and supervision obligation included in CCDII: Although this is a purely legal issue, it will be a real problem for the Spanish market to adapt to the registration and supervision obligation contained in CCDII: "Member States shall ensure that creditors and credit intermediaries are subject to an adequate admission process, to registration and to supervision arrangements set up by an independent competent authority."

In this regard, although it is unknown how this provision will be implemented in Spain, it is assumed that the current legislative landscape will change, as the current institutions will become registered and supervised.

(iii) Transposition of the directive: It is also a great challenge for Spain to be able to transpose the directive in due time and form, and even to anticipate and ensure that Spanish companies are the first to adapt themselves to the EU standard to be able to operate in the rest of the EU.

(iv) Concern about the high volume of litigation and malpractice by some of the law firms specialising in litigating matters related to the micro-lending sector: The current processing of claims in the micro-lending sector is inefficient, as it follows the course of ordinary

proceedings for undetermined sums. In addition, a large number of cases do not opt for joinder of proceedings. A new regulation would be needed to make it compulsory for the micro-lending sector to process claims for microloans in oral proceedings and for a fixed amount.

(v) The entry into force of Royal Decree-Law 6/2023[31] in March 2024, which introduced new developments in the digitalisation of justice and procedural streamlining. These developments reflect a commitment to digitisation and improved efficiency in the resolution of cases through the use of electronic tools and the streamlining of judicial procedures. Further on in this section the main novelties of **this Royal Decree-Law will be noted due to their importance for the sector**.

The implementation of the new CDDII, whose focus is on digitisation and transparency, could and should lead to several innovations and **opportunities** for the online consumer credit market, including:

(i) **More efficient and informed application processes:** Online consumer credit companies could develop more efficient digital platforms for credit applications, offering interactive and educational tools to help consumers better understand their credit options and take informed financial decisions, through simpler processes. This could include integrating disclaimers into online advertising to highlight the risk associated with applying for credit, and creating educational content on responsible financial management.

(ii) **Expansion of the market into new segments:** With the possibility of offering smaller loans in a simplified way, companies offering online loans could target new market segments that were not economically viable before, such as micro-loans or short-term loans.

(iii) **Offering optional insurance to avoid over-indebtedness:** Online companies could offer optional insurance policies as a measure to prevent consumers from becoming over-indebted. This could provide an additional layer of financial protection for consumers and increase their confidence when applying for credit online.

(iv) **Personalisation of credit offers:** Online companies could use consumers' information to personalise their credit offers and ensure that they are tailored to the consumers' financial needs and ability to pay. This could include tailoring credit limits, interest rates and payment terms to meet individual consumer preferences.

In summary, the implementation of the new CDDII could boost innovation and opportunities in the online consumer credit market, fostering greater transparency, efficiency and personalisation in the supply of financial products and services. At the same time, CDDI

31 Spanish Royal Decree-Law 6/2023 of 19 December, approving urgent measures for the implementation of the Recovery, Transformation and Resilience Plan in the areas of public justice services, the civil service, local government and patronage [*Real Decreto-ley 6/2023, de 19 de diciembre, por el que se aprueban medidas urgentes para la ejecución del Plan de Recuperación, Transformación y Resiliencia en materia de servicio público de justicia, función pública, régimen local y mecenazgo*].

encourages companies to develop new tools and practices to improve transparency, protection and user experience for consumers.

The entry into force of the new Royal Decree-Law 6/2023 may significantly benefit the online lending industry, especially in relation to the procedural inefficiency of issues related to the micro-lending sector. The way these changes could have a positive impact is:

(i) **Joindering proceedings is promoted,** which will allow for speedier resolution of cases.

(ii) **The preference for holding proceedings with remote attendance** will reduce the need for physical travel, which will save time and resources for the parties.

(iii) **The extension of the concept of electronic court documents and the possibility to submit documents in oral proceedings held remotely** will simplify and speed up the exchange of information and evidence, facilitating the handling of cases.

(iv) **The increase of the maximum amount for oral proceedings to EUR 15,000 will allow a greater number of cases to be resolved more quickly and efficiently**, avoiding the need to resort to longer and more costly procedures.

(v) **The incorporation of a new preferential witness procedure for cases with identical claims will speed up the resolution of recurring disputes,** allowing for a quicker response to common situations in this sector.

In summary, the entry into force of Royal Decree-Law 6/2023 offers a series of measures that have the potential to improve the efficiency of the judicial system, reduce the burden of litigation and streamline case resolution, which will directly benefit the online lending industry by facilitating dispute management and promoting a more favourable legal environment for its operation.

4.5. Obstacles

The regulatory obstacles facing the online lending sector include two hurdles that are currently in the parliamentary process but that raise concerns and doubts for companies in the sector:

(i) The draft bill regulating client services, which proposes to oblige companies to have an efficient system for dealing with complaints and claims in an agile manner that will improve the quality of customer service. Some of the implications for the sector include:

- Reducing the maximum time limit for financial institutions to resolve customer complaints to one month.
- A ban on only providing automated telephone responses and a requirement for 24/7 human service.

- Implementation of service improvement measurement systems and annual external audits.
- Appropriate training for customer service staff.

Significant investment in technology, staff training and external audits could increase companies' operating costs, especially for those operating in sectors with high volumes of claims and complaints.

All of these implementations would undoubtedly improve the service provided to consumers, but without a realistic implementing regulation that at least stipulates the roll-out deadlines, the existence of an online lending sector would be hindered, as there are not enough means at present to finance such far-reaching changes.

(ii) Furthermore, the creation of the Independent Administrative Authority for Financial Client Protection[32] (the "Authority") presents a number of challenges for the online credit sector, which are defined below:

- Regulatory Compliance: Online credit companies will have to adjust their practices to comply with the rules of conduct and protocols established by the Authority. This may require companies to overhaul their internal policies and procedures.
- Handling of complaints: The Authority will provide a new channel for resolving customer complaints, which will increase the pressure on online credit companies to resolve disputes quickly and efficiently. This could lead to additional costs for handling complaints.
- Deadlines and free customer service: the Authority will have a maximum of 90 calendar days to resolve and notify the complaint procedure.
- Binding nature of decisions: The Authority's decisions are binding when the amount claimed is less than EUR 20,000. This means that online credit companies will be obliged to abide by the Authority's decisions, which may affect their autonomy in handling client disputes.
- Personalised service: The regulation stresses the importance of personalised service, which may require online credit companies to adapt their practices to meet the individual needs of their clients.

In summary, the creation of the Authority poses significant challenges for online credit companies in terms of regulatory compliance, complaints handling, customer service and decision-making autonomy.

[32] Spanish Draft Bill creating the Independent Administrative Authority for the Defence of Financial Clients for the out-of-court settlement of disputes between financial institutions and their clients [*Proyecto de Ley por la que se crea la Autoridad Administrativa Independiente de Defensa del Cliente Financiero para la resolución extrajudicial de conflictos entre las entidades financieras y sus clientes*].

(iii) On the other hand, the consultation of client financial information files is restricted to online lenders and is not automatic, which prevents real-time risk and creditworthiness analysis of clients applying for a loan.

(iv) There is no reliable information in the sector on the volume of money that the consumer lending sector is making.

(v) Currently, when dealing with cases and disputes with clients, judges rely on the Spanish Usury Act [*Ley de Usura*] of 1908, which is completely outdated.

4.6. Proposals and recommendations

1. Creation of a positive credit bureau for consultation or posting, where it is possible to consult, not so much unpaid credits as is the case with the CIRBE, but borrower's debts.

2. Agility in the transposition of the CCDII and the fact that Spain is at a competitive disadvantage in this situation.

3. Access to the CIRBE. Accessing this database would give the FinTech sector a competitive advantage it currently lacks.

4. Having the transposition of the CCDII specify the specific thresholds above which interest on consumer credit would be considered usurious or include a specific definition of the calculation of usurious interest depending on the type of consumer credit requested by the consumer.

5. Encourage and promote the obligation to consult clients' Eficaz file before granting them any credit.

6. Creation of a statistical bulletin of average applied rates.

6 REGTECH & DIGITAL ONBOARDING

1. Definition

The term RegTech is a term coined to classify a set of companies that rely on technology platforms or new technologies such as cloud, big data, biometrics or blockchain to create solutions to help companies in all sectors comply with the regulatory requirements that affect them. In the financial sector, this is considered a sub-area of what is generically known as FinTech.

RegTech plays a crucial role in the financial sector by offering innovative solutions to address the increasingly complex challenges that arise with the emergence and updating of the legislation to which this sector is subject. In this regard, among the solutions mentioned above, RegTech helps with them in various areas including:

- Automation of processes to comply with regulatory provisions, such as the promotion of the use of electronic invoicing in transactions between entrepreneurs and professionals, to digitalise business relations, reduce transaction costs and facilitate transparency in commercial transactions.
- Advanced data analysis.
- Record keeping.
- Agile adaptation to regulatory changes.
- Regulatory reporting to supervisory bodies.

On the other hand, digital onboarding is the way more and more organisations are already using to move towards establishing business relationships with their clients. As the name implies, the term digital onboarding refers to the establishment of remote or non-face-to-face client relationships. Likewise, all control and security measures and other requirements for accessing, providing and purchasing new financial products or services digitally through internet channels or mobile applications should also be incorporated in this field.

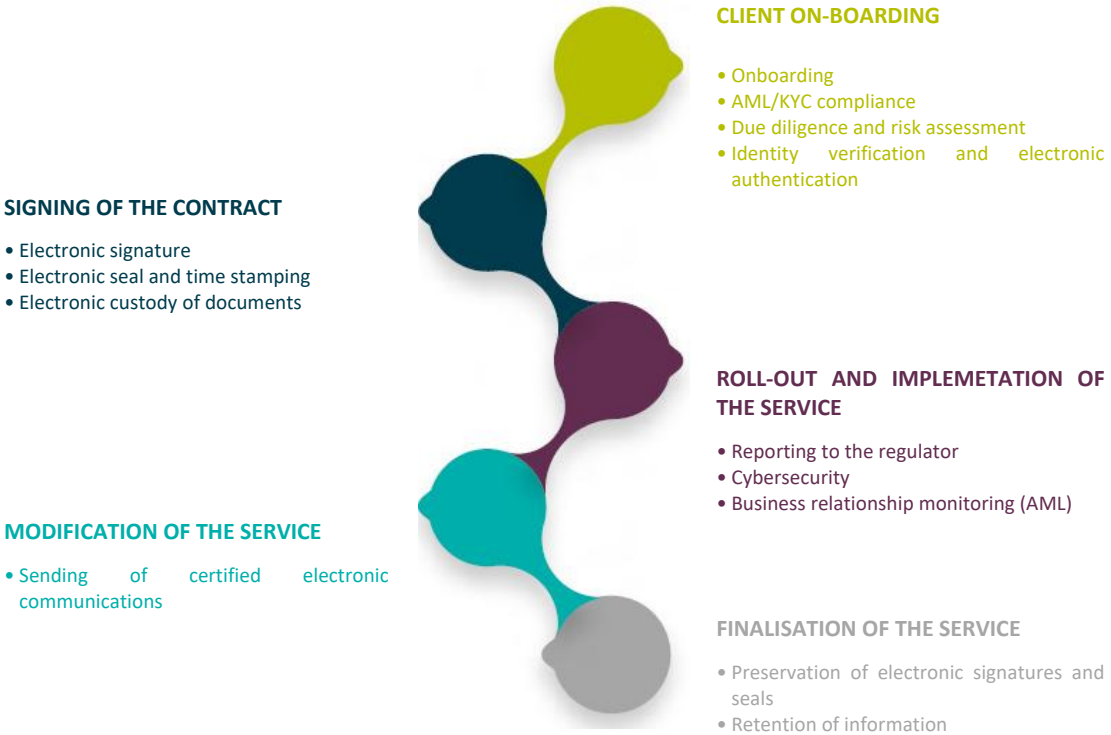
2. Value chain

RegTech uses advanced technologies, such as artificial intelligence and data analytics, to apply the relevant legislation in each case efficiently and accurately.

In digital onboarding, companies implement innovative technology solutions to enable and streamline the client onboarding process while ensuring compliance with regulatory requirements, particularly for KYC and AML/CFT. This involves verification of the client's identity, risk assessment and the collection of information necessary to comply with due diligence standards.

Finally, RegTech provides great added value in the continuous management of regulatory compliance, providing monitoring and reporting tools to ensure that the entities' operations always comply with the applicable legislation at all times.

The following figure illustrates how RegTech applications allow the integration of various processes within the same entity, providing value in each link of the chain, and processes that allow communication with clients through instant messaging:



Based on the above premise, the following sections will take a deeper look at the first three links of the value chain, with regard to:

- Digital onboarding solutions and processes.
- New regulatory proposals and challenges on digital IDs in Europe.
- Different challenges and opportunities arising in the sector, more focused on AML/CFT.

3. Applicable legislation and standards

Digital onboarding is currently subject to regulation in a number of areas, in particular:

→ AML/CFT legislation, which is made up of the Spanish AML/CFT Act 10/2010 of 28 April [*Ley de prevención del blanqueo de capitales y de la financiación del terrorismo*] and its implementing regulation (Royal Decree 304/2014, the "AML/CFT Regulation")

→ Data processing legislation; and

→ Regulatory developments: e.g., EBA guidelines on remote customer onboarding solutions (EBA/GL/2022/15, or the EBA Guidelines)

→ Procedures authorised by the Bank of Spain's Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC) that set out the requirements that must be met for a digital onboarding process to be valid under Spanish law. In particular, SEPBLAC has prepared a paper for: (i) video identification processes (without any human assistance); and (ii) video conferencing processes (with human assistance).

In addition, the EBA published digital onboarding guidelines at the end of 2022, which are applicable as of October 2023, and that apply to credit and financial institutions, as defined by the EU AML/CFT rules (currently the 5th AML/CFT Directive). In this regard, Spain came out in favour of following these guidelines in Spain, and therefore many institutions are starting to follow them as part of their best practices, to provide an additional layer of security to their online onboarding processes, and for their clients, since the essence of these guidelines is to clarify the policies, procedures, controls, and technical aspects that these solutions must comply with, and that are complemented by the procedures authorised by SEPBLAC.

In summary, these guidelines provide a set of guidelines on how to evaluate a remote solution before proceeding with its implementation, and the technical requirements that these tools must fulfil (e.g., in relation to the verification of the special characters of each identity document, the proof-of-life verification of a video selfie process, the use of holographic readers to identify possible fake documents, among others).

It should be noted that these guidelines have been the subject of much debate, given that, from a reading of them, it appears that the entities subject to the guidelines must in any case apply, as a measure of diligence on remote business relationships, the video identification processes in the terms of the guidelines, leaving other types of measures (such as the one referring to the opening deposit provided for in Spanish legislation) as an additional reinforcement layer to this solution. However, this discussion will be concluded when the new EU proposals are finally adopted that will form the new EU AML/CFT framework, with the texts mentioned in the previous section.

4. Trends, challenges and opportunities

More and more financial and even non-financial institutions (referring to the entire group of obliged entities that are not considered financial or credit institutions) are adapting their customer onboarding processes and tools to digital channels in this digital era.

This practice is becoming more and more common, as it provides, among others, a significant improvement in terms of client experience and traceability, the implementation of this type of remote solutions requires technological and operational developments.

Beyond the purely technological aspect, the implementation of this type of solutions must comply with a series of regulatory requirements that sometimes do not allow for an agile and simple user experience. However, the legislation seeks to ensure that the use of these technologies is appropriate and allows customers to be properly identified, avoiding and preventing all the possible cases of fraud that have been of real concern in recent months.

These risks have been noted and reflected in Spanish and EU legislation, where historically digital onboarding has always been considered a higher AML/CFT risk, although the technology continues to improve every day to address these risks. In this regard, it is becoming increasingly common to require authentication elements in registries that go beyond what is required by law. This does not exclude the existence of sectors outside the scope of regulation, through which additional ML/FT and fraud risks may exist, such as telecommunications, although, as far as ML/FT risk is concerned, the main sectors where the impact of committing this type of crime may occur are mostly covered by the legislation in force, and this risk is therefore more closely linked to other types of fraud.

The adoption of these digital onboarding and contracting means has been a great opportunity for RegTech entities, where they have launched various remote customer onboarding solutions, giving way to a technological service business model that is easy for the entities to implement, avoiding all the costs involved in having to develop them internally.

As regards the latest regulatory trends, and as summarised below, the AML/CFT regulatory package in Europe is pending final passage, which will unify the rules of play in this area throughout the EU. This package consists mainly of the following proposals:

- Proposal for a Sixth AML/CFT Directive (the "**Sixth Directive**")
- Proposal for a Single AML/CFT Regulation
- Proposal for a Regulation establishing the European Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA)

This new regulatory package involves combining all the obligations of obliged parties into a single text, to homogenise and harmonise the disparity of specialities existing in each member state in relation to AML/CFT and the requirements for digital contracting. The current starting point is the Fifth Directive, which is not based on any directly applicable EU regulation, so that the Member States have different AML/CFT legislation, which has led to some countries having stricter measures than others, as is the case of Spain compared to other EU jurisdictions.

The latest trend with this new regulatory framework is to homogenise all the provisions, so that there are no significant differences in EU jurisdictions, and, in addition, a specific supervisory authority, the AMLA, will be created to develop future AML/CFT legislation. Although this package has not yet been finally approved, it is already known that the new authority will be based in Germany.

On the other hand, in the framework of digital IDs and personal data protection, the new regulation on EU digital identity, known as the "eIDAS 2 Regulation", is also being adopted, which will replace the current regulation on electronic identification and trust services, known as the "eIDAS Regulation".

With this new law, a European digital identity wallet will be created which will (i) contain a dashboard of all accessible transactions; (ii) offer the possibility to report data protection breaches; (iii) fully respect users' choice of whether to share personal data; and (iv) allow interaction between wallets.

In addition, it opens the door to the bigger challenge of integration into existing national e-ID systems, allowing the use of this wallet to open bank accounts, make payments and store digital documents (electronic attribute statements), such as a driver's licence, a medical prescription, a professional certificate or travel tickets.

In relation to digital signatures, and as highlighted in the recitals of the eIDAS 2 Regulation, European digital identity wallets should enable users to create and use qualified electronic signatures and seals that are accepted throughout the EU, allowing users to affix signatures free of charge and without any additional administrative hurdles.

Furthermore, the acceptance of this new European wallet, and the digital signature, and the wide availability and user-friendliness of European digital identity wallets should foster their acceptance and trust among individuals and private service providers alike. In particular, entities providing financial services and others must accept the use of European digital identity wallets for the provision of services in cases where EU or national law or a contractual obligation requires strong user authentication for online identification, which will help clients to use digital wallets to identify themselves and thus comply with the AML legislation.

Finally, this legislation also opens up a new business opportunity in the market for private services due to the common characteristics and specifications of this wallet.

In addition, the new directive on financial services contracts concluded at a distance[33] was also published in the *Official Journal of the European Union* at the end of 2023, which mainly developed issues related to:

(i) Information requirements for consumers, especially focused on pre-contractual information and prior disclosure obligations in communications by telephone (identification and explanation of the commercial purpose, recording of the call, request for express consent, among others).

[33] Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023 amending Directive 2011/83/EU as regards financial services contracts concluded at a distance and repealing Directive 2002/65/EC.

(ii) Th right to withdraw from contracts concluded at a distance, detailing the procedure for withdrawing from the contract, together with the period and possible costs for the actual provision of the service until withdrawal.

(iii) Provisions on the clarifications that must be provided to consumers, including adequate explanations of the financial services proposed, to allow them to assess whether the proposal is appropriate to their needs and financial situation. Here, additional protection measures are incorporated in online interfaces, such as consumers being able to request and obtain human intervention in the pre-contractual phase, and in some cases, in the post-contractual phase.

In another area, the Create and Grow Act 18/2022 of 28 September promotes electronic invoicing a useful instrument for reducing transaction costs in commercial transactions and that can also serve to facilitate access to information on payment deadlines between companies. This law therefore promoted the widespread adoption of electronic invoicing by amending the Spanish Information Society Promotion Act 56/2007 of 28 December [*Ley de Medidas de Impulso de la Sociedad de la Información*], by extending the obligation to issue and send electronic invoices to all entrepreneurs and professionals in their commercial relations. It also refers to the regulatory development of the minimum interoperability requirements between providers of technological solutions for electronic invoices, the technical and information requirements that the electronic invoice must include and the systems that process it must have to be able to confirm the date of payment and determine companies' average payment periods. However, as of today, passage of the regulatory development is still pending, and it is therefore necessary to focus on this issue as well.

On the RegTech side, there is a trend and a constant challenge in relation to reporting obligations (i.e., the disclosure of regular information to the various supervisory authorities, such as the Bank of Spain, the European Central Bank (ECB), the National Securities Market Commission (CNMV) and the Directorate General of Insurance and Pension Funds (DGS)).

These periodic reporting obligations to supervisors have undergone significant development in recent years, with a notable increase in the volume and complexity of the information that must be disclosed, as it covers each regulatory block applicable to the financial sector (PSD 2, CRD and CRR, MiFID, UCITS, AIFMD, EMIR, SFTR, AML/CFT, Solvency II, etc.) and includes a set of reporting obligations to regulators, either in a harmonised manner at EU level or on a strictly local level.

Finally, the increase in fraud in all sectors, and in particular in the financial sector, is a national security problem that must be resolved at government level, going beyond compliance by institutions with the legislation applicable at any given time, which poses a series of challenges that must be addressed as soon as possible and that go beyond further strengthening the requirements for institutions' digital onboarding procedures. In this regard, there are

regulations that can help to achieve this, but institutions need clarity and legal certainty in their application, for example in IDAS 2 and in the AML/CFT requirements for digital onboarding.

4. Trends and technology in the FinTech ecosystem

Innovation and technology are inherent to the very concept of the FinTech sector and are inseparable from its emergence and success. The following is a list of the technologies that, due to the regulatory momentum they are having in Europe, or because of the great impact or revolution they may bring to this sector, were considered most relevant at the time of drafting this White Paper, as it is very difficult to carry out an in-depth analysis of all the technologies that could affect the sector in the coming years.

1. Digital Identity Solutions

The interaction of individuals on the digital plane leaves traces, a digital trail, which turns people into information sets. These accesses, presence and interactions in the digital world involve entering individualised data that, through an indefinite and constant number of interactions, constitute what that person wants to be in the network, what they want to be known about themselves, how they want to signify their person and how they want to be considered by others. Therefore, Digital Identity can roughly be defined as the translation of physical identity to the digital world, through the identification of a set of attributes (inherent to an individual, accumulated by them based on their own interactions, or assigned on the basis of relationships with third parties) that allows the recognition of that individual by others. However, there is not always a real correlation between the identity of the person and the digital identity that the person wants to create online, and these data may have little or nothing to do with the person who enters them.

Therefore, in the legal sphere, where legal identity confers on its holders the capacity to act and to have rights and obligations, it is essential to be able not only to represent the identity of a person or entity electronically, but also for the attributes associated with that identity to allow for secure authentication and verification of that identity in digital transactions, with the same reliability as in the physical world. Thus, in the digital world it is necessary to be able to identify yourself (say who you are) and authenticate yourself (prove who you are). This verifiable Digital Identity is based on identification solutions (including solutions such as access keys, pins, passwords, etc.) and authentication solutions (such as electronic signatures, use of biometrics, etc.), the implementation of which currently depends on the entities that require this identification and the level of security that is desired or must be offered to users.

In the financial world, where identifying individuals is not only necessary but also mandatory for transactions, the proper management of digital identities has become a crucial element, and many FinTech companies have taken advantage of this reality to generate solutions to meet these requirements.

Undoubtedly, a further step in the evolution of these solutions and their implementation in the FinTech world will be the enactment of the “EIDAS 2” Regulation (Proposal for a Regulation

amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity), which imposes a standardised digital identity management tool in Europe, guaranteeing universal access for individuals and companies to secure and reliable electronic identification and authentication, through a widely adopted technological solution: a digital wallet installed in a mobile phone. The wallet will make it possible to link national identity with other attributes, without having to resort to large portal identification services, and allowing users greater control over their personal information (what information I share and with whom), thus fostering self-sovereign digital identity and decentralised management models.

This regulation aims to respond to the need to provide sufficient digital identity solutions across the EU, to make the system more flexible to support new use cases, and to overcome the stumbling block of current identity management solutions that do not respond effectively to market needs, lack cross-border reach and often have drawbacks from a privacy and data protection point of view.

This solution, which is intended to be adopted by 80% of the citizenry by 2030, will undoubtedly be closely monitored. On the one hand, because the operators that are already working with digital identity solutions will have to be able to align themselves with this wallet and allow its integration into their services (the wallet will be free for citizens, but its integration will undoubtedly imply an economic effort for public and private entities) and furthermore, the intention is that for operators with more than 45 million clients or sectors with a high level of authentication (such as FinTech), its use will be mandatory. The proposal provides existing European digital identity issuers a technical architecture, a reference framework and a common set of standards to be implemented in cooperation with the Member States.

On the other hand, new business opportunities will open up, as it is foreseen that not only will Member States be able to issue the digital identity wallet, but also private companies, albeit with state recognition. Moreover, the proposed regulation extends the list of trust services already included in the eIDAS Regulation (i.e., the provision of electronic archiving services, electronic ledgers and the management of remote electronic signature and seal creation devices).

2. DLT, Blockchains, Tokenisation and Smart Contracts

Distributed ledger technologies are electronic information recording systems that are decentralised and can communicate with each other both publicly and privately. Among them, Blockchain is the most widely used in the financial sector, as it allows data to be organised in chained encrypted blocks that guarantee the immutability, traceability, transparency and integrity of the information contained in them.

Blockchain has enabled the use of Smart Contracts (automated code that runs automatically when certain conditions are met) and the emergence of cryptoassets. The financial sector has found a myriad of uses and applications for this constantly evolving technology.

Smart Contracts are self-contained programs (computer code) whose terms and conditions (the rules of the transaction or operation) are programmed into lines of code. Once established, they are run automatically when certain predefined conditions are met, thus creating security, trust and transparency between the parties involved. They are not the electronic equivalent of a traditional contract, but can be run when certain aspects of the contract are fulfilled. For example, a purchase of airline tickets could be regulated through a traditional contract, and program a Smart Contract so that if the aircraft is delayed for more than "x" amount of time, the equivalent compensation or refund points would be automatically generated in the passenger's airline user account.

Their main benefits include enabling the automation and execution of process like automatic payment and securities settlement while bypassing human intervention. They take away the need for banks and intermediaries to validate and perform agreements and enhance security because, thanks to blockchain, they cannot be tampered with or changed. However, precisely because of this immutability, all possible safeguards must be taken to ensure that the code is correctly programmed. Applications that hold out particular interest for smart contracts in the FinTech sector are being developed for lending and microlending, for instance in such tasks as approval and monitoring; in terms of investing, for buying and selling financial instruments; for automatic savings management; and for international transfers and payment projects.

Given the potential and possibilities of Smart Contracts and Cryptoassets, the EU has sought to establish a regulatory framework for this type of asset: the MiCA Regulation (explained above).

On the level of specific use cases, Blockchain has already proven its worth by speeding up international transfers and lowering costs for payment and remittance services and by simplifying issuing and monitoring investment tokens for crowdfunding and collective financing operations, and for post-trade clearing and settlement. New uses will most assuredly emerge in the near future both in new markets that are operated using these distributed ledger technologies and in gamification, payment services, and more.

As regards digital identity solutions, the proposal for the EIDAS 2 Regulation envisages new trust services delivered through DLTs. Thus, distributed ledgers may be considered qualified when they (i) are created by qualified trust service providers; (ii) are capable of establishing the origin of the data stored in them; (iii) ensure the chronological sequential uniqueness of the stored data; and (iv) record the data in such a way that any subsequent changes to the data are detectable. In this way, qualified e-ledgers will have recognised legal validity and the presumption of uniqueness, authenticity and accuracy in relation to the data they contain. Therefore, new players may arise in the digital identity market associated with distributed systems such as Blockchain.

3. Artificial Intelligence

Artificial Intelligence or AI, as defined by John McCarthy in his 2004 article "What is artificial intelligence?", can be defined as the science and engineering of creating intelligent machines (i.e., machines that mimic human intelligence to perform tasks). Thus, in its most simplified form, it is a field that solves problems by combining large data sets with computer science, and that also extends to the subfields of machine learning and deep learning. These disciplines are therefore based on algorithms that use a set of input data to make predictions or classifications. These systems are traditionally divided into four categories in terms of rationality and thinking versus acting: the human approach (systems that think like humans and systems that act like humans) and the rationality approach (systems that think rationally and systems that act rationally).

In any case, it is a discipline that has been studied and developed since the 1950s, mainly as a result of Alan Turing's work "Computational Machinery and Intelligence", in which he explored whether machines could think. However, it was with last year's emergence of ChatGPT and Generative AI that the world turned its gaze towards this technology, as its potential and capacity to transform reality became more evident than ever.

Generative Artificial Intelligence(GenAI) is a type of artificial intelligence that reuses training data to solve new problems. Using advanced algorithms and neural networks, it analyses vast amounts of data, finds patterns and relationships that would be impossible to detect without deep learning, and is able to produce new data that resembles the examples it was trained on. There are various categories of generative AI models, such as diffusion models, transformer-based models, and Generative Adversarial Networks (GANs). These networks were developed in 2014 and work by training two neural networks competitively, so that the first network (the "generator") creates data samples and adds random noise, and the second network (the "discriminator") tries to distinguish between the real data and fake data produced by the generator. During training, both networks improve continuously.

Another GenAI model, perhaps the most popular today, is the generative pre-trained transformer or GPT model, which is a family of neural network models that use transformer architecture. GPT models are linguistic prediction models that analyse natural language queries (prompts) and predict the best possible answers based on knowledge acquired after training with hundreds of billions of parameters. In a simplified explanation of how it works, the transformer architecture allows models to focus on various parts of the input texts with each processing stage; on the one hand, through an encoder, which separates the words in each input, represents them mathematically, and assigns a weight to each, indicating the relevance of those words within the sentence; and a decoder, which through complex mathematical techniques focuses on various parts of the input, estimates the possible outputs and predicts the most accurate one.

Since their launch, GPT models have found applications in countless industries, including the FinTech sector. This sector was no stranger to AI, as use cases were already being implemented in it, such as for fraud detection and security management algorithms, facial recognition,

customer service chatbots, robo-advisors, etc. But with the appearance of Chat GPT3 and Chat GPT4 in 2023, these use cases have increased exponentially.

There are general use cases that can also be transferred to the FinTech sector, such as improving online customer service, generating product descriptions and recommendations, creating content quickly and efficiently; and others that are more specific to the sector, such as the creation of systems or programmes focused on financial education (learning about savings, budgets, how markets work, etc.); in the field of financial advice (more focused on the recommendation or use of information by advisors than by the end consumer, at least for now), facilitating financial transactions, helping, for example, to reduce the digital divide for users for whom technology is less intuitive or generates more rejection, etc.

Despite the convulsive general panorama regarding AI, which has detractors and supporters alike, and the controversy between self-regulation models, the EU's governing bodies have taken a step forward with the Proposal for an AI Regulation that will undoubtedly have a direct impact on the evolution of this technology in the coming years, even at a global level if, finally (as intended) the premises established by the Regulation end up being assimilated in the legislation of third countries.

The proposed regulation was passed by the European Parliament on 13 March of this year and defines AI systems as software that uses one or more of the techniques and strategies envisaged by the standard to generate, for a given set of human-defined objectives, output information such as content, predictions, recommendations or decisions that influence the environments with which it interacts.

The aim of the regulation is to establish a legal framework for using AI based on transparency, explainability and accountability, while, in the Commission's words, "encouraging innovation" and protecting the fundamental rights and security of citizens. The scope of the standard includes the commissioning, use and marketing of AI systems and, as mentioned, it is controversial to say the least, as many see it as a check on Europe's competitiveness in the technology race. This is because it categorises AI systems according to risk levels, and establishes a higher number of obligations and burdens for those at the higher levels, while other countries are opting for much softer models of self-regulation.

AI-enabled manipulation techniques can be used to persuade people to adopt unwanted behaviours or to trick them into making decisions in a way that undermines and damages their autonomy, decision-making power and ability to make free choices. They are particularly dangerous and therefore commissioning, using and marketing certain AI systems for the purpose or with the effect of substantially altering human behaviour, with the consequent likelihood of significant harm (in particular harm with sufficiently serious adverse effects on physical or mental health or financial interests), should be prohibited.

In relation to services specific to the financial sector, AI systems that are used to assess the credit rating or creditworthiness of natural persons are classified as high risk. This is because these systems have the capacity to determine who can access financial resources or essential services (housing, electricity, telecommunications, etc.) and, therefore, if poorly configured, they could be discriminatory and/or perpetuate historical patterns of discrimination (on grounds of racial or ethnic origin, gender, disability, age or sexual orientation, or generate new forms of discrimination).

This classification does not apply to AI systems for fraud detection in the provision of financial services and, for prudential purposes, for calculating capital requirements for credit institutions and insurance undertakings.

In any case, there is no doubt that AI has associated risks, both from the point of view of acquiring solutions (models that are unbiased, have the necessary security, manage and mitigate their risks, are trusted providers, etc.), and their development (risks of explainability, data quality, transparency, governance, auditing, compliance, etc.). Likewise, from the point of view of application to businesses themselves (the impact of decisions taken using AI, their reliability, their interrelation with physical reality), FinTech companies cannot be exempt from their risks, even more so given the greater their level of involvement in the use of these solutions.

In the future, many more uses and developments can be expected than have been seen so far, as this technology exponentially increases capabilities as broad as prediction, optimisation of operations, resource allocation and personalisation in the provision of services, improved risk and fraud management, etc. The question remains as to whether competition will also come from the EU, or whether we will have the same problems of technological dependence that we are experiencing in other areas, and that the proliferation of more and more legislation of direct application in the EU does not seem to be solving.

4. SaaS and Cloud Computing. Open Banking APIs. Cybersecurity and cyber resilience.

Although software and the Cloud are perhaps the most mature technologies, they cannot be ignored in this chapter, precisely because of the proliferation and widespread adoption of Cloud solutions, and in particular Software as a Service (SaaS).

Cloud solutions allow access to computing resources and information storage through the internet, which means flexibility, scalability and lower costs. When these solutions are SaaS solutions, the application and interface of the solution is directly usable by the end users through the internet, without the need for local installation and without prior IT knowledge, democratising the use of tools and instruments of all kinds with an infinite number of applications, from financial management (platforms for accounting, invoicing, expense

management and payroll), customer relationship management (CRM), data analysis, cybersecurity, etc.

Although the cloud is a clear and exponentially adopted trend, it is also necessary to bear in mind that this type of solution tends to generate technological dependence on dominant providers in the market, which impose contracting terms and service level agreements (SLAs) that do not always meet the needs of the business, which generate situations of lack of control and risk for business continuity if the existence (or lack of existence) of alternative providers has not been considered, and that can sometimes entail higher costs than the traditional solution for receiving those storage aspects or additional functionalities. Therefore, the leap to the cloud model must be reasoned and strategic, and carried out through a coordinated analysis between the business, legal and cybersecurity areas.

At the regulatory level, the changes with the greatest impact on these types of solutions will come from the Digital Markets Regulation (Regulation 2022/1925), which provides for mechanisms to reduce the impact of large wholesale platforms on businesses and individuals to ensure the accessibility and availability of large digital services; and the Data Governance Act (Regulation 2022/868) and the Data Act (Regulation 2023/2854), which respectively regulate the processes and structures that facilitate the voluntary exchange of data, and the creation of value from data on certain terms.

Moreover, for the FinTech sector, the cybersecurity and operational resilience requirements imposed by the "DORA Regulation" will be particularly relevant, which aims to promote financial system resilience (i.e., to ensure that the financial system is able to withstand, respond to and recover from any type of disruption and ICT-related threat. Operational resilience is seen as a necessity because, as the implementation and use of these technologies advances, the sector also becomes more vulnerable to the technological dependencies and risks traditionally associated with information security.

This Regulation harmonises the rules on operational resilience applicable to various types of financial institutions and extends their application to third-party ICT service providers providing services to those institutions. The areas regulated by DORA are:

a) ICT risk management: it establishes principles and requirements on ICT risk management.

b) Third-party ICT risk management: third-party risk mitigation, including through key contractual clauses.

c) Digital operational resilience testing: a testing programme that is applied proportionally, depending on the entity and its size and capabilities.

d) ICT-related incidents: incident management, notification and reporting of significant cyber threats to the competent authorities

e) Cyber threat intelligence and information exchange

f) Supervision of external ICT providers designated by the supervisory authorities as critical for the financial sector.

Holding or adapting to certifications such as ISO 27001 or, for Spain, the National Security Scheme [*Esquema Nacional de Seguridad*], will make it easier for companies, through slight changes, to assume the requirements of the new regulation, since these certifications have inspired the bases of the standard. Adoption will be more complex for the vast majority of SMEs that, while not yet familiar with the concept of cybersecurity, are suppliers to the financial sector and have not assessed the potential application of these requirements.

Without prejudice to the aspects of the regulation that require transposition, the relevant EU Supervisory Authorities have been entrusted with developing the technical standards that institutions within the scope of application will have to comply with, and the respective national competent authorities will supervise their compliance. In any case, and despite its broad scope, DORA provides elements of proportionality, depending on the size and risk profile of the institutions, and the nature, scale and complexity of the services, activities and operations, among other variables.

Within this range of software solutions, Application Programming Interfaces ("APIs") are also increasingly gaining importance, which could be defined as bridges connecting systems and applications allowing data sharing between different agents, and specifically for the financial sector, Open Banking APIs.

These Open Banking APIs enable access to account, payment and transaction information quickly and enhance the customer experience, thanks to their ability to enable personalisation of services quickly. Thus, they are widely used by account information service providers (AISPs), which use these APIs to access banks to read account transaction data; or payment initiation service providers (PISPs), which through APIs can initiate payments from their customer' bank accounts.

A wide array of technological solutions can be expected for the financial sector, along with an increase in payment services and financing models, greater competition in the market, and the orientation of business models towards the personalisation of services, reaching new audiences, automating processes that do not provide added value, and in which the needs, behaviour and financial health of clients are better understood. At the same time, cybersecurity, data management, data analytics and asset risk analysis solutions will grow, all of which will evolve in parallel with these new technologies and realities, and will complement the portfolio of services and products for the FinTech sector.

5. Conclusions

1. In the world of finance, proper management of digital identities has become a crucial element and will be key to the development of business models in the coming years, with the digital wallet proposed by the Eidas 2 Regulation as a starting point for the integration and sharing of information while respecting user sovereignty.

2. Blockchain technology and Smart Contracts will continue to be useful for developing business models where transparency, automation and traceability are particularly relevant. The markets operated with these technologies and the tokenisation of assets will contribute to the democratisation of investments and, together with the supervisory authorities, regulatory developments will arise that will seek to promote DLT-based success stories.

3. AI will be a star technology in many use cases transferable to the FinTech sector, some more general (customer service and content creation), and others more specific such as financial education to bridge the digital divide or financial advice, although there is still a long way to go in terms of governance and management of the associated risks, which could have a major impact if appropriate mitigating measures are not taken. The success of the new IA Regulation is uncertain, but it will in any case promote the industry's move towards a culture of risk measurement and compliance that is also linked to the technology itself, not just to data or cybersecurity.

4. Cloud adoption is becoming increasingly widespread, due to the multiple advantages it can bring in terms of agility, ease of implementation and decentralisation/delocalisation. However, this adoption needs to be managed through a holistic strategy that also takes into account factors such as vendor lock-in, interoperability, lack of vendor control, etc., to ensure not only the performance of the solution, but also regulatory compliance, which will now be particularly demanding in terms of operational resilience.

5. A wide range of technological solutions for the financial sector should be expected, with an increase in disruptive payment services and new financing models, increased competition in the market, and greater personalisation of products and services, reaching new audiences, automating processes that do not add value, and better understanding of clients' needs, behaviour and financial health. Cybersecurity, data management, data analytics and asset risk analytics solutions will also grow, complementing the existing portfolio of services and products for the FinTech sector.

5. IMPROVEMENT MEASURES AND RECOMMENDATIONS

This last section of the White Paper brings together the challenges, conclusions, claims, demands and needs of the FinTech ecosystem that have been presented throughout its chapters. They have been categorised under "Urgent Measures", "Important Measures" and "Necessary Measures", and represent a summary of what the various FinTech sectors are calling for from a shared perspective.

4 URGENT MEASURES FOR THE SECTOR

1. Putting Spain at the forefront of regulatory innovation in the EU

At present, Spain is one of the EU countries that are late in transposing directives. As a result, there is a cost of uncertainty and damage to companies that are losing competitive advantages compared to companies from other EU countries that can operate in the national territory with fewer restrictions through a EU passport. This damage also extends to their clients and to their investors, who are seeing the value of their investments diminish as a result.

The rapid transposition and application of EU directives in other Member States creates a clear competitive advantage for companies from Spain's neighbouring countries and a clear situation of vulnerability for Spanish companies. First, countries that transpose their legislation earlier make it necessary for their companies to keep a close eye on the regulatory pace to comply in a timely manner and leave companies that have operated in the shadows of regulation behind, thereby reinforcing best practices. Second, they force national regulators and supervisors to be demanding with legislators and to ask for cooperation and collaboration from industry players to foster regulatory development in an effective way and to prevent political barriers and obstacles. Third, it brings legal certainty to companies and strengthens clients' confidence in them, so they can get investors who help them to make the leap to other Member States with larger markets. Fourth and lastly, the country's reputation is marked by indecision and legal uncertainty that prevents the attraction of talent, investment and resources to Spanish companies.

In addition to the transposition of directives, legislation that is transitional or complementary to EU directives and regulations is often necessary. All that has been said above in relation to the transposition of directives is equally applicable to that legislation.

AEFI recommends increasing regulatory efficiency in the financial and related areas sufficiently to put Spain at the forefront of regulation in the EU, either by improving the efficiency of current resources or by increasing resources for the regulator and oversight authorities and providing them with the necessary tools. They should also benefit from and support industry players, in the case of FinTechs, the AEFI.

2. Mechanisms and protocols to ensure the principle of proportionality and avoid discrimination. In Spain there are rules and laws that were passed and enacted many years ago, when certain industry players, such as E-Money Institutions, Payment Institutions, TPPs, financial advisory firms and others did not exist and, in many cases, their creation was not even envisaged. However, as has been seen throughout this paper, these new entities have been given a charter to develop their business model and are adequately supervised.

However, in many situations, their activity and access to market infrastructures is limited by "fossil" regulations that are not only meaningless at present, but also contradictory to EU legislation.

For these reasons, the AEFI proposes a thorough review of all Spanish legislation that limits the activities of this type of newly created entities, mainly FinTechs for which they are generally authorised, and the application of the principle of proportionality in its review. First, the use of technology and the optimisation of resources needs to be recognised by law. Second, it should be recognised that the authorisations granted by the oversight authority should not have the same requirements, depending on the business model and its purposes. Third, the arrival and the product catalogue is not the same for all the players in the industry. And fourth, how customer's money is used is not the same for all the institutions.

Having recognised all of this, the terms and wording in rules and regulations that exclude new entrants must be identified. In particular, the Draft Bill creating the Independent Administrative Authority for the Defence of Financial Clients for the out-of-court settlement of disputes between financial institutions and their clients opts for the term "financial institutions" and excludes e-money institutions and payment institutions from forming part of the partner institutions of public bodies and does not guarantee citizens access to a greater number of institutions that can provide them services. For example, this includes payments to public bodies such as the social security administration, municipalities, etc., and capital contributions to incorporate companies and capital increases, from accounts provided by authorised e-money institutions or payment institutions.

Each law must stipulate that any entity with the means to provide the service in question may do so, regardless of whether they are credit, payment, e-money or other institutions, to increase legal certainty for these institutions and their clients. In addition, this will increase the range of operators that can assist in the payment of benefits and thus gives citizens access to a larger number of entities that can provide these services instead of relying exclusively on credit institutions, which helps to reduce the risk of financial exclusion of part of the population.

3. Simplification of licensing and authorisation processes.

Although the ranking is not as clear as in the case of late transpositions, Spain is one of the EU countries where obtaining licences, modifying them, extending them and obtaining authorisations is far from being at the top within the EU.

While it is true that these processes must be rigorous, this rigour need not be incompatible with greater efficiency that will streamline them. At present, the slowness of these processes is leading Spanish companies to flee to other Member States with more agile processes for obtaining licences and authorisations and reducing the valuations of entities that choose to remain in Spain. This is due not only to the uncertainty that delays in obtaining, extending or modifying licences create for the activity of the supervised parties, but also to the slowness of the approval process for acquiring significant shareholdings, which hinder the corporate operations that ultimately allow the growth of the companies in the sector.

It is considered particularly important that where the possibility of proportionate application is indicated in the legislation, supervisors must be provided with effective mechanisms to apply this proportionality: for example, in the fit and proper criteria for participation and management of supervised entities.

If the licensing and authorisation process were quicker and faster, the company could begin to launch its products and services on the market and start earning revenues, which would allow it to transmit security to its clients and investors.

To make these processes easier for entrepreneurs to cope with and for the oversight authority to understand and convey their requirements, the AEFI proposes that communication channels should be much more fluid, natural and effective, clear guidelines on processes and requirements should be provided, and response times should be substantially shortened. In addition, the semantics of some processes can hinder the process, and it is therefore proposed that semantic interoperability and a precise, harmonised and common definition in the field of financial regulation should be achieved both in Spain and in Europe, so as not to give rise to interpretative or legislative ambiguity.

4. Creation of a Twin-Peaks supervisory model.

Currently, financial supervision is mainly entrusted to two institutions: the Bank of Spain and the National Securities Market Commission (CNMV). Their main mission is prudential supervision and supervision of conduct. The first is charged with ensuring the stability of the financial system, the development of markets and the soundness of financial institutions. In other words, it involves prudential supervision to ensure that none of the supervised entities are engaging in activities that are not absolutely contemplated. The second is responsible for the supervision and inspection of the Spanish securities markets and the activity of its participants, ensuring the transparency of the securities markets, the correct formation of prices and the protection of investors.

In certain respects, particularly as regards innovation and competitiveness of financial services, there may be a potential conflict of interest between prudential supervision and supervision of conduct, where the interests associated with the stability of the financial system may naturally prevail, to the detriment of innovation and competitiveness.

And that is why the AEFI proposes the creation of this new supervisory model, commonly known as the Twin-Peaks model, which involves separating prudential supervision from supervision of conduct, allowing for more specialised supervision, without jeopardising innovation and competition, which is ultimately the guarantee of a solid financial system in the long term.

In a model in which financial industry startups can develop their innovative projects hand in hand with the oversight authority, without the need for a sandbox, it would have a siren-call effect for all institutions to create solutions for the financial system.

One model that could serve as inspiration in Spain is the British model, which separated the Financial Services Authority into the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). This model enabled the UK to lead innovation and competition in financial services in the recent past, creating a powerful tractor effect for financial firms in general, and FinTech in particular, from around the world. This model requires coordination and **alignment between the various supervisors, including those mentioned above, the AML authority, the consumer defence authority and others.**

The optimal regulatory moment to create this model would have been through the Bill creating the Independent Authority for the Defence of Financial Customers for the out-of-court resolution of conflicts between financial institutions and their clients. However, while this bill is in very advanced stages, it is certainly possible to start a new path to lay the first stones for this new form of supervision. The first step should be to launch a prior public consultation to listen to the voices of the entire financial industry and to assess the proposals of the various players.

3 IMPORTANT MEASURES

1. Establishment of discussion forums with balanced representation of all players in the financial industry.

Given the heavy regulatory burden of the financial industry and the fact that it is responsible for organising, structuring and guaranteeing many relationships between FinTechs and traditional entities, it would be very positive if discussion forums on the rules governing these relationships were established with several objectives in mind:

a. To understand each player's business model and circumstances in depth.
b. To analyse in detail the characteristics of each of the parties and understand their nature.
c. To seek mutually beneficial solutions that will not hinder or impede each other's work and development.

Balanced representation of each of the sectors affected by the regulation or situation to be analysed is essential for the success of this forum.

The regulator and the oversight authority should be part of these forums to understand the issues affecting the sectors first hand and to lead the discussions.

In addition, they could have a second function such as finding alternatives ways for small businesses to act as partners, as they need to comply with requirements but cannot afford the investment involved.

Therefore, the AEFI proposes creating these discussion forums as a means of cooperation and working in a balanced, fair and representative manner.

2. Resolving the historical issues regarding the Financial Sandbox.

The AEFI was one of the main promoters of the Sandbox, and after its approval and the implementation of six cohorts, the association proposes the following measures to improve it:

a. Allocating a budget and distributing funds among the competent authorities, with the Treasury being the main recipient due to its organisational role.
b. Prior advice to institutionalise the preliminary advice for promoters and assessment of project maturity, which will contribute to the quality of the selected projects and reduce their risk of failure.
c. Slots that are always open and elimination of the cohort system to allow promoters to minimise the impact of the Sandbox on their companies.
d. Expansion of the authorities' teams thanks to the budget allocation.
e. Leaving the Sandbox with access to public funding, not necessarily through grants, but through public loans.

3. Creation of a positive credit bureau for consultation.

For B2C businesses it is essential to know the credit history of their clients to limit risks, and creating a positive credit bureau would allow consultation and reporting of each user's payment history, determination of over-indebtedness situations, responsible lending and real-time response and assessment of applicants. This would benefit the whole sector and the market.

The regulatory momentum has arrived thanks to the transposition of the Consumer Credit Directive, which Member States have until 20 November 2025 to transpose and must be in force from 20 November 2026. Therefore, Spain has sufficient time to design and implement the project.

Furthermore, this project would oblige credit industry players to work collaboratively and cooperatively for the good of clients and the market.

Therefore, the AEFI proposes to start this project in collaboration with the whole industry, taking advantage of the current regulatory and legislative momentum in Spain and the EU.

2 NECESSARY MEASURES

1. Improve financial education.

Many problems of over-indebtedness, purchase of high-risk products, lack of knowledge when filing tax returns, inability to save, and poor wealth management could be solved if an educational programme was established from an early age in schools to educate future generations from the perspective of responsible financial management and promote an understanding of the risks and benefits.

According to the latest PISA report, Spanish students are below the OECD average in financial literacy. A course should be created by the Ministry of Education in collaboration with the Ministry of Economy and the Ministry of Digital Transformation in which concepts and educational material on economics and financial management should be taught in compulsory secondary education. It should also include clear training on the threats and risks involved in social media advertising and content creators without financial knowledge or experience.

More financial education would contribute to having adults who are better prepared, more risk-aware and more responsible with their finances, and encourage savings and individual responsibility to manage their finances in an orderly and farsighted manner.

2. Financial inclusion: analysis and amendment of the Spanish Vulnerable Consumers and Users Protection Act 4/2022 [*Ley sobre la protección de los consumidores y usuarios antes situaciones de vulnerabilidad social y económica*].

It would be timely to review the benefits and updates that the Vulnerable Consumers and Users Protection Act has brought since it was passed in February 2022. This law establishes a plan to guarantee essential services to people at risk of exclusion or with very limited access to financial services. Almost all the proposals require investment and resources to be allocated by financial institutions to inefficient solutions, such as increasing their support staff.

However, FinTechs could be great partners in providing effective, fast and secure solutions to ensure access to basic financial services for these people. This collaboration could take the form of agreements with sectors outside the financial industry, such as supermarkets, tobacconists and municipalities in rural and hard-to-reach areas. Technology would make it possible to carry out ordinary, everyday and simple transactions in real time, and the training of the employee (a cashier or clerk) would not be a barrier for the participating business partners.

The AEFI proposes to open a dialogue to establish a common ten commandments agreed with all the players, from associations of financial users to credit institutions, to address this social problem and for the financial industry to be the forerunner in improving the lives of citizens.

WHITE PAPER ON

FINTECH2.0

ASOCIACIÓN ESPAÑOLA FINTECH e INSURTECH

CREATING A FAVOURABLE ENVIRONMENT FOR THE DEVELOPMENT OF FINTECH AND INSURTECH COMPANIES IN SPAIN

December 2024 - Madrid, Spain

www.asociacionfintech.es