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Real estate investments and housing market: a persistent crisis in the European Union?

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ABSTRACT

The present work is devoted to the analysis of the real estate investments in the European Union context as a factor of making vulnerable the right to housing. However, in order to set the stage for the legal debate, we delve into a property market comparison between Spain and Sweden making explicit the dependent variables for the speculative model followed by the real estate investment trusts and how progressive taxes may discourage risky portfolios in ownership. The aim of our dissertation is an alternative proposition to avoid the financialisation of the property market that has permitted in EU the formation of dwelling stocks without residential immediate purposes, but exorbitant rental income and capital gains for the REITs. Using official data, statistics and other documents, we show how REITs can oscillate their supply between lettings and sales of assets relying on the dynamics of the aggregate demand, unemployment rates and the concentration of wealth. For the Swedish reality, we found that similar practices are discouraged by municipalities and the income tax system.

Keywords: housing prices, real estate investments, progressive taxes, right to housing, European Union.

RESUMEN

El presente trabajo hace un análisis de las inversiones inmobiliarias en el contexto de la Unión Europea como un factor que ha contribuido para la vulneración del derecho a la vivienda. Sin embargo, el debate legal es antecedido por la comparación con el mercado de propiedades español y sueco. Explicitamos cuales son las variables dependientes para el modelo especulativo de estas sociedades de inversiones inmobiliarias y cómo los impuestos progresivos pueden desestimular tales carteras de riesgo. El objetivo de nuestra investigación es una propuesta alternativa para evitar la transformación del mercado inmobiliario en un sector financiero que ha permitido en la UE la formación de acciones de vivienda sin fines residenciales inmediatos, pero rentabilidad exorbitante y ganancias de capital de alquileres y venta de inmuebles. Utilizando datos oficiales, estadísticas y otros documentos, mostramos cómo las sociedades anónimas cotizadas de inversiones

inmobiliarias pueden oscilar su tipo de oferta entre alquilar y vender sus activos basándose en la dinámica de la demanda agregada, las tasas de desempleo y la concentración de la riqueza. Para la realidad sueca, encontramos que las municipalidades y el sistema de impuesto a las ganancias no fomentan prácticas similares.

Palabras clave: precios de la vivienda, sociedades anónimas cotizadas de inversiones inmobiliarias, impuestos progresivos, derecho a la vivienda, Unión Europea.

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INTRODUCTION. THE PREMISES FOR THE DEBATE

Three dependent variables for the REITs' investments

In order to respond to the academic inquiry if the real estate investments may cause a persistent economic crisis in the European Union, we elaborated a long argument defending the right to housing. However, before getting into the legal debate, it is necessary to discern the differences between the conventional property market linked to residents and the speculative portfolios of the REITs' investments. As we selected the Spanish reality as one of the countries that suffered more from the effects of the 2008 global crisis, it was necessary to contrast the Spanish distress with another European Union country. Sweden experienced a banking crisis during the 1990s like the one in Spain since the housing system was strongly affected by de-regulation of the social welfare state in property financialisation with the expansion of credit for mortgages, high level of indebtedness for families, elevated interest rates and increasing marginal returns for the REITs' investors through an ascending real margin discounted the inflation. The first chapter of our work is devoted to an analysis of how the aggregate demand, unemployment rates and the concentration of income are dependent variables for the REITs' investments.

Progressive taxes on property system

As a consequence of reforms during the period of torment in the Swedish economy, we could observe that the tax system was indispensable to re-direct the increasing profits in the real estate market through rental income and capital gains to public policies. The efforts to limit legally credit expansion, lower the interest rates and monitor the activities of the private banks were important tools, however, high level of taxes on speculative property market galvanised the expectation of recovery into reality. Although Spain has also a progressive system of taxes, the investments in REITs in the country have absolute incentives as we will mention in one of the sections. In the second chapter, other aspect that may sound interesting about progressive taxes and property is that Swedish municipalities have an important role and protagonism involving taxes, social housing and cooperatives. The combination of the reflection on the finances of the REITs with the fiscal policies cleanses the terrain for a legal debate.

Human rights issues such as housing, socioeconomic development with the eradication of poverty and dignity depend, for the purposes of our dissertation, much on how the wealth is distributed in the European Union.

The right to housing as an alternative for critical times

In the third chapter, our defence of the right to housing may proportionate the possibilities for a socioeconomic alternative to avoid the expansion of the speculative real estate market. Legal arguments, the role of international organisations and judgments from different courts are some of the precedents for our formulation. Banking crises and their respective solutions, beyond the notion of lack of transparency in REITs, for example, are some of the technical mechanisms to discourage speculative activities involving a fundamental right such as housing.

Methodology

Our methodology consisted in the use of data and statistics to contextualise the debate on the speculative property system making more evident which dependent variables are determinant instead of making an analysis of the housing supply-demand dynamics. The comparison of the Spanish and Swedish tax systems is another tool to observe whether the REITs responded or not to the market incentives – low or absent taxes, elevated tax margins for those who earn little in the property market etc. Since the economic and social analyses for both countries are important to make the observations about the legal issue involving housing in the EU, the comparative method made more evident how inequality operates in Spain through speculative property market.

CHAPTER I. THREE DEPENDENT VARIABLES FOR THE HOUSING PRICES

1. First dependent variable for REITs: the expansion of the aggregate demand

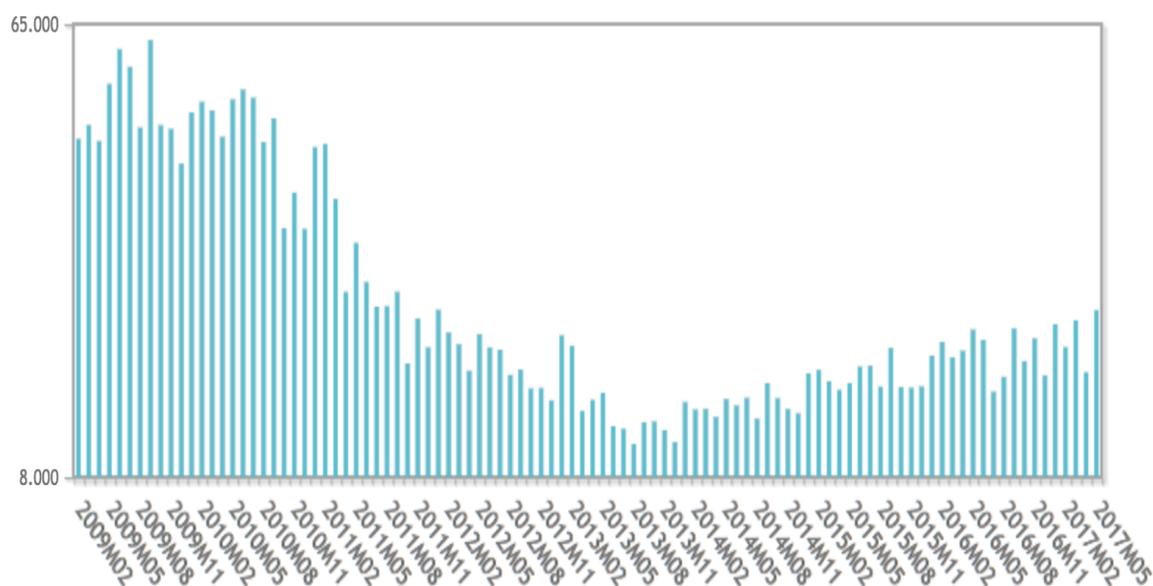
Mortgage, rents and a new market in expansion

There are basically two forms families or individuals use to access a residential unit. One of them is the rental market and the other one buying the property. For the working class, there are historical issues that still impede people with low salaries to choose comfortably one or another. This is why the expansion of the aggregate demand through credit is a crucial element to give low income workers the opportunity to satisfy their basic needs when the amount of capital demanded from them is superior than their real material conditions. With the help of a mortgage system, for example, people have more possibilities to finance a property or borrow money for cash deposit in rental contracts. As aggregate demand, we understand the sum of all goods and services produced in an economy at a given time and expressed as the total amount of money necessary for the transactions. REITs (Real Estate Investments Trusts) are a system of mutual funds with large and small investors that enables basically three types of investments. The first one is called equity REIT in which the investors guarantee revenues through rental contracts in commercial and residential properties. The second one is known as mortgage REIT that may allow investors to own property mortgages, purchase mortgages from lenders and loan money for mortgages. The marginal returns come from rental contracts and interest rates. Finally, the third version classified as hybrid REITs that are a combination of the two previous models of investments.

After the 2008 economic global crisis, credit was reduced in Spain. As we see in the Figure 1, the number of housing units financed by mortgages decreased in considerable volume till November 2013. The following period showed a slight recovery, but not proportional to the previous years. The statistics also reveals how banks in the country began to put in practice more strict protocols before lending money for their clients. In that sense, the lack of confidence operating in the Spanish society reflected the high rates of unemployment and the impoverishment of the working class observed in their descending income power. When the same period is compared from 2012 onwards in

Sweden with the figures available in the Table 1, the average for debt and market values are still higher in Spain. However, the disposable income household follows the same trend of prices and indebtedness in the Swedish economy creating a real comfort for the working class.

Figure 1. Number of housing units financed by mortgages in Spain. INE. 2009-2017.



Source: INE. Retrieved from http://www.ine.es/prensa/h_prensa.htm

Table 1. Average debt, market values and income in previous samples.

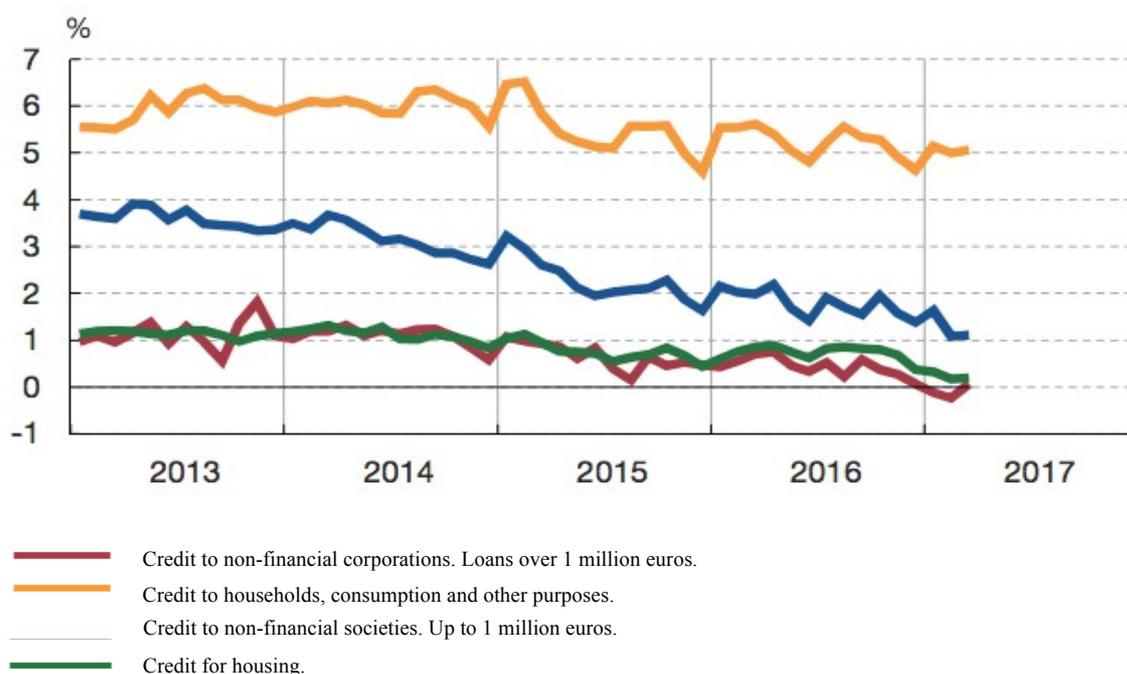
	2012	2013	2014	2015	2016
Average debt (SEK)	1,659,422	1,703,157	1,893,998	2,071,351	2,122,680
Average market value of home (SEK)	2,221,049	2,332,598	2,519,224	2,864,292	3,052,181
Average disposable income household (SEK/month)	39,421	38,634	39,919	41,750	42,893

Source: Finansinspektionen. The Swedish Mortgage Market. Retrieved from http://www.fi.se/contentassets/2a4665e04627420880e4af1c771a11fe/bolan_2017_eng.pdf

The expansion of credit, here as a component of the aggregate demand, in Spain and Sweden may be analysed observing the real interest rates. The Figures 2 and 3 show the

trends for both countries and how the Spanish rates are still elevated for the European standards. In a long-term period between 2000-2008, the case of the Scandinavian economy reveals real interest rates close to zero per cent even after the 2008 global crisis events.

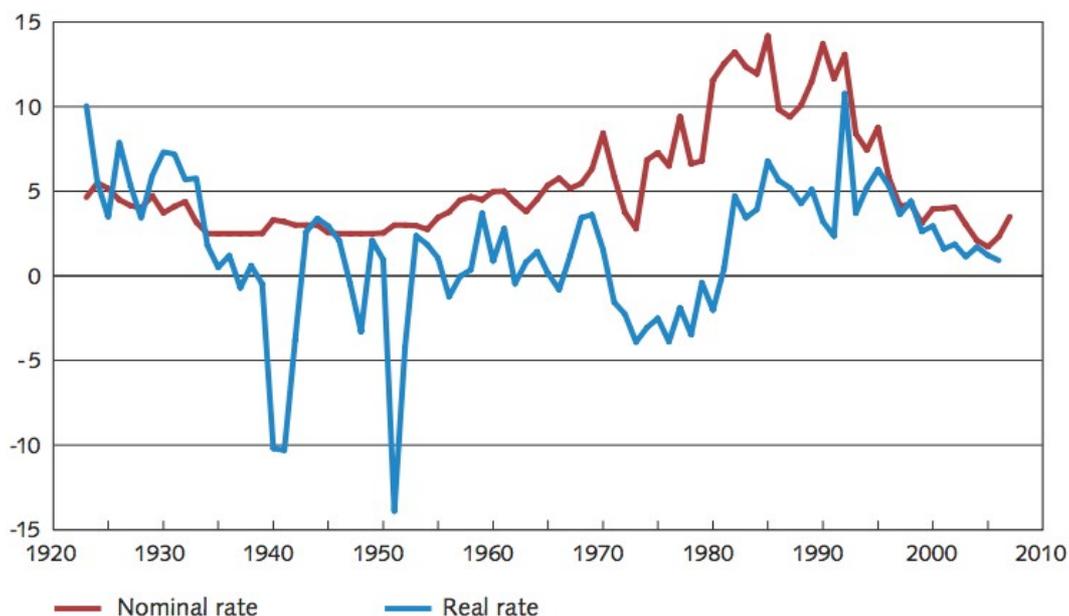
Figure 2. Real interest rate in Spain, 2012-2017.



Source: Banco de España. Informe Anual, 2016. Retrieved from: <https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesAnuales/InformesAnuales/16/Fich/inf2016.pdf>

Because of the economic crisis since 2008, the credit restriction and the reduction of the aggregate demand in Spain have affected the prices in property market. Transference of ownership through housing sales diminished drastically up to the point the Spanish real estate equities were lowered by the decrease of the demand. However, the level of prices in the rental market experienced the opposite for Spain. The following Figures 4 and 5, respectively, the property and rent price indexes, make evident that behaviour just described.

Figure 3. Nominal and real short-term rates in Sweden, 1923–2008, per cent.



Source: Sveriges Riksbank. Retrieved from http://www.riksbank.se/Upload/Dokument_riksbank/Kat_publicerat/Ekonomiska%20kommentarer/2008/ek_kom_no5_eng.pdf

We can list two sets of countries referring to property values and rents. The first one is led by what we call the “Spanish effect”, which is a relation between the fall of property prices and the rise of rents in a long-term. Spain, Greece, Italy and Portugal are very eloquent study cases when we contrast the Figures 4 and 5. The other group shows prices growing up for both property equities and rents. For Sweden and Norway, the property price index has grown aggressively in real values, however the Finnish case is considered an outlier. In that country, ownership prices are relatively stable for the time series 2006-2016 and the same happened to France as the Figure 4 shows. The French level of rents increased enormously for the same period though. The prices of rents for Iceland, Ireland, France and Germany have grown since 2006. In general, the effects of the 2008 crisis did not destabilise the investments of real estate firms in rental market, but sales of property have been affected according to the aggregate demand.

As in the Figure 4, the decrease in property prices has meant a descending quantity of money spent in each unit for ownership, but also the restrictive policies governments and banks applied to limit the expansion of the credit through mortgages.

Figure 4. Property Price Index in Real Values. OECD. 2006-2016.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Country											
Austria	89,0	90,9	89,9	93,0	100,0	103,0	107,9	111,1	112,6	116,5	124,9
Belgium	93,1	97,5	98,7	98,6	100,0	101,0	101,2	101,5	100,2	101,5	102,6
Canada	84,1	92,4	96,0	93,1	100,0	102,8	106,3	107,6	110,8	115,3	125,3
Czech Republic	..	..	107,3	102,3	100,0	98,7	95,1	94,4	96,1	99,8	106,3
Denmark	123,3	124,4	114,7	99,7	100,0	96,1	91,3	94,1	96,9	103,0	107,3
Estonia	166,8	187,1	156,3	98,4	100,0	102,8	106,2	114,4	129,5	138,3	143,5
Finland	94,6	98,0	95,4	93,4	100,0	99,5	98,4	97,6	95,7	94,6	94,8
France	99,7	104,0	102,2	96,2	100,0	104,1	102,1	99,2	97,4	95,3	96,2
Germany	103,9	100,0	99,7	100,9	100,0	101,4	103,4	105,5	107,8	112,2	118,2
Greece	114,7	117,5	114,3	108,4	100,0	92,4	81,1	73,6	69,6	67,1	65,7
Hungary	..	120,4	116,7	106,3	100,0	93,1	84,4	80,8	83,4	93,0	102,1
Iceland	138,4	144,5	133,8	105,1	100,0	101,2	102,3	104,9	110,5	118,6	129,3
Ireland	137,4	143,2	130,6	113,1	100,0	83,3	70,4	71,3	82,0	88,8	93,4
Italy	104,5	107,5	106,0	102,5	100,0	97,9	92,7	86,3	82,3	80,2	79,6
Latvia	154,5	188,5	168,4	109,5	100,0	104,1	103,6	110,4	115,1	112,0	120,4
Luxembourg	..	96,1	96,6	95,9	100,0	100,4	102,8	105,7	109,6	116,6	123,5
Netherlands	103,9	106,4	106,5	102,8	100,0	96,0	88,3	81,1	81,1	83,8	87,5
Norway	89,3	99,3	94,9	94,4	100,0	106,8	112,9	115,1	115,6	119,9	124,3
Poland	..	..	..	..	100,0	95,4	89,1	84,8	85,8	88,1	90,2
Portugal	111,6	108,5	98,9	101,0	100,0	93,5	85,3	83,1	86,3	88,3	93,6
Slovak Republic	85,0	106,8	120,7	105,2	100,0	94,8	89,2	88,8	90,1	95,1	101,8
Slovenia	..	111,4	112,9	101,3	100,0	100,9	92,7	87,1	81,4	82,6	85,8
Spain	108,9	115,7	110,2	103,8	100,0	90,2	75,1	67,5	67,6	70,2	73,6
Sweden	85,8	95,2	93,3	94,0	100,0	100,8	101,5	106,3	115,0	128,8	138,6
Switzerland	91,1	95,1	96,9	97,8	100,0	106,3	112,7	116,8	120,2	124,3	126,9
United Kingdom	108,0	116,4	107,1	96,6	100,0	95,2	93,7	94,0	99,8	105,4	112,0
United States	127,7	124,7	111,2	104,8	100,0	93,6	94,6	100,1	103,8	109,2	114,6
Euro Area	102,6	104,8	103,8	100,9	100,0	98,6	95,2	92,4	92,4	93,6	96,3

Source: OECD. Retrieved from http://stats.oecd.org/index.aspx?r=189142&erroCode=403&lastaction=login_submit#

Therefore, from 2008 to 2015, the property prices were knocked down and even with their small positive variation they are still lower compared to 2009-2010 period in the Euro area. The cases of those economies suffering from the “Spanish effect” still show us the most profitable market is the rental one, although property prices recovered a little in the past two years. These patterns unravel two different dynamics. The first one

has to do with the marginal returns in each business, i.e., rental and sale property markets. The other one with the nature of the good, that is to say, the non-perishable aspect of property depreciation as a devaluating factor.

Figure 5. Rent Price Index in Real Values. OECD. 2006-2016.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Country											
Austria	89,0	90,7	91,9	96,2	100,0	103,3	107,8	111,2	115,6	120,7	124,4
Belgium	93,1	94,9	96,8	98,8	100,0	101,2	102,7	104,1	106,3	107,3	108,3
Canada	94,2	95,7	97,3	98,8	100,0	101,1	102,5	104,2	105,7	106,9	107,6
Czech Republic	65,1	69,4	79,2	92,3	100,0	102,7	107,1	109,3	110,3	111,2	112,5
Denmark	90,0	91,9	94,4	97,3	100,0	103,0	105,7	107,9	109,8	111,9	113,4
Estonia	133,6	169,4	162,5	111,6	100,0	121,6	143,7	163,9	181,8	195,2	207,0
Finland	93,8	99,5	103,8	100,2	100,0	103,3	107,1	110,3	113,7	117,1	119,8
France	91,5	94,4	96,5	98,4	100,0	101,2	102,8	104,4	105,5	106,2	106,5
Germany	95,5	96,6	97,8	98,8	100,0	101,2	102,4	103,8	105,3	106,6	107,9
Greece	86,7	90,7	94,2	97,6	100,0	100,8	98,7	92,0	85,0	81,2	79,1
Hungary	77,2	83,1	90,6	96,7	100,0	101,9	105,8	107,9	108,3	110,4	116,2
Iceland	64,8	71,6	83,8	96,9	100,0	104,9	111,0	119,2	126,8	131,8	137,5
Ireland	99,3	130,4	146,3	97,6	100,0	114,1	110,6	109,7	108,9	109,7	112,6
Italy	90,6	92,6	94,9	98,1	100,0	101,6	103,8	105,2	104,9	105,0	105,3
Latvia	91,4	108,4	135,2	116,2	100,0	105,6	115,7	122,2	128,3	129,2	127,4
Luxembourg	91,4	93,0	95,8	98,2	100,0	101,9	103,3	104,7	105,7	107,5	108,4
Netherlands	92,1	94,0	95,6	97,8	100,0	101,7	104,1	108,0	112,8	116,5	119,0
Norway	89,5	91,3	94,0	97,2	100,0	102,2	104,2	107,4	110,3	113,4	115,6
Poland	83,8	88,4	93,3	97,3	100,0	103,1	105,7	107,2	108,4	109,8	111,3
Portugal	90,2	92,6	95,4	98,0	100,0	100,9	103,0	104,2	108,9	110,1	111,9
Slovak Republic	87,4	90,9	93,3	98,4	100,0	100,8	101,4	101,7	101,7	101,7	101,9
Slovenia	93,7	96,5	101,9	101,4	100,0	99,6	98,0	97,0	96,2	98,2	99,7
Spain	88,2	92,0	96,0	98,9	100,0	101,0	101,6	101,4	100,7	100,2	100,1
Sweden	91,5	93,0	95,3	98,4	100,0	102,3	105,0	107,3	109,2	110,8	111,8
Switzerland	92,1	94,3	96,5	98,9	100,0	101,3	102,0	102,4	103,7	104,5	104,8
United Kingdom	90,8	93,7	96,9	98,6	100,0	102,5	105,9	108,6	111,1	114,3	116,3
United States	93,5	96,9	99,4	100,4	100,0	101,3	103,5	105,9	108,9	112,2	116,0
Euro Area	93,2	95,1	96,9	98,5	100,0	101,4	102,9	104,3	105,8	107,0	108,1

Source: OECD. Retrieved from http://stats.oecd.org/index.aspx?t=189142&erroCode=403&lastaction=login_submit#

If we exclude the possibility of a mortgage contract or an amount of money borrowed from banks for a low-income family or individual, for instance, the rental market seems to be the most plausible one. The modality of a non-monetary financial institutions,

which may have different legal framework from country to country, is the one that has grown faster and more since 2000. These markets basically operate as a mutual fund involving different sizes of investment with different marginal returns. The advantage of that model for investors is the possibility of leverage in stock markets and how the massive quantities of money can be used in order to get lower prices in the market.

Table 1. Non-monetary financial institutions. SOCIMIs, 2010-2016. EUR millions.

	2010	2011	2012	2013	2014	2015	2016
Credit assets,	71 732	69 296	103 771	48 434	42 809	41 878	37 244
of which: debt securities	439	359	2 120	231	226	352	140
Financial vehicle corporations.	496 425	457 293	356 129	279 677	257 032	227 078	223 539
Securities dealers	8 631	6 744	7 683	6 193	8 329	7 258	3 826
Central counterparty.	30 037	29 163	34 744	37 624	30 616	30 498	22 565
SOCIMIs (b) . . . . .	...	...	91	122	2 327	8 597	10 950

(b) Listed real-estate investment companies (SOCIMIS, known internationally as real estate investment trusts or REITs) are governed by Law 11/2009. Since Law 16/2012, that reviewed SOCIMIs legal status (mainly tax regime), this sector started its development.

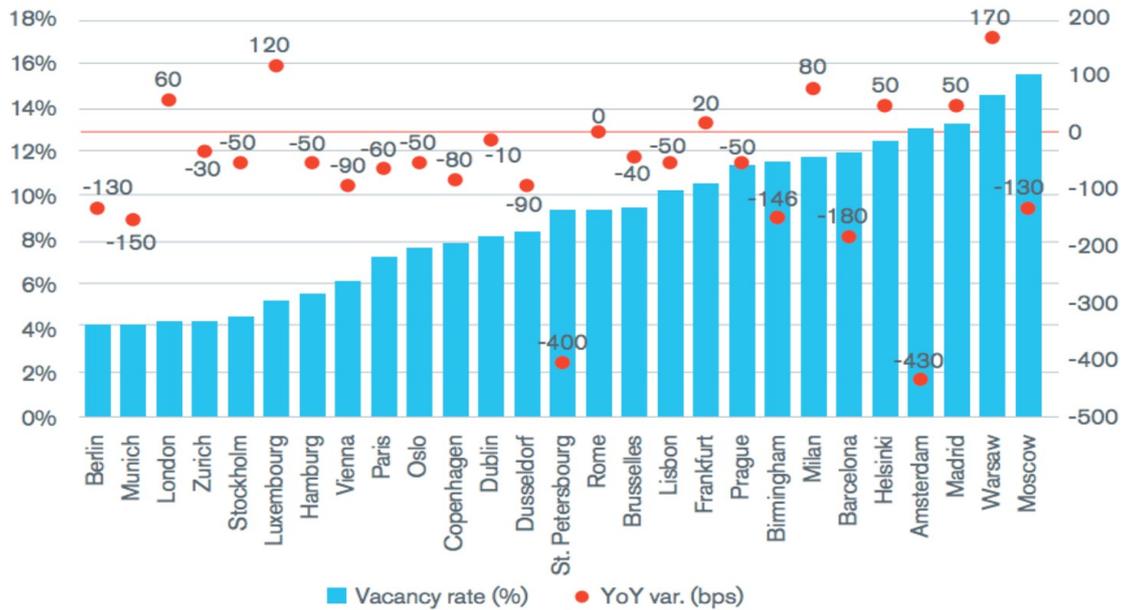
Source: Banco de España. Retrieved from <https://www.bde.es/webbde/es/estadis/infoest/a0901e.pdf>

As the property is not a perishable good, the investments take longer to mature and the property is usually put in the market through rental contracts, systems of mortgage, non-permanent residence during vacation etc. The average annual growth rate in that sector from 2000-2005 was around 40% in Spain.¹ Since the Law 11/2009 was passed, the market has expanded in the country.

Property is a very responsive good to price changes. With a small variation in the price of rents and mortgages, for example, the demand promptly responds to the stimulus from the market with a bigger variation. So, the expansion or the contraction of the aggregate demand may affect the goods and services offered in the property market. A recent study says “a low supply of housing is only one factor contributing to higher housing prices”. We must also take into consideration that “Falling real interest rates, rising incomes and wealth in the household sector and changes in credit conditions also affect developments in prices and demand for housing” (Emanuelsson, 2015, p. 48).

¹ *Banco de España* [on-line]. Boletín Económico, mayo 2006, Cuadro 3. La inversión colectiva en activos inmobiliarios: un análisis comparado del caso español [Accessed on 16 August 2017]. Retrieved from <https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/InformesBoletinesRevistas/BoletinEconomico/06/May/Fich/art4.pdf>

Figure 6. Vacant housing units. Duff & Phelps, 2017.



Source: Duff & Phelps. Real Estate Advisory Group. European Estate Market in 2016. Retrieved from <http://www.duffandphelps.com/insights/publications/reag/european-real-estate-market-study-2016>

In a scenario of relative stagnation for some countries or with small growth of the gross domestic product for others, the mortgage demand was shifted to rents without any other substitute for the clear majority of tenants. That movement in the property market opened a window of opportunity for real estate firms pursuing an ambiguous strategy on short-term rents and long-term sells of property. As mutual funds, the REITs usually buy properties in considerable quantities that the prices are slightly affected. A strategy that accentuated a diversification of the real estate portfolios oscillating between gains in equity in long-term contracts and small marginal returns for clients in a short period.

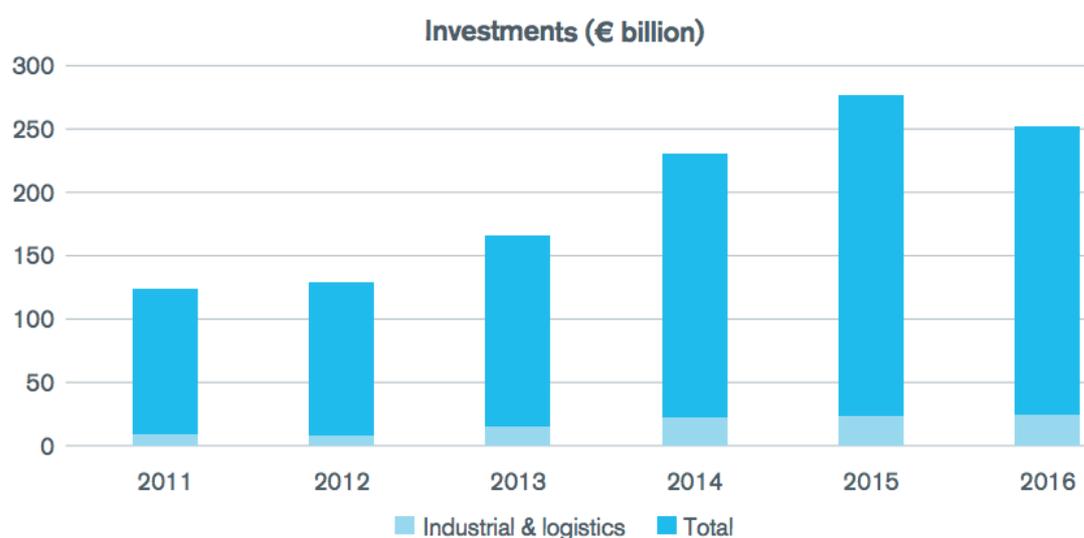
As the Figure 6 reveals, the average profit gain for portfolios of private investments was positive in those assets located in urban areas such as London, Luxembourg, Frankfurt, Milan, Helsinki, Madrid and Warsaw. For the other main capitals in Europe, like Berlin, Vienna, Amsterdam and Barcelona, the property equities decreased abruptly from 2015-16. Duff & Phelps as an advisor in REITs investments translates the expansion of the aggregate demand in expansive budget policies, investment volumes and, more recently, the metropolitan growth as a potential new property market where the lower incomes

cannot pay for a housing unit in the centre of Dublin, Lisbon, Barcelona and Madrid (Duff & Phelps, 2017, pp. 3-5).

Who are the suppliers in the first dependent variable?

Some years ago, the presence of the REITs in Spain did not correspond to a volume of investments in which the firms could rely on as a promising market. Nevertheless, with the 2008 economic crisis and the changes in the legislation, real estate businesses were ignited in Spanish and Italian cities. The Figure 7 and 8 point out the volume of capital being introduced in Europe and, more specifically, in European Union.

Figure 7. Total investments in REITs including European Union.

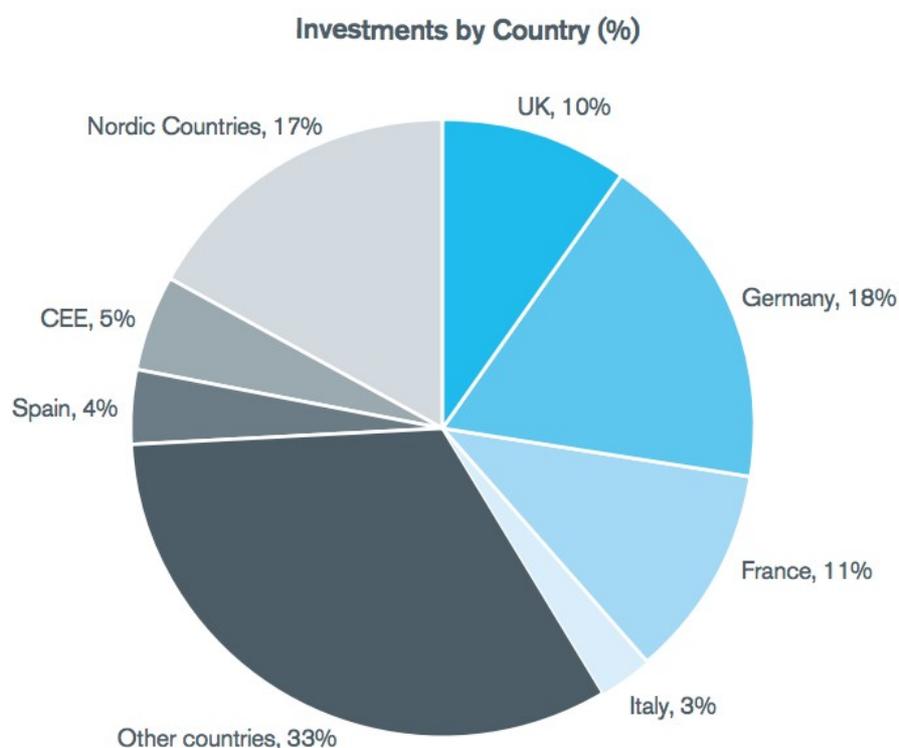


Source: Duff & Phelps, 2017. Retrieved from <https://www.duffandphelps.com/assets/pdfs/publications/real-estate-advisory-group/real-estate-market-report-2016-europe.pdf>

Different from Nordic economies, United Kingdom, France and Germany, where usually the investments in social housing have historically balanced the private activity in the property market, Spain and Italy started facing without any tradition in social housing the financialisation of the property market (Rolnik, 2016; Aalbers, 2008;

Atterhög, 2005). Corroborating the data seen previously in the Table 1, the Figure 8 shows how representative is Spain in a recent market regulated in 2011.

Figure 8. Distribution of the investments in Europe.



Source: Duff & Phelps, 2017. Retrieved from <https://www.duffandphelps.com/assets/pdfs/publications/real-estate-advisory-group/real-estate-market-report-2016-europe.pdf>

However, it gets more complicated if we describe the main characteristics of housing suppliers in European Union nowadays. The Norwegian Bank made a report in which we can see how the real estate flocks tend to behaviour inside the European Union (Torsteinsen & Bjørnå, 2012). It is basically a system divided into four quadrants. Direct ownership, real estate funds and private portfolios of REITs to shield the equity of their investments while economies are recovering (Hansson, 2015; Buckley & Kalarickal, 2005). If the aggregate demand is shortening, the firms tend to invest in property and pay the marginal returns of their clients using the income from the rents. In some countries, it is possible to find public mutual funds that behaves as State REITs, but they are the exception.

If the economies are strong enough with the aggregate demand in expansion and credit systems restabilising the confidence, creditors lease their properties to new buyers through mortgages, backed by securities and covered bonds. In a nutshell, in periods of monetary restrictive policies, the firms invest their mutual funds buying strategically massive amounts of property for rents. When the working class is eligible for credits and borrowings in the housing market, the REITs may sell units. The Figures 10a and 10b are extracted from the Figures 4 and 5, but we want to emphasise the trends for the Euro Area. It is interesting how the levels of prices are distributed. They have decreased in the Euro Area since 2006 for property sales and increased for rent prices. All data are presented in real values, i.e., inflation does not interfere.

Figure 9. Four quadrants of real estate. Norges Bank Investment Management.

	Equity	Debt
Private	Direct ownership Real estate funds Private REITs	Private mortgages
Public	Listed real estate companies Public REITs	Mortgage-backed securities Covered bonds

Source: NBIM. Retrieved from https://www.nbim.no/contentassets/6f7dc4d09cd94c10b76906442e6e1549/nbim_discussionnotes_1-15.pdf

Figure 10a. Property Price Index in Real Values. OECD. 2006-2016.

Euro Area		102,6	104,8	103,8	100,9	100,0	98,6	95,2	92,4	92,4	93,6	96,3
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Figure 10b. Rent Price Index in Real Values. OECD. 2006-2016.

Euro Area		93,2	95,1	96,9	98,5	100,0	101,4	102,9	104,3	105,8	107,0	108,1
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The nature of costs for REITs and the economy of scale in property system

According to Ambrose, Brent W., Highfield, Michael J. & Linneman, Peter D., it is possible to affirm that “As a whole, our results suggest that small REITs have available efficiency gains in the area of growth, and we find strong evidence suggesting that large

REITs are succeeding at lowering costs, specifically G&A [general and administrative] expenses, and increasing profit margins. Thus, it is no surprise that there is a direct relationship between firm profitability, as measured by return on equity, and firm size". However, it is important to say the reduction of marginal costs and the increase of profitability are not continuously positive and depend much on the size of the REIT. Some of the strategies to compensate relatively losses from one country or region of investment to another is to diversify the general and administrative expenses taking advantages of unit labour costs in different geographical areas of global economy. Construction, infrastructure and urban planning are very prominent areas of investments for REITs looking for higher marginal returns. We must also take into consideration the contrast in our analyses between size-related advantages for investors *versus* a period of rapidly expanding of capital investments in REITs. The analytical data are thought for cities and adjacent zones where the prices can be mapped with these two criteria, that is to say, size of the REITs and the period of investments.² For the case of European Union, as presented by the Figure 6, many capital cities have been object of REITs' investments, but observing the number of vacant houses the places with low unoccupied units compensate the ones where the firms struggle more to negotiate their portfolios. The costs for hedges, especially the ones to insure the prices when exchange rates affect the REITs' assets, tend to be recovered in a long-term period. Nevertheless, investments to reduce the risky practices of adverse prices (hedges) eventually nurture the need for securities to support the equity values of the property market (derivatives).³

2. Second dependent variable for REITs: unemployment rates

Unemployment rates

We use unemployment rate as a second depend variable for REITs, because the more

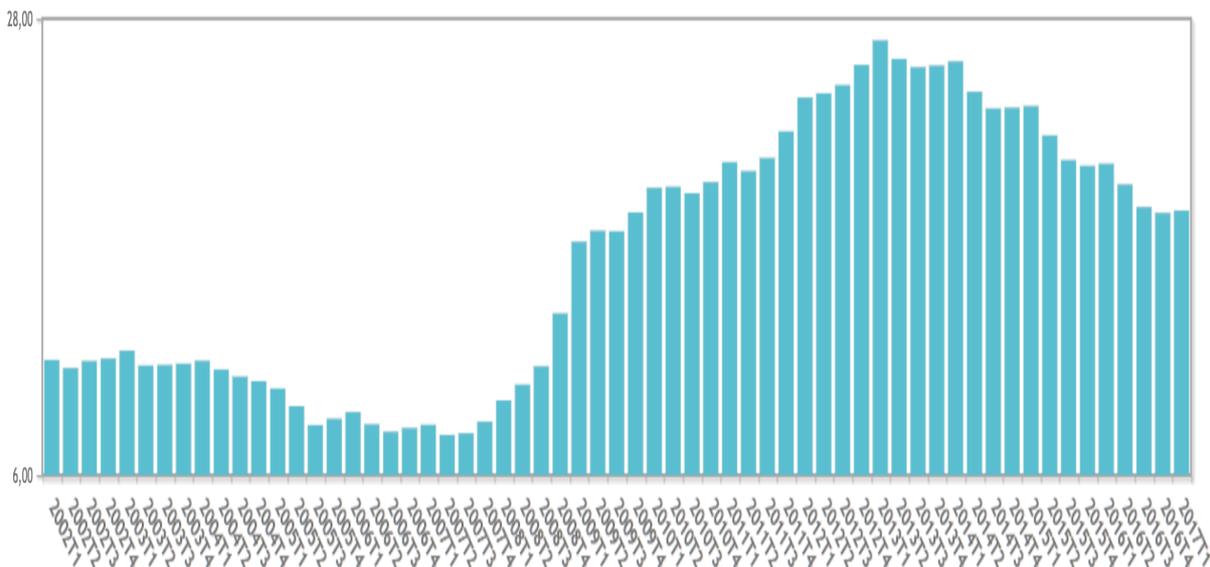
²Read Ambrose, B. W., Highfield, M. J. & Linneman, P. D. (2005). Real estate and economies of scale: the case of REITs. *Real Estate Economics*, 33(2), 323-350; and about the need for geographical diversification of portfolio to aggregate value in property products through economies of scale in marketing, see also Ambrose, B. W., Ehrlich, S.R., Hughes, W. & Wachter, S. M. (2000). REIT economies of scale: fact or fiction? *Journal of Real Estate Finance & Economics*, 20(2), 211–224.

³Ertugrul, M., Sezer, Ö. & Sirmans, C. F. (2008). Financial leverage, CEO Compensation, and corporate hedging: evidence from real estate investment trusts. *The Journal of Real Estate Finances and Economics*, 36(1), 53–80.

people are unemployed the less they will have the financial conditions for mortgages or borrowings that demand long-term payments. On the one hand, the instability of that variable creates more uncertainties in the property market for sales and investments are slowed down in construction sectors of national economies. On the other hand, the ones who cannot afford to pay a mortgage tend to look for rents or even share precarious places to live. Moreover, the quality of social benefits and State policies to support people while they are unemployed will also guide the property investments since the proprietors in rental market, especially real estate firms, tend to take advantages of that sort of demand as well.

A profile of unemployment rate and household final consumption expenditure per capita

Figure 11. Unemployment Rate, 2002-2017.



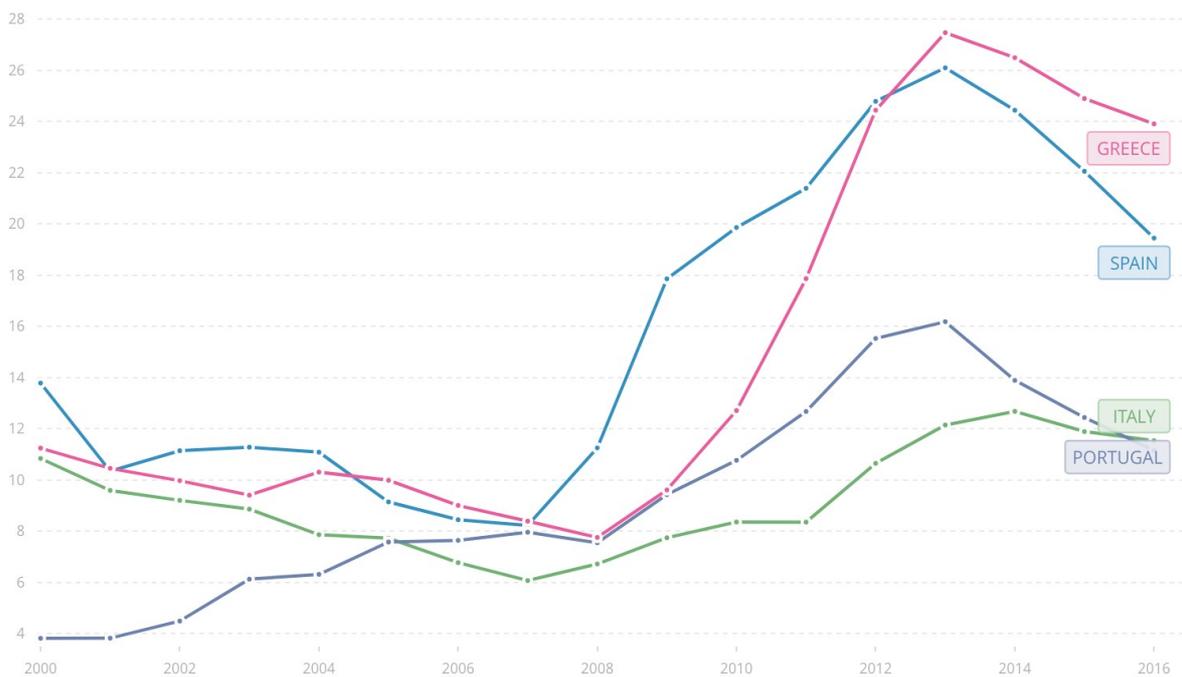
Source: INE. Retrieved from <http://www.ine.es/consul/serie.do?s=EPA815&c=2&nult=0>

The Spanish unemployment rate was around 14.1% in 2001 with a decreasing expectation for the coming years. As predicted, the figures decreased to 11.5% over the total Spanish population in 2002 and with the lowest point for the decade with 7.9% in March 2007. Meanwhile, the creditors had also the sensation the economy of Spain could trust in elevating the money prices for mortgages as it happened during the years

2005-2007 when the country registered a very energetic perspective for job creation in construction market.

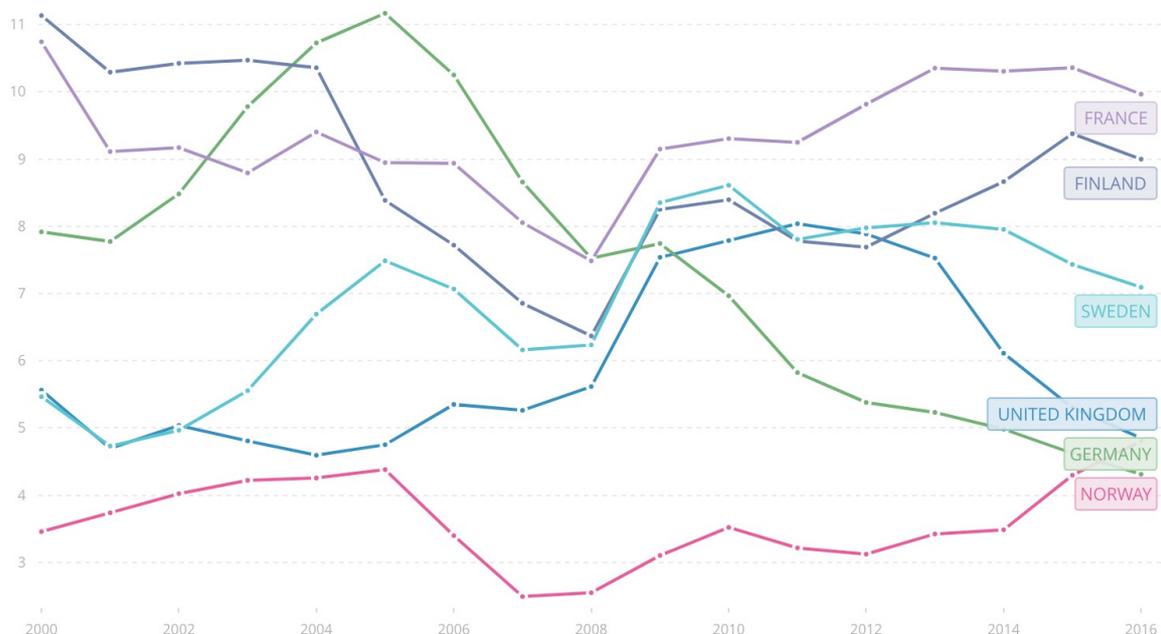
The level for the unemployed in Spain was 20.1% in 2010 and almost 28% in the first trimester of 2013 based on the Table 1. Then, it is interesting the comparison of Spain with other countries where we notice the same trend line in the statistics for unemployment rates in a long-term. As we can see, the Figure 11 reveals, Spain has had high rates of unemployment since 2002, but the numbers more than tripled when the 2008 global crisis affected severely the country. The same phenomenon is also seen in Greece, Portugal and Italy since these countries also have suffered from the “Spanish effect”, although Italy and Portugal had the lowest unemployment rates in the group.

Figure 12. Unemployment, (% of total labor force) (modeled ILO estimate). 2000-2014.



Source: World Bank. Retrieved from <http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?end=2016&locations=IT-GR-ES-PT&start=2000>

Figure 13. Unemployment, (% of total labor force) (modeled ILO estimate). 2000-2014.

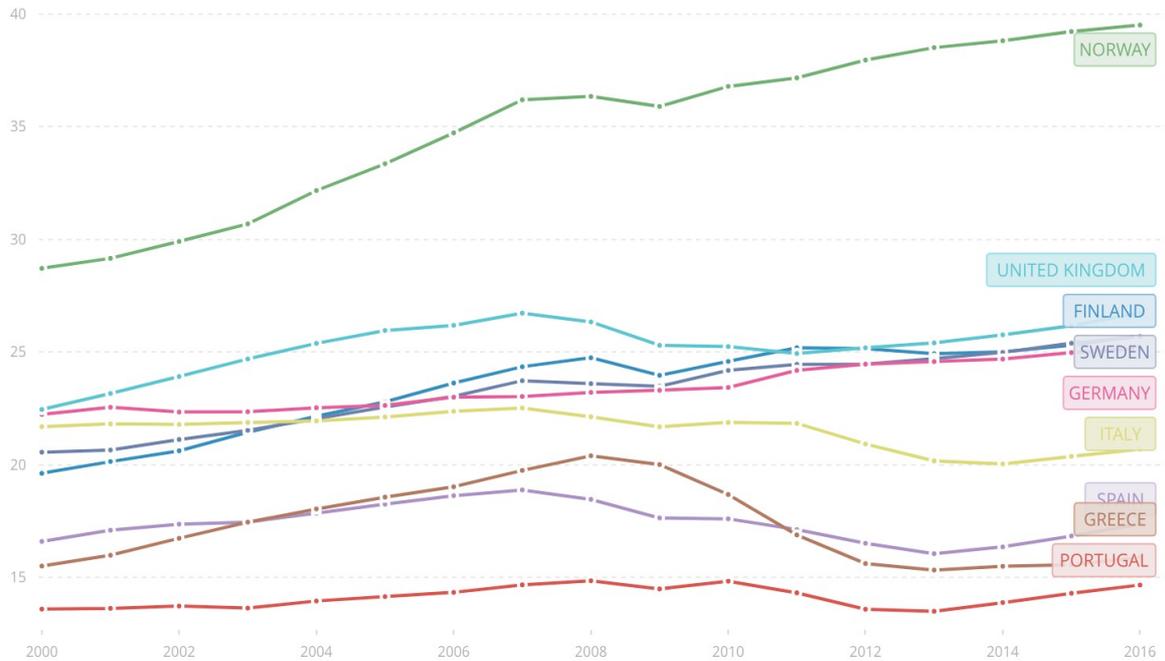


Source: World Bank. Retrieved from <http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?end=2016&locations=GB-DE-FI-NO-SE-FR&start=2000>

Nevertheless, when we compare with the statistics of high industrialised economies, such as United Kingdom, France and Scandinavian countries, the unemployment rates reached the ceiling of 10% compared to the total labour force in the worst scenario since 2008. Other interesting aspect between the Figures 12 and 13 is the countries of the Figure 12 are the ones without a history in massive social housing programmes. Other remarkable characteristic of the property market intimately connected to the rates of unemployment has to do with the stress on constant legislative measures for labour rights de-regulation to establish the economic conditions for a minimum salary for the household consumption (Cirillo, Fana, & Guarascio, 2017; Koukiadaki & Grimsaw, 2016; Manzoli & Mocetti, 2016; European Commission, 2014; Portugal, 2011). As a consequence of the presence of a real estate market in expansion in these “Spanish effect” countries, investors adapt their rental supply taking into consideration the level of the salaries or the State benefits of the demand. In contrast, observing the countries with relative lower unemployment rates, it is notable how a long-lasting tradition in

social housing policies, such as the Scandinavian cases, France, Germany and United Kingdom, have provided people with more social protection without labour reforms.

Figure 14. Household final consumption expenditure per capita (constant 2010 US\$). 2000-2016.



Source: World Bank. Retrieved from <http://data.worldbank.org/indicator/NE.CON.PRVT.KN?end=2016&locations=ES-SE-NO-FI-GR-IT-PT&start=2000>

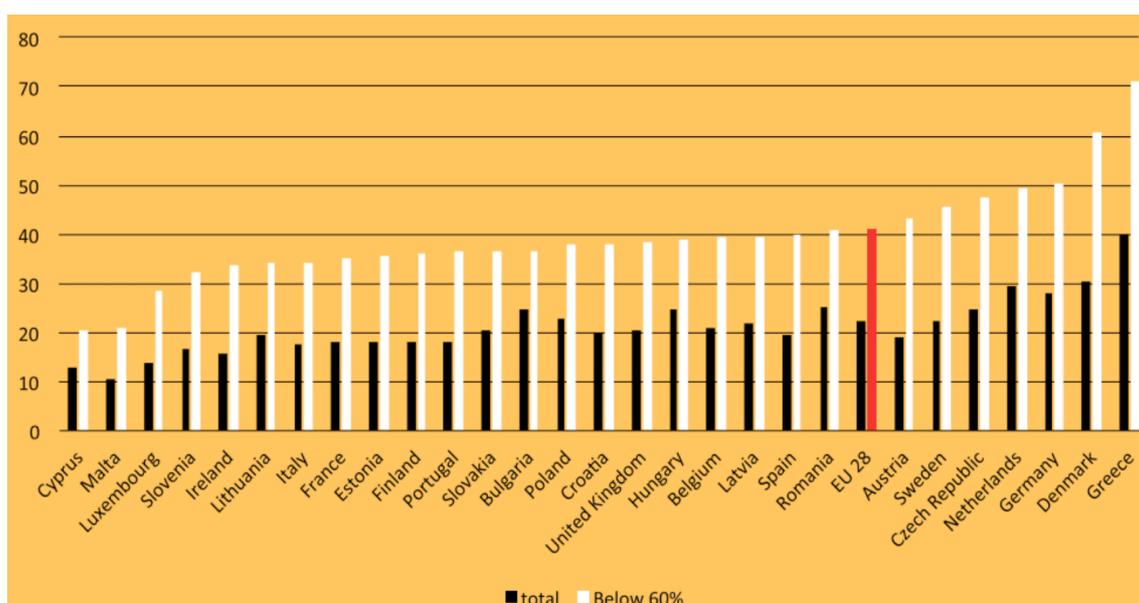
As we apprehend in the Figure 14, the household final consumption expenditure per capita in the “Spanish effect” countries has been practically stagnated from 2000 to 2016. Yet the unemployment rates varied brutally in Greece, Italy, Portugal and Spain, the costs for housing once the rents are included in that concept have contributed to floating prices in a very stabilised band with negative impacts in wealth distribution through the quality of the jobs, welfare state and professional opportunities.

According to the numbers of the Figure 5, in the previous section of the present chapter about rent price index, the costs of rents have changed enormously for the working class. Although here are more and more speculative funds through real estate investment trusts operating in European Union as a whole, the costs of living are a heavier burden for the individual and families from the “Spanish effect” countries.

The housing costs and the unemployment overburden in the “Spanish effect” countries

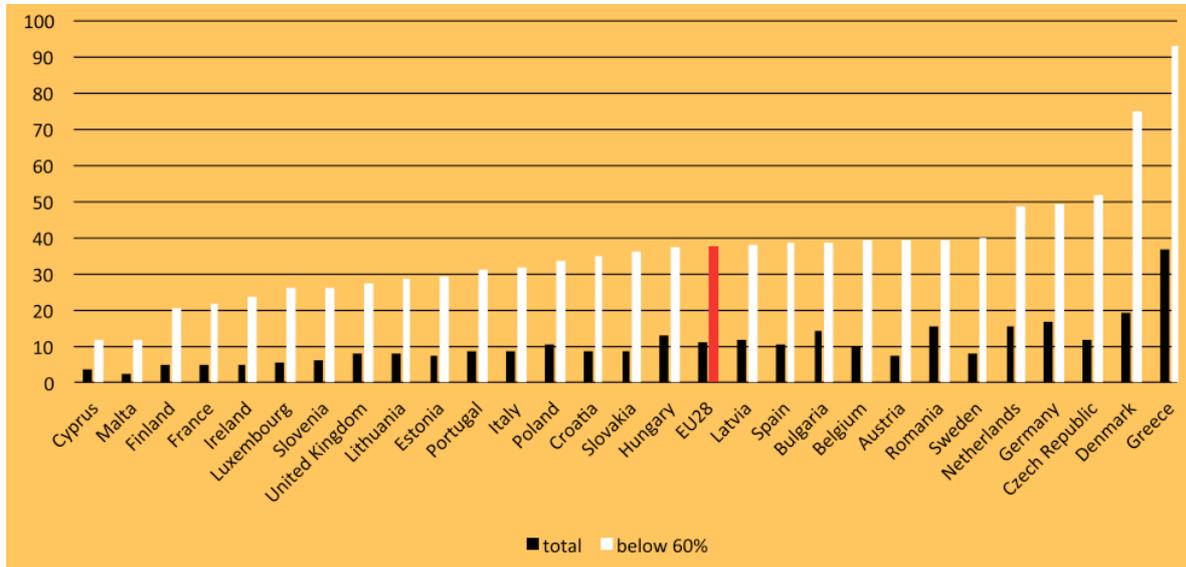
The “Spanish effect” countries with a low profile for social protection and the lack for historical social housing programmes combined with high level of unemployment suffer more. The presence of the State subsidising the working class may correct the distortions and impacts of the rents on the salaries of the low income individuals and families (Wieser & Mundt, 2014; Stigler, 2008). The Figure 15 presents how the impact of housing costs may affect the household income just taking into consideration how much payments for housing consume from wages. Without many social benefit, as it is common in the “Spanish effect” countries, the high costs for housing usually impose overburden rates for people as we see in the Figure 16. The Table 2 makes evident how the percentage of the social housing stock for Scandinavian societies, Netherlands, Scotland, Austria, Denmark, England and France can be an important tool to smooth the severe conditions of the 2008 economic global crisis.

Figure 15. Share of housing costs in disposable household income, for the total population and those with income below 60% of median equivalized income. 2013.



Source: Housing Europe. The State of Housing in European Union 2015. Retrieved from <http://www.housingeurope.eu/resource-468/the-state-of-housing-in-the-eu-2015>

Figure 16 Housing costs overburden rate among total population and those with income below 60% of median equivalized income. 2013.



Source: Housing Europe. The State of Housing in European Union 2015. Retrieved from <http://www.housingeurope.eu/resource-468/the-state-of-housing-in-the-eu-2015>

Table 2. Housing tenure of dwellings stock: highest to lowest by % of social rented housing (most recent year).

Size group	Country	Year	Social rented housing			Private rental (% of stock)	Owner-occupation (% of stock)	Other (% of stock)
			Number of dwellings (000s)	% of stock	Change in preceding decade (%)			
High	Netherlands	2010	2,300	32	-4	9	59	
	Scotland	2011	595	24	-6	12	64	
	Austria	2012	880	24	+1	16	50	10
Medium	Denmark	2011	541	19	+1	17	49	18 ⁴
	Sweden ("allmännyttan")	2008	795	18 ³	-3	19	41	22
	England	2011	4,045	18	-2	18	64	
	France	2011	4,472	16	-1	21	58	5
Low	Ireland	2011	144	9	+1	19	70	3
	Czech Republic	2011 ⁵	312 ⁶	8 ⁶	-9	10 ⁶	65	18
	Germany	2010	1,054 de jure 1,000 de facto	5	-3	49 ⁷	46	
	Hungary	2011	117	3	-1	4-8	88-92	1
	Spain	2011	307	2	+1	11	85	2

Retrieved from http://eprints.lse.ac.uk/62938/1/Fernandez_Social%20housing%20in%20Europe_2015.pdf

Yet we can see high levels of social benefits in public policies for European countries, the percentage of people with the option of having social rents access is comparatively

low in the “Spanish effect” countries. Different from the nations that were brutally hit by the 2008 global crisis, Netherlands, Scotland, Austria and Denmark show higher levels of social rented housing with 32%, 24%, 24% and 19%, respectively. Sweden, England, France, Ireland and Germany are medium size markets for social rents. Spain around 2%, Italy 5.5%, Portugal 2% and Greece with very low percentage. The Table 2 may also be very illustrative for the analysis of how the REITs impact the “Spanish effect” countries and the others with a more social housing history as a social protection.⁴

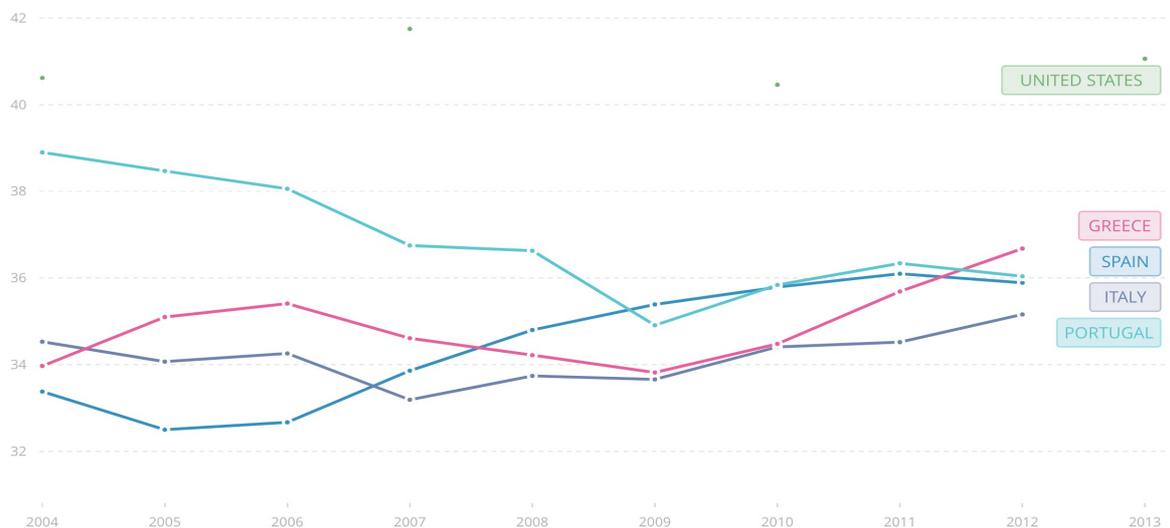
3. Third dependent variable for REITs: concentration of income

The 2008 economic global crisis produced the reduction of the aggregate demand in the “Spanish effect” countries with high unemployment rates. However, as we have argued with the data before, the level of rents are relatively stable for real estate investment firms. The aggravating factor of prices keeping the same level before and after the reduction of the aggregate demand and with more unemployment happens due to the fact of the income concentration. In the last decade, the Spanish, Italian, Portuguese and Greek societies have witnessed a rapid wealth transfer through property market once the last global economic crisis was mainly ignited by the real estate speculative portfolios. The complexity of economic tragedies may rely on different historical, structural and contingent aspects, although the housing prices have played a central role in financial crises: “For the study of banking crisis, three features of the data set underlying this book are of particular note. First, to reiterate, our data on banking crises go back to 1800. Second, to our knowledge, we are the first to examine the patterns of housing prices around major banking crises in emerging markets, including Asia, Europe, and Latin America. Our emerging market data set facilitates comparisons across both duration and magnitude with the better-documented housing price cycles in the

⁴ Scanlon, K.; Arrigoitia, M. F. & Whitehead, C. (2015). Social housing in Europe. *Swedish Institute for European Policy Studies*, 1(17), p. 3. Read also Pittini, A.; Ghekière, L.; Dijol, J. & Kiss, I. (2015). *The State of Housing in the EU 2015*. Retrieved from <http://www.housingeurope.eu/resource-468/the-state-of-housing-in-the-eu-2015>

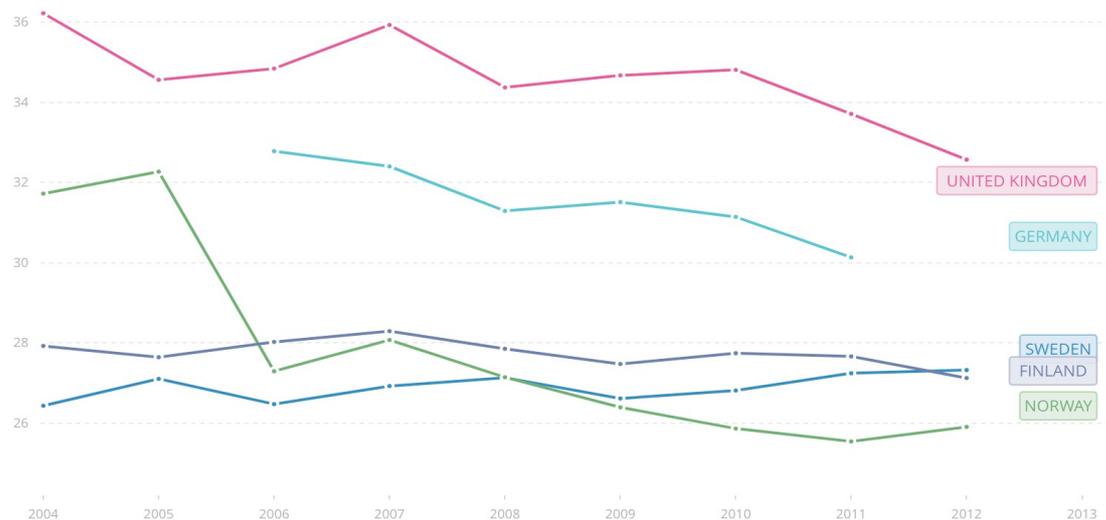
advanced economies, which have long been known to play a central role in financial crises”.⁵

Figure 17. GINI Index. World Bank Estimate, 2004-2013.



Source: World Bank. Retrieved from <http://data.worldbank.org/indicator/SI.POV.GINI?end=2013&locations=ES-US-IT-GR-PT&start=2004&view=chart>

Figure 18. GINI Index. World Bank Estimate, 2004-2013.



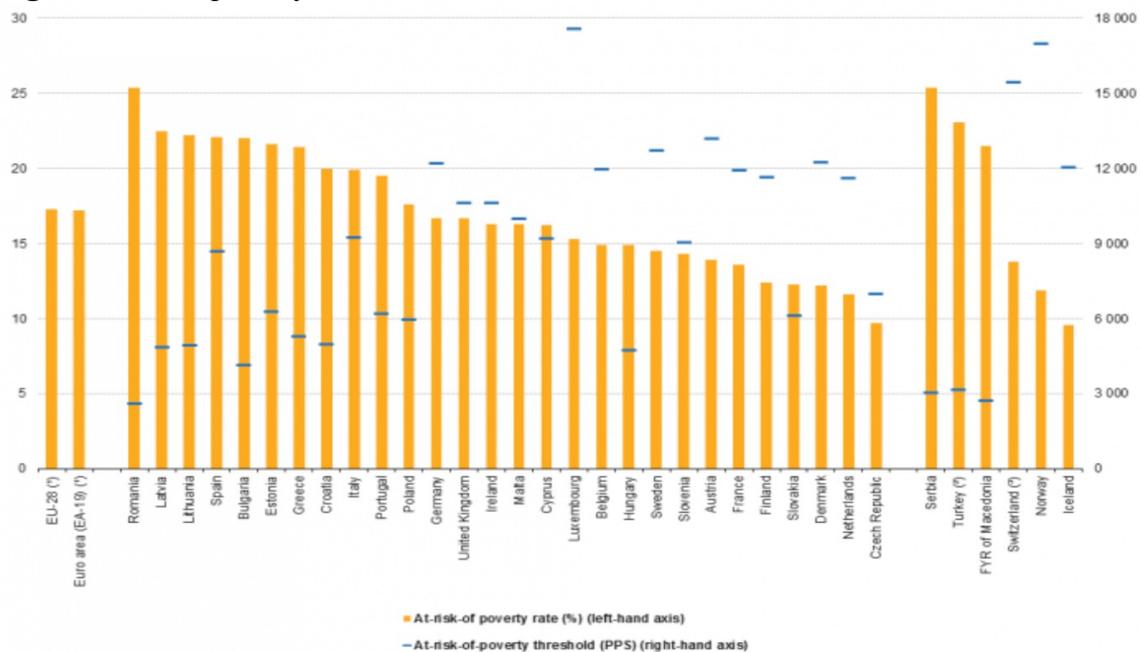
Source: World Bank. Retrieved from <http://data.worldbank.org/indicator/SI.POV.GINI?end=2013&locations=SE-NO-FI-GB-DE&start=2004&view=chart>

⁵ Reinhart, C. M., & Rogoff, K. S. (2011). *This time is different: eight centuries of financial folly* (pp. 141-143). New Jersey: Princeton University Press.

Different from the period of 2004-2005, when the statistics showed a decreasing GINI index as it is shown by the Figure 17 for Spain, it was the only economy that presented a non-stop progressive distance between the poorest and the wealthiest from 2005 to 2012. The Spanish levels of income concentration were the highest compared to Italy, Portugal and Greece till 2011 when the Greek economy faced the worst effects of the 2008 global crisis in Europe.

The Figures 17 and 18 can be combined with the statistics of household consumption expenditure aforesaid in the previous section proportionating some insights on property market. In countries with high and medium levels of social rents, the “Spanish effect” can be faced if the wealth transfer is made based on direct expenditure in the welfare state as it happened in Scandinavian countries, including social rents, or indirectly giving credit to different sectors of the economy to heat up the economy.

Figure 19. Risk poverty threshold. 2015.

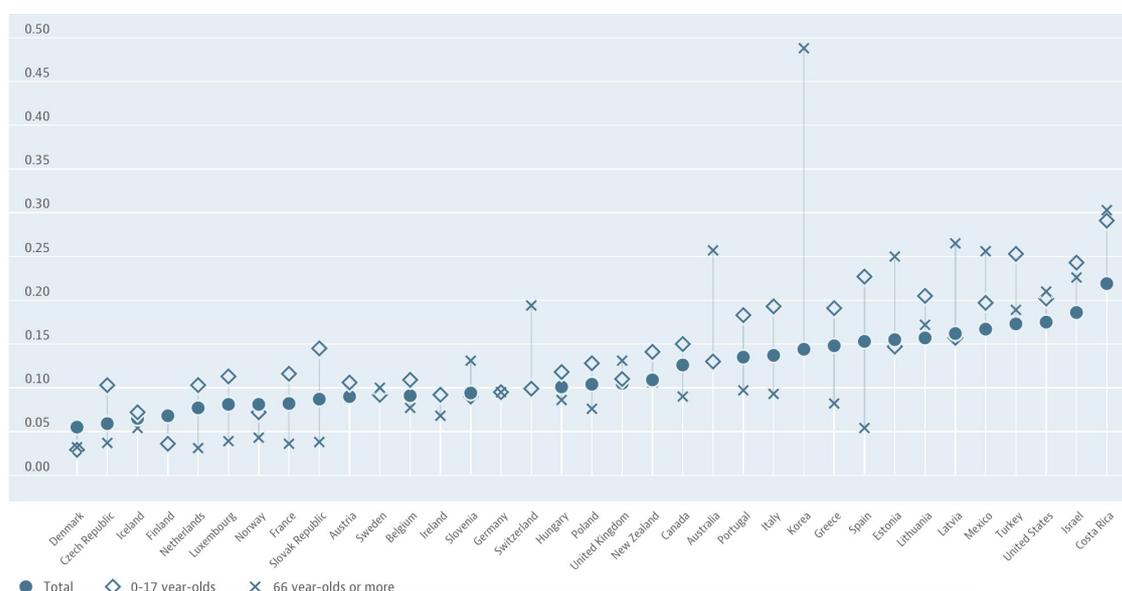


(*) At-risk-of-poverty threshold (PPS): not available.
 (*) 2013.
 (*) 2014.
 Source: Eurostat (online data codes: ilc_li01 and ilc_li02)

Source: Eurostat. Retrieved from http://ec.europa.eu/eurostat/statistics-explained/index.php/Income_distribution_statistics

In the United States, the concentration of income lowered after the effects of the 2008 global crisis, but from 2010 and 2012 increased again. The Figure 18 makes evident the opposite trend, that is to say, a decreasing curve of income concentration in Finland, Norway and Sweden from 2006 to 2012. United Kingdom and Germany from 2007 to 2011 distributed more the wealth generated. As the other dependent variables, aggregate demand and unemployment rates, the concentration of income also favours the risk poverty threshold once the housing costs is one of the criteria to measure the social and economic vulnerability of an individual or family.

Figure 20. Poverty Rate. Ratio. 2014.



Source: OECD. Retrieved from <https://data.oecd.org/inequality/poverty-rate.htm>

The “Spanish effect” countries show a higher magnitude of poverty rate that has already exceeded the limits poverty risk. In other words, Spain, Italy, Portugal, Greece, Poland, Romania, Bulgaria, Southern and Eastern European countries have high percentages of their populations living in poverty. The Figure 20 points out young people cannot study, live and emancipate or even the elderly can afford to have a decent life in the “Spanish effect” countries.⁶

⁶ “There was no change in the share of the population living in overcrowded dwellings in the EU-28 between 2014 and 2015. The largest increase among the EU Member States was reported by Latvia, its share rising by 1.6 percentage points, while in Sweden, Greece and Italy the share also rose by more than

4. Brief conclusive notes: the trilemma for governments

In 2008, the housing bubble originated in United States and the debt wave that stroke Spain created a sort of anomaly in the European Union for the following years. In a nutshell, when the aggregate demand expands the prices for property go up and the rents stabilise or even are lowered by a similar dynamic of substitutive goods. However, behind the aggregate demand expansion we observe the level of unemployment with salaries that permit a more equitable distribution of income from all wealth produced in a society is a key element as well for the socioeconomic development (Jones, 1956; Keynes, 1937). This is why the tools that measure the income concentration is another dependent variable such as the aggregate demand expansion and unemployment rates for property market.

These three variables conform what we define as the trilemma for governments since the equilibrium of aggregate demand expansion with the two other variables is not easy. Therefore, we have three immediate preoccupations: (i) one can generate more credit in society combining high quality jobs with real gains till the point people have access to goods and services without being excessively indebted; (ii) either one can promote low rates of unemployment stagnating real gains for the working class till the point they tend to be indebted, but the government cover the costs for social protection without restrictive monetary policies; (iii) or one can use progressive taxes on personal or firm incomes to avoid the concentration of wealth. This seems to be the best alternative to re-

0.5 percentage points. By contrast, the overcrowding rate declined in 17 of the EU Member States. Reductions between 2014 and 2015 were larger than 1.0 percentage points in Slovenia, the Czech Republic, Bulgaria and Lithuania. Within the population at risk of poverty (in other words, people living in households where equivalised disposable income per person was below 60 % of the national median), the overcrowding rate in the EU-28 was 29.5 % in 2015, some 12.8 percentage points above the rate for the whole population. The highest overcrowding rates among the population at risk of poverty were registered in Hungary (62.0 %), Romania (61.7 %), Poland (59.7 %) and Slovakia (57.6 %); Turkey (72.9 %, 2013 data), the former Yugoslav Republic of Macedonia (68.1 %) and Serbia (63.6 %) also reported high overcrowding rates among their populations at risk of poverty. At the other end of the range, the lowest overcrowding rates for those at risk of poverty were recorded in Cyprus (3.5 %), Ireland (6.0 %), Belgium (6.5 %) and Malta (7.7 %); these were the only EU Member States to report that fewer than 1 in 10 persons at risk of poverty were living in overcrowded conditions". See Eurostat [on-line]. Housing statistics [Accessed on 15 October 2017]. Retrieved from http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics

direct the energies from the *rentier* profile to those productive sectors in society while stimulating innovation, research and the creation of technologies without stressing legislative systems, misbalancing macroeconomic policies and favouring a national diversified participation in global trade (Leontief, 1953). With the last option of our trilemma the system of property will not allure easy and lazy clients looking for higher marginal returns with low risky operations in a long-term period.

CHAPTER II. PROGRESSIVE TAXES ON PROPERTY SYSTEM

1. REITs, taxes on property and precedents in banking crises

REITs usually behave in the three modalities we have described in the beginning of the present work, that is to say, equity, mortgage and hybrid systems. However, the local or national conditions to operate the investments may change from place to place. There are some economies that permit more speculative profiles in the property market and others constraining risky activities. This is why the nature of taxation is intimately linked to the type of externalities that can be observed in economic, social and legal terms for ownership investments (Poghosyan, 2016; Atienza, 2013; Aalbers, 2008). The central argument that derives from the first chapter is around the violation of rights and, specifically, how REITs may be unfriendly to housing and urban issues.⁷ We will come back to the legal debate in the last part of our study. At this point, what seems to be more relevant is an analysis of progressive taxes levied on property system and how the production of wealth in REITs may distort affordable and dignified housing access. We selected the Swedish case in comparison with the “Spanish effect” countries for two reasons: (i) Swedish economy faced a similar banking crisis connected to the expansion of the aggregate demand, high interest rates and an aggressive speculative property system at the very beginning of the 1990s; (ii) risky investments through banks, insurance companies and other financial institutions acted in a de-regulated market with increasing marginal returns believing State has the categorical imperative for bailouts in critical times motivated by the belief of an unconditional property protection (Calabresi, 2003, Englund, 1999). Some countries have applied a non-orthodox treatment for risky activities in property market with more relatively proportional economic measures. The two following examples indicate a sort of financial penalty that could be understood as an indirect system of taxation in case of irresponsibility in REITs investments.

⁷ Swedish authorities have been very critical on how wealth distribution works in the country. Women have less access to the richness produced reaching 43% of the total amount, but taking into consideration single mothers could be more independent with higher incomes. This is understood as central for human development in the country: “Wealth is unevenly distributed in Sweden. In 2007 the wealthiest 1 percent of the population possessed 23 percent of the total net wealth and had a median wealth of SEK 8.5 million. The median value for all inhabitants was SEK 65,000. Women’s wealth is smaller than that of men. Of the total net wealth, women possessed 43 percent”. Read *Swedish Tax Agency* [on-line]. Tax Statistical Yearbook of Sweden 2015, p. 10 [Accessed on 16 October 2017]. Retrieved from <https://www.skatteverket.se/download/18.361dc8c15312eff6fd1f7cd/1467206001885/taxes-in-sweden-skv104-utgava16.pdf>

Iceland

Based upon the international magnitude of bank finances affecting economic, social and cultural rights, the Supreme Court of Iceland convicted bankers for market manipulation and fraud. In October 2016, the Icelandic Supreme Court decided in the *Kaupthing* case that nine bank officials were involved in criminal actions during the Icelandic banking crisis of 2008. After investigation, it was proved the Kaupthing Bank used to buy its own stock with the intention of keeping the market value shares artificially high. The court's diligences also found in the Case No. 498/2015, October 2016, that the Kaupthing officials, ranging from a board member, the CEO of the Luxembourg branch, and a member of the loan committee to traders, were operating internationally in risky financial markets manipulating capital data. Eight of them were sent to prison. Although the Court did not decide through an exhaustive interpretation of the law, the practices were seen as abusive even under the argument of the defendant the money invested in shares had come formally from the private savings of the accused.

Following the previous Icelandic leading case, Kaupthing officials let Sheikh Mohammed Bin Khalifa Bin Hamad Al-Thani of Qatar buy shares in the Kaupthing Bank using the capital that he had loaned from the institution. A practice of leverage morally condemned, but not illegal at the time of the transactions. However, Mr. Björk Thorarinsdottir, who was intimately linked to the loan committee, ended up in prison for economic abuse of power. Mr. Magnus Gudmundsson, who was the former CEO of the bank, had an additional penalty beyond the one he had already been sentenced for his previous links with Al-Thani. Mr. Hreidar Mar Sigurdsson, who had been convicted and sentenced to five and a half years in prison for contributing to Al-Thani's financial crimes, was convicted to more half year in prison. His total conviction summed up six years in prison. Mr. Gudmundsson had already been condemned for four and a half years in prison as a result of his participation in the Al-Thani case. The Kaupthing officials were sentenced for fraud and crimes attempting to fair market by the Icelandic Supreme Court according to the General Penal Code. The Icelandic Securities Act, No. 19, passed in 1940, *which was amended in 2013*, and the Act on Securities

Transactions, No. 18/2007, Iceland Ministry of Industries.⁸

United States

Washington Mutual, Inc. was a savings bank holding firm, but also the former owners of Washington Mutual Bank. It was the largest savings and loan association until its collapse in 2008 mortgage global crisis. The US Office of Thrift Supervision (OTS) acquired the Washington Mutual Bank from the Washington Mutual, Inc. reallocating it in the Federal Deposit Insurance Corporation (FDIC). After that, caused by a withdrawal around 9% of all deposits in a time a little longer than a week, the FDIC started selling the banking subsidiaries discounting the unsecured debt and equity claims to JPMorgan Chase. The operation was called Project West to regain the confidence of the investors. The most interesting part of that case has to do with the way the U.S. federal authorities dealt with the irresponsibility of the mortgage system interpreting the global crisis as a corrupted system in the sense intermediate speculative investors broke the rule of creating infinite net of products such as derivatives, unpayable credits secured by real properties and high interest rates.

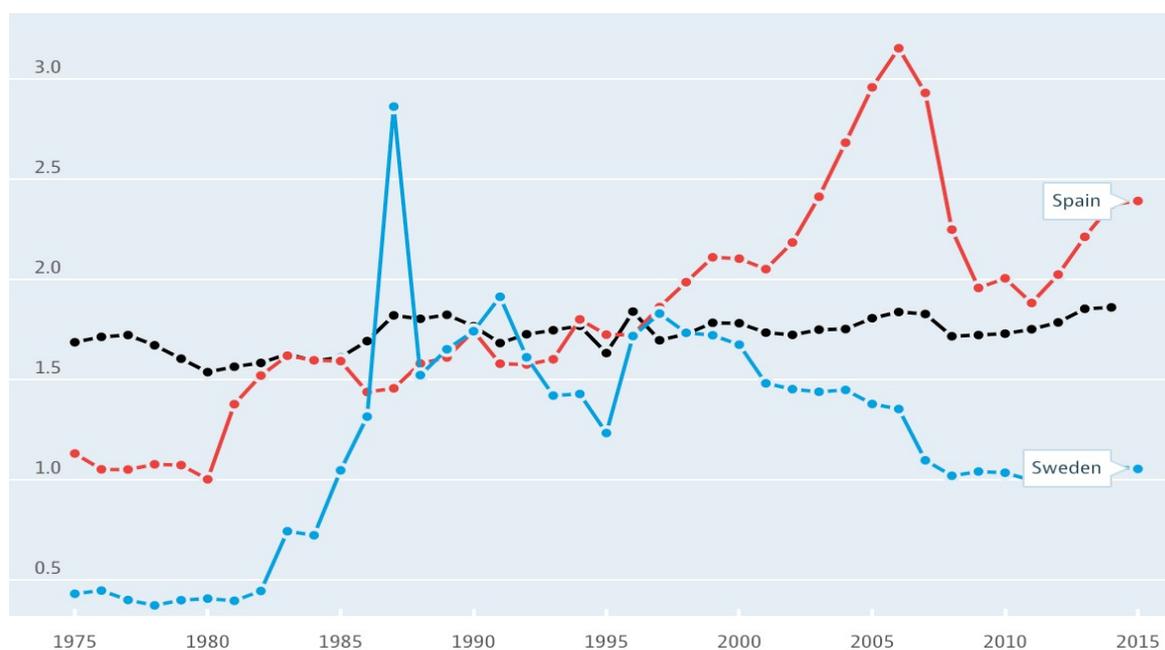
2. Progressive taxes on property system: the case of Sweden

The cases of Kaupthing and Washington Mutual, Inc. are illustrative of how the capital is privatized when private owners menace the public or general interest with property speculative markets. As we saw in the previous section, financial penalties or if we prefer indirect taxation for specific cases, may work well to protect the taxpayer money from risky property investments. Nevertheless, we will delve into a proper analysis of a progressive tax system to defend the idea of imposing constraints for speculative markets and how the Swedish society achieved a consensus allying the interest of those who work, produce and invest with a sustainable property market with a mitigated violation of rights. In order to clarify how the taxes are applied in Sweden, we will expose their typology differentiating the investment made by individuals and companies. It is important to notice that the classification of which tax should be levied

⁸ Retrieved from <http://www.loc.gov/law/foreign-news/article/iceland-supreme-court-convicts-bankers-in-market-manipulation-and-fraud-case/>.

on depends on the nature of contract signed. For example, if families use their savings to buy or rent a residential apartment where the members will live, the duties paid to municipal and national government must be contrastively different to the ones honoured by real estate firms.

Figure 1. Tax on property. Total, % of GDP, 1975 – 2015

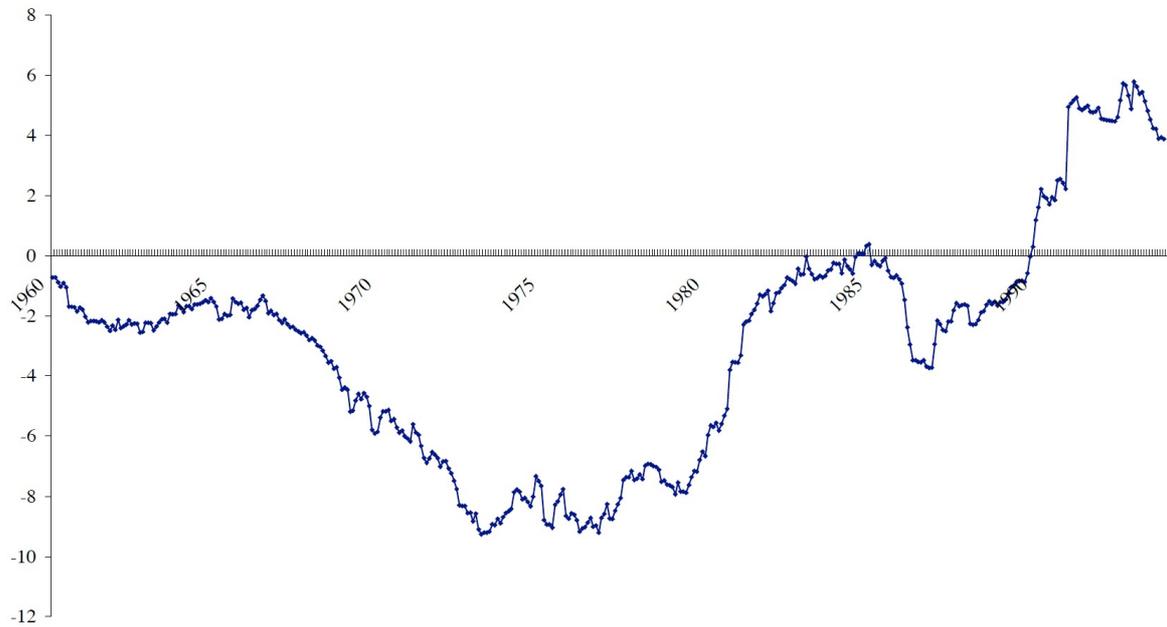


Source: OECD. Retrieved from <https://data.oecd.org/tax/tax-on-property.htm>

However, if the same family uses the property or the ownership as a source of income, taxes will be applied according to the income generated.⁹ Progressive taxes may operate in different contexts without causing an overburden for the working class, i.e., taxes on property and personal income. The Figure 1 makes explicit how taxes on property work in comparison with the total % Gross Domestic Product (GDP) from 1975-2015. For both cases, Spain and Sweden, we can see the way the progression of taxation on ownership may produce the same trends, but with distinct treatment to redirect the wealth generated either to a solid welfare state or a de-regulated economy.

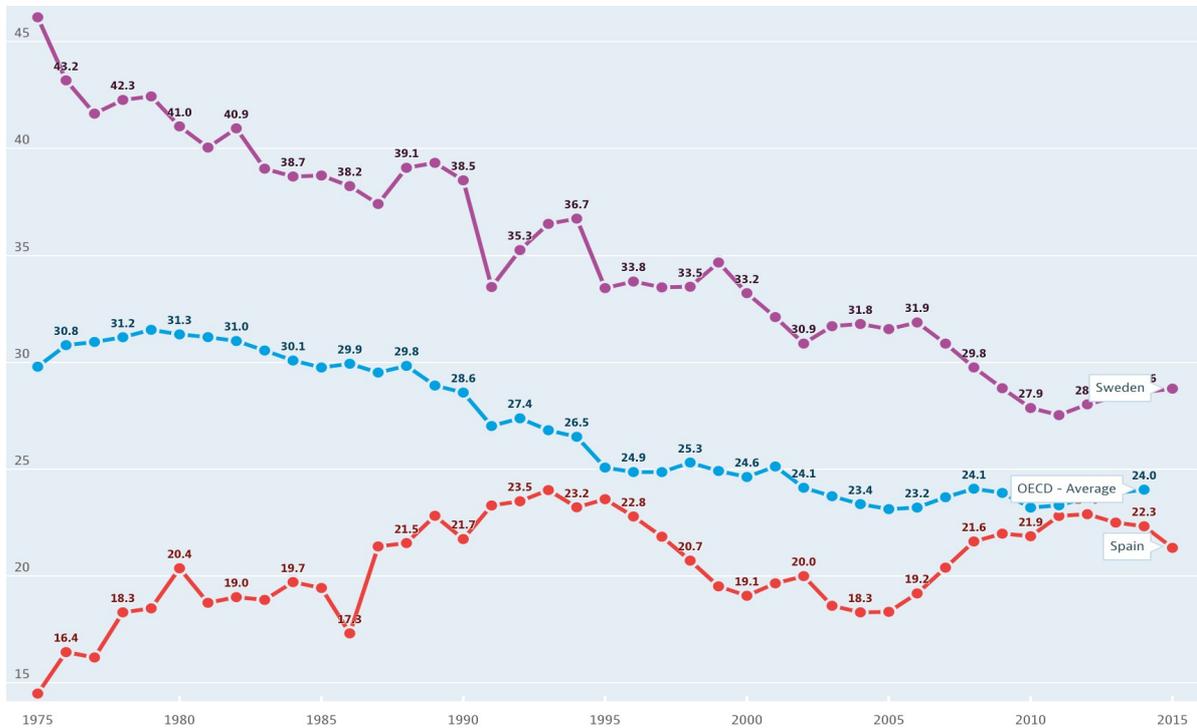
⁹ Retrieved from <http://www.dlapiperrealworld.com/export/sites/real-world/brochures/downloads/Sweden-Investor-Guide.pdf>

Figure 2. Ex-post 5-year real after-tax interest rate, 1985-1990.



Source: Statistics Sweden. Retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.521.503&rep=rep1&type=pdf>

Figure 3. Tax on personal income. Total, % of GDP, 2000 – 2015



Source: OECD. Retrieved from <https://data.oecd.org/tax/tax-on-personal-income.htm>

After the 1983-85 period of economic de-regulation for banks and financial institutions in Sweden, one of the immediate effects as it is seen in the Figure 2 was the reduction of the negative level of after-tax interest rate for the mortgage system and credit expansion with higher interest rates. When we look at the impact on personal income, we see the opposite. Families and individuals started paying more taxes in the five-year period of 1985-1990. According to the Figure 3, the 1991-1992 Swedish crisis was the moment to interrupt that tendency and re-establish the decreasing trends in rates for taxes on property and taxes on personal income with the elevation of interest rates. The level of after-tax interest rate reached the amount of 6% per year as never it had happened before as we can see in the Figure 2.¹⁰

REITs and the taxes levied on the sales of property

When real estate products or site leaseholds are sold in Sweden the sales are subject to a stamp duty. It is calculated on the higher of the purchase price or the tax value of the ownership. For example, the stamp obligation is generally 1.5% except the purchaser is a legal entity. In that case, the tax is 4.25% if the property is not, for example, object of housing cooperatives, which are models that can solve the distributive conflict between the urban surplus value from speculative market and the protection of housing rights. The result of that legal, social and economic regime is a window of opportunity for a different formation of prices not captured by financial risks since the economy of these cooperatives favour only families and individuals with first residential purpose as its main purpose (Vogel, Lind & Lundqvist, 2016). So, REITs or real estate agencies are not allowed to be neither investors nor owners in *bostadsrätt* system. However, stamp duty is not applicable to the shares sold by corporations or partnerships and it is not levied when a ownership is merged into other real estate investments observing the Land Parcelling Act. It is possible to merge a larger property into a smaller property in order to avoid the payment of stamp duties. It is only possible to use real estate as

¹⁰ All information along the present section was extracted from the Official Webpage Skatteverket – Swedish Tax Agency. Retrieved from <https://www.skatteverket.se/>

security for the payment of a loan in case of debts provided that the Real Property Register has issued mortgage certificates.¹¹

Municipal property tax

A municipal property fee is only applicable for those owners who use their properties for housing. Bearing in mind the income year 2015, the tax for residential ownership reaches 1,217 SEK for each unit, but not exceeding 0.3% of the tax value of the previous year. For commercial properties, the tax is 1.0%. On industrial estates, the fee varies between 0.2% and 2.8% observing the use of the property. The construction of residences that were built in 2011 or earlier are free from that tax during the subsequent five years and proprietors will honour half of the fee in the next following five-year period. Residential projects constructed from 2012 onwards are exempt for fifteen years of the municipal fee. For residential units already zoned, but not yet built, the tax is 0.4% of the value.

In Sweden, the rental income is submitted to Swedish income taxes or corporate income taxation. The Swedish Tax Agency is the authority responsible for evaluating each case. The corporate income tax rate is a simplified quota of 22% when real estate is owned by a corporation. Partnerships are not taxable entities, but the proprietors will be taxed for the capital they make. So, their payments may reflect the net income of the owners and corporations. For net gains the Swedish Tax Agency understands the gross income minus the costs with amortisation, firm maintenance, administrative expenses and also financial costs like interest on loans. In case partners running a business are individually taxed on their incomes, the progression is calculated till the top rate of approximately 57% – it is the competence of each municipality that will ponder the quantity applicable – and the income is also assessed based upon social security contributions.

Regarding the deductions for financial costs, the main rule is that interest on loans from REITs to REITs is not deductible regardless of the reason for the loan. However, there are two exemptions that must be taken into consideration: (i) the ten-per cent criterion

¹¹ Retrieved from <https://www.lantmateriet.se/en/Real-Property/Property-information-/real-property-register/>.

and (ii) the business purpose. The ten-per cent rule means the interest on an intra-group loan is deductible if the interest paid is taxed at a quota of at least 10% in the hands of the beneficial owner of the income. Furthermore, any deduction is acceptable if the underlying debt is predominantly motivated by business purposes and the beneficial owner of the interest income is resident within the Euro Area (EA) or in a country where Swedish taxes are the same by inter-state treaties. Rules of residence, income and exemptions are mutual for the parts.

With reference to the depreciation on property assets, every calculation relies on purchase prices, or the construction expenses plus the acquisition costs. In that case, the assessment of depreciation follows a simple protocol with taxes that vary between 2% and 5% depending on the use of the property. Land is not object of any calculus of depreciation. In order to inhibit REITs' speculative intentions, Sweden has ratified a considerable amount of double taxation treaties with different nations. Most treaties respect the standards negotiated during the Model Tax Convention under the auspices of the Organisation for Economic Co-operation and Development (OECD).¹² According to these international agreements already applicable, rental income from real estate in Sweden may be taxed in Sweden as any other income from permanent establishments in Sweden. The method for avoiding double taxation may vary depending on the treaty.

Taxation for real estate corporations

Payments from companies owning real estate are levied as ordinary dividends. Only private property used for residence that generates income obliges proprietors to pay a single rate of 30%. If the shares do not appear in a public list, only five-sixths of the dividend is taxable, but the effective quota is 25%.¹³ Nonetheless, for owners of

¹² Retrieved from <http://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-2015-full-version-9789264239081-en.htm>

¹³ According to the Tax Statistical Yearbook of Sweden 2015, it is said that “[...] from 1 January 2008 government property tax on dwellings was abolished and replaced by a municipal property charge. The new charge for single-family houses in 2008 is SEK 6 000, but not more than 0.75 percent of the tax assessment value. The maximum charge for an apartment in an apartment building is SEK 1 210 , although not more than 0.3 percent of the tax assessment value. The charges are index-linked by being linked to changes in the income base amount. In conjunction with the abolishment of the property tax, the

qualified shares in closely held companies, an amount of the dividends shall be taxed as income of employment with a marginal tax rate as high as 57% varying from municipality to municipality. Non-resident individuals must pay a withholding tax on dividends. Swedish corporations must pay corporate tax of 22% on dividends and the same percentage on the amount of sold ownerships.¹⁴

However, the Swedish holding regime specifies some exceptions. The holding system applies to shares held as a capital asset in two cases: (i) unlisted shares; (ii) and listed shares that holders represent ten per cent of the decision-making process of the investment and the shares are owned for at least one year, or if the shares are bought for business purposes. Foreign companies must pay a withholding tax on dividends. Registered companies in other European Union states will not pay withholding tax on the condition the companies receiving the dividends owns at least ten per cent of the shares in the company honouring the dividend.

If a real estate firm has a capital gain in Sweden, the profit is subject to Swedish corporate income tax regardless of where the company is tax resident. The capital gain is calculated based upon the sale price less the book value for tax purposes and costs. Capital losses that companies may claim on real estate are only deducted from capital gains in real estate investments. In Sweden, the income of the rents and the capital of the property from sales are part of a single calculation for the shareholders in REITs investments.¹⁵ Moreover, if an investor realizes a capital gain on Swedish real estate,

Budget for the autumn of 2007 suggested that the capital tax on the gain from selling a property has to increase from 20 percent to 22 percent. In addition it is also suggested that the postponed amount is billed an interest of 0.5 percent annually. For capital gains from the sale of commercial or rental properties the taxable amount was set to 90 percent of the actual gain. The proposal was to take affect from the fiscal year 2008". See *Swedish Tax Agency* [on-line]. Tax Statistical Yearbook of Sweden 2015, p. 10 [Accessed on 16 October 2017]. Retrieved from <https://www.skatteverket.se/download/18.361dc8c15312eff6fd1f7cd/1467206001885/taxes-in-sweden-skv104-utgava16.pdf>

¹⁴ The same amount for individuals.

¹⁵ According to the legal framework, individuals may rent their private residence: "Compensation when a residential property or a private residence is paid, and compensation for the disposal of products from such real estate or housing is to be raised. The same applies to compensation when a rental property is rented. The expenses for the assignment or products may not be deducted. Instead, deductions shall be made of SEK 40,000 per year for each residential property, private residence or rented apartment. If the remuneration relates to a grant, additional deductions shall be made to the issuer in accordance with the provisions of section 31. The deduction must in no case be higher than the income". See the 42 chapter, 30§, 2012: 757 Law. Retrieved from <http://www.notisum.se/rnp/sls/lag/19991229.htm#K42P30>

the taxation may differ for each situation. If the real estate is classified as part of business in an investment, 90% of the capital gain is subject to tax as capital income at a 30% rate. The most interesting part the system is that REITs are taxed twice exceeding the amount on capital gains aforementioned: “Companies are not allowed deductions for dividends to shareholders, and dividends received by shareholders are taxed as capital income. Dividends are thus taxed twice. From the point of view of a resident shareholder, the effective tax rate on adjusted company profits is, therefore, 45.4 per cent. A profit of SEK 100 is first subject to company income tax at a rate of 22 per cent. The dividend of SEK 78 (100-22) is then subject to individual income tax on capital income at a rate of 30 per cent. Total tax may thus be computed as $SEK\ 100 \times 22\% + SEK\ 78 \times 30\% = SEK\ 45.4$ ”.¹⁶

REITs and consumption taxes

The requirements to sell a unit or fraction of a financial product are generally met if the assets are sold in independent operations. It is imperative that the buyer has the intention to continue with the operations in the stock exchange markets in order not to pay value added tax. Under these circumstances, the buyer becomes the successor of rights and obligations originated from seller. All real estate rentals income is generally exempt from this type of tax, although the owner can apply this tax if the property is leased to a taxpayer who uses the property in REITs operations. If a taxable person invests in real estate and discounts the input value added tax on the investment, it is mandatory to repay 1/10 of the tax every year for a decade. In case the use of property changes or the ownership is sold, the taxable person must inform the Swedish Tax Agency.

3. Progressive taxes on property system: the case of Spain

¹⁶ See *Swedish Tax Agency* [on-line]. Tax Statistical Yearbook of Sweden 2015, p. 10 [Accessed on 16 October 2017]. Retrieved from <https://www.skatteverket.se/download/18.361dc8c15312eff6fd1f7cd/1467206001885/taxes-in-sweden-skv104-utgava16.pdf>

REITs and the taxes levied on the sales of property

In Spain, EU proprietors and no residents pay 19% of taxes per year on the amount made from ownership rents. The same quota is applied for nationals from Iceland and Norway. Other nationals shall contribute with 24%.¹⁷

Municipal property tax

In Spain, the minimum and supplementary municipal tax rate shall be 0.4 per cent in the case of urban real estate and 0.3 per cent in the case of rural real estate, and the maximum will be 1.10 per cent for the urban and 0.90 per cent for the countryside properties. The type of lien applicable to real estate with special characteristics, which will be of a supplementary nature, will be 0.6 per cent. The town councils will be able to establish for each group of them existing in the municipality a differentiated sort of tax, in any case, it will be less than 0.4 per cent or more than 1.3 per cent. So, the respective town councils may increase the rates set in paragraph 1 with the percentage points that are indicated for each case.

Proprietors may be entitled to a bonus of between 50 and 90 per cent in the fee of the tax, provided that they accomplish certain formalities requested. The interested parties must present their petitions before the beginning of their works averring if it is a real estate investment that constitutes the object of the companies of urbanization's activities, construction or real estate development of both new construction and rehabilitation projects. Properties that serve for the operation of a company and real estate businesses investments are not entitled. In cases of default, the maximum allowance will be applied to the aforesaid properties that were supposedly entitled to have the benefit – situations of fraud, for example. The term of application of this bonus will include from the tax period following the one in which the works begin until after their completion, provided that during this time the urbanization or effective

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Retrieved

from

http://www.agenciatributaria.es/AEAT.internet/Inicio/La_Agencia_Tributaria/Campanas/ Campanas /Fiscalidad de no residentes/ Impuesto sobre la Renta de no residentes /Sin establecimiento permanente/ INFORMACION/Informacion General/Cuestiones sobre bienes inmuebles/Tributacion de los inmuebles urbanos propiedad de no residentes personas fisicas.shtml

construction projects are carried out. The bonuses may not exceed three tax periods or three consecutive years.

The houses of official protection and those comparable to that sort of construction, which may vary among the autonomous regions, are entitled to a 50 per cent bonus on the full tax rate during the three tax periods following the granting of the definitive qualification. The respective fiscal benefits shall be granted at the request of the interested party, which may be made in any time prior to the termination of the three tax periods of duration of that and will have effects, as the case may be, from the tax period following the approved request. The town councils may establish a bonus of up to 50 per cent in cases of full tax payment which is applicable to the aforementioned cases. A fiscal ordinance will determine the duration and the annual amount of this benefit. Owners will be entitled to a 95 per cent bonus of the full fee and, in their case, of the surcharge of the tax if the properties are rustic ownership dedicated to agricultural cooperatives and of community exploitation of the land.¹⁸ The tax ordinances shall specify the substantive and formal aspects of the bonuses indicated previously, as well as the conditions of compatibility with other tax benefits.¹⁹

Taxation for real estate corporations

In Spain, individual savings scales vary from 19% to 23% when one has to declare the income taxes. First and foremost, it is relevant to differentiate this type of contribution since the taxes for REITs can be clearly compared with the amount paid by Spanish citizens and, then, entrepreneurships. Secondly, individuals that have rental income, capital gains or both will pay 19% over the amounts if they make up to 6,000 euros. If they exceed that quantity in the following 44,000 euros, the tax applicable will be 21%; and for those amounts over 50,000, the quota will be around 23%.²⁰ Nonetheless,

¹⁸ Retrieved from <https://www.boe.es/boe/dias/1990/12/20/pdfs/A37970-37977.pdf>

¹⁹ Retrieved from <https://www.boe.es/buscar/pdf/2004/BOE-A-2004-4214-consolidado.pdf>

²⁰ Retrieved from http://www.agenciatributaria.es/AEAT.internet/Inicio/La_Agencia_Tributaria/Campanas/ Campanas /Im puesto_sobre_la_Renta_de_las_Personas_Fisicas_IRPF_/INFORMACION/Cuestiones_destacadas/No

entrepreneurs in the property market will pay a common levy in their businesses, i.e., 20% over their contracts. Gains originated from lease and subletting of personal property, businesses involving ownership usufruct, mines and any other urban real estate.²¹

The 11/2009 Act for Real Estate Investments Trusts in Spain, *Ley de Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario*, in its articles 3 and 9, regulates the supply and taxes on real profits made by the REITs. In general, the regime permits the firms to operate exempt from State taxes if they run the business with at least 5 million Euros and making available 80% of their wealth for the supply of rents. It is an ambiguous legal mechanism. On the one hand, it reinforces and stimulates the control in the formation of prices for a long-term period, since the investors create a reserve of market without short-time limit to rent the units. That timing favours the speculation of higher prices and, consequently, affecting the working class looking for housing. On the other hand, it is a service with general interest that gives the impression government is working for the regulation of the property market with strict rules since the firms must comply with a long list of criteria to be entitled to run their business.

REITs and consumption taxes

In the Spanish system of taxes for properties, the rents of housing units, garages and land parcels are free of value added tax. Nevertheless, the exemption will not be applied in those cases in which a mixed use is attributed to a dwelling, as a housing unit or as a professional office. The lease of furnished homes is not exempt from the tax when the landlord agrees to provide services like the hotel sector, that is to say, cleaning, laundry, sheets, towels and other services are subject to value added tax. The lease of furnished houses made by a legal entity to assign it, assigning its use, to the residence of employees must pay the tax. Real estate agencies, which may be public and private,

vedades_Renta_2016/Tipos_y_escalas_de_gravamen_aplicables_a_partir_de_2016/Escala_del_ahorro_a_aplicar_a_partir_del_ejercicio_2016.shtml

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http://www.agenciatributaria.es/static_files/AEAT/Contenidos_Comunes/La_Agencia_Tributaria/Informacion_institucional/Campanias/IRPF_permanente/Informacion_general/Cuestiones_destacadas/reten_ingresos_cuenta_IRPF.pdf

have to apply the tax in different levels. For example, services for housing units under “protección oficial” (a regime that respects social quotas for the construction of dwellings) will pay 4% and renting contracts with the option of property acquisition in the future 10% – maximum of two garage spots. In the free market, housing units, garages etc may vary from 4% to 10% while buildings destined to demolition and commercial shops 21%.²² Housing services with services analogous to hotels will pay 10%.²³

The Table 1 is a concise comparative scheme of taxes between Spain and Sweden. It is important to notice that both countries have progressive taxes, but we point out two relevant exemptions in Sweden that may benefit the working class. One of them is the transfer tax when a property is inherited or sold, for example. The other one is the rental income generated free from taxes if the limit of 40,000 SEK per year is not exceeded. In Sweden, the low income families and individuals that use property inherited as their own residence or lease their ownership to other residents are not considered aggressive speculators. The concept of property is strictly limited by legal culture and economic usufruct as a human settlement.

Other aspect we should take into account is the type of progressiveness applicable for rental income and capital gains in both countries. Yet in Spain tax levels may vary from 19% to 23%, four percentage points do not capture the aggressiveness of the property system investments if we consider rental incomes or capital gains of firms in contrast to those families or individuals that make up to 6,000 euros per year with letting. A person pays almost the same in proportion making less with rental income than a real estate firm making much more. So, the Spanish taxable ceiling of 23% eventually incentivises a fierce competition for higher prices. In Sweden, rental income and capital gains have usually a flat rate of 30%, but dividends from REITs may reach 45.4%. In Spain, the

²² Retrieved from http://www.agenciatributaria.es/static_files/AEAT/Contenidos_Comunes/La_Agencia_Tributaria/Segmentos_Usuarios/Empresas_y_profesionales/Novedades_IVA_2014/Nuevos_tipos_IVA.pdf

²³ Retrieved from http://www.agenciatributaria.es/AEAT.internet/Inicio/_Segmentos_/Ciudadanos/Vivienda/Tributacion_del_alquiler_de_vivienda/Arrendador_IVA.shtml

dividends made by REITs are not subject to taxes, although there are some criteria to claim that the right and operate in the Spanish stock market.

Table 1. Property taxes in Spain and Sweden. Values on the total amount.

	Sweden		Spain	
	Individuals	Companies	Individuals	Companies
Stamp Duty*	1.5%	4.25%	0.5 - 1.5%	0.5 - 1.5%
Municipal Taxes	Max. 0.3%	0.2 - 2.8%	0.3 - 1.1%	0.3 - 1.1%**
Transfer Taxes	0%	0%	6%	6%
Rental Income	30% ***	30%	19 - 23%	20%
Capital Gains	30%****	22 - 30%	19 - 23%	20%
REITS	-	up to 45.4%	-	0%

* Impuesto sobre Actos Jurídicos Documentados

** Between 50% and 90% of the full installment for real estate construction companies, urbanization urbanization, and real estate development.

*** In Sweden, property by law as considered a place of residence. Exemptions for rents that do not exceed 40,000 SEK per year. See 42 chapter, 30§, 2012: 757 Law.

**** A tax of 22% may be applicable on capital gains (selling price less allowable deductions).

Table elaborated by W. Migliari based upon the data referred and collected along the present chapter.

4. Rental REIT, mortgage REIT and hybrid REIT: mutual funds in Spain

In order to claim the right to exemption in taxes, the main corporate purpose must be oriented by the acquisition and promotion of real estate for letting in urban context. Then, the possession of shares in the capital of other SOCIMIs (Sociedades Anónimas Cotizadas de Inversión en el Mercado Inmobiliario) or other entities not resident in the Spanish territory must have the same corporate purposes as those that are subject to a similar regime of benefits distribution. Beyond that, ownership of shares in the capital of other entities, resident or not in Spanish territory, whose main corporate purpose is the acquisition of immovable property in urban context for leasing, is subject to the same benefit distribution and investment regime. As another criterion, the possessions of shares or any part in collective investments in real property institutions must be regulated by the 35/2003 Act, 4 November. They may develop other accessory activities if they represent less than 20% of the company's income during each tax period. With reference to nature of the shares, the REITs must invest at least 80% of the value of the

asset in real estate for leasing in urban context and land for the promotion of real estate that will be used for letting provided that the promotion begins within three years of its acquisition. In that point, the rents are the main branch of the property market linked to speculation. This is why the aggregate demand, unemployment and concentration of income are three dependent variables for that sort of speculative investment.

For those participations in the capital or equity of other entities whose corporate purpose is that of the SOCIMIs, 80% of the investments must come from the lease of real estate subject to the fulfillment of its main corporate purpose with persons or entities that do not form a group independently of the residence. Furthermore, dividends or participations in profits have to be originated in those participations that fulfil the main corporate purpose. With reference to the time of permanence or maintenance, the real estate investments that integrate the asset must remain leased for at least three years, including the time that the property has been offered for lease with a maximum of one year. Shares or shares in the capital must be kept in the asset for at least three years from its acquisition or, as the case may be, from the beginning of the first tax period in which the tax regime is applied.

The shares of SOCIMIs must be admitted to trading within a regulated market or in a Spanish multilateral trading system or in any other Member State of the European Union or the European Economic Area, or being included in a regulated market of any country or territory with which there is an effective exchange of tax information uninterrupted throughout the tax period. In a nutshell, REITs shall observe a minimum capital of 5 million euros and just one class of shares is permitted. When opting for the special tax regime established by the SOCIMI's law, the company will include in its denomination "SOCIMI, S.A." or identify the REIT without abbreviations.

REITs are obliged to distribute their dividends, once the corresponding mercantile obligations have been fulfilled, sharing the benefits obtained in the year observing two initial protocols. The first one indicates 100% of the profits from dividends or profit sharing, which are mainly from the rental market, will be distributed by the entities that

have the main corporate purpose indicated in this law. The second one states that 50% of the profits derived from the transfer of other real estate or stock market shares respecting the fulfilment of main corporate purpose of the law. The rest of the benefits transfer will be reinvested in other properties or participations within a period of three years counted from the transmission of the assets.²⁴ Any breach of the information obligations constitutes a tax infraction REITs must send to the Spanish authorities data on annual activities. In case of irregularities, omissions and frauds, the firms will be seriously punished in accordance with what is mentioned in article 11 of the 11/2009 Act.

The special tax regime applicable to SOCIMI states that entities opting for the application of the special fiscal regime affirmed the 11/2009 Act shall be governed by the provisions of the Texto Refundido de la Ley del Impuesto sobre Sociedades (TRLIS) without prejudice to the special provisions set forth in that law. For example, taxes on company activities are 0%. Nevertheless, it will not be applicable for negative compensation in real estate investments included in the article 25 of the TRLIS if investments had been previously taxed at 0%. Deductions and bonuses must be claimed as the Chapters II, III and IV of Title VI of the TRLIS predict.

If the REITs do not respect the minimum period of three years of activity in the property market under the regime of SOCIMI, they will be taxed in accordance with the general regime and rates in the the law on corporate taxes (Impuesto sobre Sociedades) as the article 3.3 of 11/2009 Act. The lien applicable for that case is around 19% on the total amount of dividends or profit sharing distributed to members when the participation in the share capital of the entity is equal to or greater than 5% and such dividends, at the headquarters of its partners, are exempt or taxed at a rate lower than 10%.²⁵

²⁴ From the benefits obtained, 80% shall be paid within the month following the date of the distribution agreement. The legal reserve may not exceed 20% of the share capital. The bylaws can not establish any other reservation of unavailable character other than the legal one.

²⁵ See also <http://www.agenciatributaria.es/AEAT.internet/Inicio/ Segmentos /Empresas y profesionales/Empresas /Impuesto sobre Sociedades/Periodos impositivos iniciados hasta 31 12 2014/Regimenes tributarios especiales/Regimen Especial de SOCIMI.shtml>

5. Brief conclusive notes on banking crises

With the 2008 global financial crisis, governments acted in many ways to recover the confidence of investors, firms and individuals. However, some of them selected to bail out banks involved in property system investments with portfolios relying on risky activities without any feedback. As we have seen in the previous sections, the REITs' activities in Spain and Sweden have different stimuli along the last decade. However, since the 1980s, Europe and developing countries all over the world have been targeted by aggressive international investments especially with the political support of a wave in favour of de-regulated markets without measuring the probability of confidence crises (Geithner, 2007; Eichengreen, 2001; Yap, 1996). As we have seen the real estate investments need complex structures in the monetary and financial systems, but they will inevitably promote either risky or sustainable activities according to the political scenario of each country (Radelet & Sachs, 2000). Rents, mortgages or hybrid portfolios will be forged by the level of freedom the mutual funds have.

As an example of that sort of historical complexity in capital flows, the Directive 85/611/EEC and many studies published by the Committee of European Securities Regulators illustrate the political efforts made by the Council of Ministers in the decade to cause more transparency in the movement of capitals entering the continent. Mutual funds are not geographically stable and that means if they are monitored by government authorities they will probably affect the lives of millions and, consequently, violate people's rights. One of the reasons of these uncontrollable effects of the global finances was the lack of national legislations to create strong socioeconomic development with high levels of confidence in the market, although a simpler motivation is pointed out by same authors as the epicentre of economic crises in the last decades. On the one hand, the idea of a global model of government including the economic power had been understood as a powerful mechanism for the maintenance of stability in worldwide finances (Rodrik, 2011). On the other hand, Reinhart & Rogoff affirm the aggressive elimination of intermediate actors, such as State banks, shortened the distance between the commercial banking system and risky investments. Other argument was the avid

greed of investors in accelerating their profits in property market operations using different systems of remuneration such as the high interest rates in public debts and mortgages (Rajan, R., 2005; Reinhart, C. M., & Rogoff, K. S., 2011). As we have seen in the previous section on the Spanish REITs' legal framework, real estate firms operate like banks with private funds expanding credits. However, they may affect the aggregate demand of nations without having the responsibility of the other two dependent variables, i.e., the rates of unemployment and concentration of income as parts of public policies. Therefore, it seems to be a perverse real estate system for the working class and making vulnerable the right to housing of millions in Europe. The following chapter we will bring the legal arguments in favour a more dignified and affordable place to live. The Swedish model of progressiveness for real estate investments is not the unique option for the countries that have suffered the "Spanish effect" described previously as Spain in itself. Our intention in the present chapter was to suggest that the comparative debate on taxes as a political arrangement of a society may create other alternatives for the effectiveness of the right to housing.

CHAPTER III. THE RIGHT TO HOUSING AS AN ALTERNATIVE FOR CRITICAL TIMES

1. REITs, the violation of rights and the public international law perspective

The aim of our initial inquiry is to know how far the activity of the REITs corroborates a crisis of confidence making vulnerable the effective right to housing. From an international perspective, the local demands observed in the context of 2016 *United Nations Conference, Habitat III*, in Quito, Ecuador, corroborates the same transversal rationality from civil society questioning critically those international investments looking for speculative opportunities. We interpret the claim to the social function of the city and the social function of property as an area of interest with principles, norms and legal matters claiming also to the right of being part of the decision-making process in the field of International Relations (Keohane, & Nye, 1987; Krasner, 1983). We also refer to item 20 in the list of topics approved by the United Nations General Assembly for the 71st Period of Sessions referring to the right to housing and city issues. That postulate emerges from the document A/CONF.226/PC.3/14, Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), to avoid that “Major cities experience severe housing shortages while housing provision is largely driven by speculative land and property development practices, and tends to be geographically and socially concentrated”. After the 2008 economic global crisis, urban social movements started questioning the right to property design that had used speculative mechanisms of wealth accumulation affecting families, individuals and national economies. Therefore, the human rights principles and international law as a common language for individuals and States may promote the idea of a dignified human life embedding these values shared among nations in their constitutional legal systems (Koskenniemi, 2011; Habermas, 2012).

Yet from an international perspective, the concepts related to the right to housing had already been defined with the Committee general comments No. 4 (1991) on adequate housing and the No. 7 (1997) on forced evictions. These two documents were elaborated by the United Nations Committee on Economic, Social and Cultural Rights under the auspices of the article 11.1 on adequate housing from the *International*

Covenant of the Economic, Social and Cultural Rights (1966).²⁶ They also put forward the efforts made by the United Nations to harmonise States' obligations with the international law in those issues related to human rights. At that time, the right to housing had already been thought as a legal instrument to question the speculative capital in city context putting at risk human lives in forced dislodgements of communities. Therefore, we selected a series of counterarguments from which the inadequate use of the right to property or, as it is suggested by our debate, its absolute use by the REITs can be faced. One of them has to do with the international perception of how cities matter and property is central in the debate. As "Today, 54 per cent of the world's population lives in urban areas, a proportion that is expected to increase to 66 per cent by 2050", the usufruct of the right to property is really essential for cities once demography demands public powers, proprietors and real estate market to give solutions to the human needs in urban context.²⁷ The concentration of people in cities is also connected to the way people live. According to the *2003 United Nations Human Settlement Programme*, the number of inadequate houses has really pressured the well-being of billions. Run-down urban areas, "favelas" or even the invisible poor conditions of places to live are some of the global constant similarities for cities. The case studies of Barcelona and São Paulo are very illustrative.²⁸

²⁶ *United Nations Committee on Economic, Social and Cultural Rights* [on-line]. Committee General Comment No. 4 on Adequate Housing [Accessed on 17 December 2016]. Retrieved from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en

²⁷ Retrieved from <http://www.un.org/en/development/desa/news/population/world-urbanization-prospects-2014.html>

²⁸ "The district known as the Ciutat Vella, or old city, in Barcelona was the entire city until the mid 19th-century expansion. The old city had developed very high housing densities and had associated problems of lack of light, air and open space. As the city expanded, the more well off population moved out. Slum conditions developed in various areas, and continue to the present day in several neighbourhoods, such as the Barri Gòtic, Santa Caterina and the Barceloneta. The highest concentration is found in the neighbourhood known as the Raval, and most specifically the Raval Sud, or Southern Raval. This area was traditionally known as the Barri Xino, or 'Chinatown', and, partly because of its proximity to the port, has been characterized by marginal activities and the highest levels of poverty in the city. It has also traditionally served as the gateway for new immigrants to the city, providing cheap lodging in very poor conditions, in the form of boarding houses, dormitories and subdivided apartments. The buildings in this area vary in age – some are several centuries old – and the existence of slum lodgings in the area can be traced back at least to the mid 19th century. [...] In São Paulo, cortiços (rented rooms in a subdivided inner-city tenement building) are the traditional form of central slum housing. Most cortiços are located in the central districts of the city, in areas that are deteriorated but near the city's jobs and services. Sacrifices of cramped, unhealthy and expensive housing are compensated for by the proximity of work and public services. Favelas sprout everywhere: in wealthy areas, poor areas, in the central region or in

Poverty, property and the demands for the access to a dignified place to live in urban settlements persisted. The right to adequate housing connected all these demands for the Sixty-Seven Session of the General Assembly in United Nations in the year of 2012. That meeting resulted in the Resolution A/67/286 and showed the States' preoccupation about how economic issues such as unemployment, individual debts and housing prices are one of the keys to understand problem: "The discrepancy between income levels and soaring housing and rental prices coupled with unemployment led to increased payment default, foreclosures and homelessness. These processes were exacerbated by the adoption of legal and institutional adjustments aimed at facilitating foreclosure, which have been promoted in recent years as 'imperatives for developing a housing finance system'". The international financial market in real estate investments also make difficult the access to the right to housing once individuals have their life expectations in having their own homes reduced to a mortgage speculative system offered by banks. It is also a de-regulated market in which loans are given in risky conditions: "The paradigm that promoted homeownership as the most secure form of tenure has been proven false, as increasing foreclosure rates have been one of the main results of the recent crises". As a consequence, Spain had "more than 350,000 foreclosures have occurred since 2007 and in 2011, about 212 foreclosures and 159 evictions occurred daily. The crisis has disproportionately affected the poorest and most vulnerable, who were the 'last' to join the mortgage markets and the first to suffer the consequences of the crises owing to their low resilience to economic shocks and low repayment abilities. Recent research indicates that the majority (70 per cent) of defaults in Spain are related to the unemployment crisis and that 35 per cent of the foreclosed properties belong to migrants".²⁹

the periphery, wherever there is an empty and unprotected lot. Their appearance during the 1970s and 1980s mixed up the pattern of centre-periphery segregation in São Paulo. Public authorities constantly repressed and removed favelas in the areas valued by the market. The action of private property owners in regaining possession, moreover, has driven favelas to the poorest, most peripheral and environmentally fragile regions. Few remain in well-served regions, although the largest two, Heliópolis and Paraisópolis, are located in these areas". See *United Nations Habitat* [on-line]. *The Challenge of Slums*, Global Report on Human Settlements 2003, United Nations Human Settlement Programme, 80-89 [Accessed on 16 September 2016]. Retrieved from <https://unhabitat.org/books/the-challenge-of-slums-global-report-on-human-settlements-2003/>

²⁹ Resolution A/67/286, 2012, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental*

The three dependent variables for the REITs, which were presented in the first chapter, have caused different negative externalities for a wide range of socioeconomic realities. Nonetheless, these effects are globally ubiquitous in a varied scale making visible the process of housing speculation tends to be a zero-sum game: “Subsidy programmes in South Africa, Mexico and Brazil have also been criticized for replacing widespread informal housing with low-standard and stigmatized housing typologies concentrating low income families. The result is greater urban and social segregation, an increase in the disparity in access to urban services, a worsening of local living conditions, increased environmental damage and urban security problems”. Moreover, the access to the right to housing has been an object of financial investments in which the private interest with aggressive speculative practices have a triple trend line: “Three main housing financing mechanisms (sub-prime mortgage loans, demand-side subsidies and housing microfinance) have been promoted to specifically facilitate the access of lower-income households to housing finance, promoting homeownership. These policies have been implemented in the context of a changing role of the State from supplier of affordable housing to enabler of housing and financial markets”.³⁰ Although contrasts are considered from country to country, the rapporteuse indicated also how these capital policies have spread a net of indebtedness worldwide incompatible with the

freedoms. Raquel Rolnik, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, paragraph 29, p. 10

³⁰ Resolution A/67/286, 2012, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*, p. 21. The United Nations General Assembly approved another Report elaborated by Leilani Farha on *Adequate housing as a component of the right to an adequate standard of living*. The document A/71/310 still confirms that in 2016: “Unregulated real estate and land speculation, predatory mortgage lending and deregulated global flows of capital have resulted in economic crises in countries around the world. The real estate “bubble” of the mid-1980s to 1990 in Japan, the financial crisis in Argentina in the 2000s and the 2007 mortgage crisis in many States, including the United States of America and several States in Western Europe, have all had devastating effects on low-income and poor households. Japan has yet to recover and continues to see ever-growing numbers of homeless people. Unemployment rates tripled in a 10-year period in Argentina, resulting in a large number of households being unable to pay their mortgages, rent or utility bills. In Spain, Ireland and Greece, thousands of low-income and poor individuals suffered foreclosures or debt-related evictions and were thus forced out of their homes into encampments or into overcrowded accommodation with relatives and friends, or were left homeless. In these circumstances, increased suicide rates are not uncommon. In the United States, suicides spurred by severe housing stress — evictions and foreclosures — doubled between 2005 and 2010. Europe also saw a 6.5 per cent increase in suicides between 2007 and 2011. In States where social programmes were made available to those affected, similar spikes in suicide rates were not seen. See the A/71/310 pp. 9-10.

international obligations of State parties in the United Nations system: “Having examined the impact of these policies in various regions of the world, it is the view of the Special Rapporteur that they have largely failed to promote access to adequate housing for the poor. Evidence indicates that housing policies based exclusively on facilitating access to credit for homeownership are incompatible with the full realization of the right to adequate housing of those living in poverty, failing to supply habitable, affordable and well-located housing solutions accessible to the poor”.³¹

In 2016, the *Preparatory Committee for the United Nations Conference, Habitat III, on Housing and Urban Sustainable Development*, has put forward some relevant guidelines the meeting.³² The State parties have agreed in defining the right to the city as the fair distribution of spatial resources, normative action with social, economic and cultural diversity. The document A/CONF.226/PC.3/14 is a political effort relying on three pillars. The first one has to do with the land use for “housing and livelihoods, and the de-commodification of urban space; urban commons, public space, and biodiversity; access to basic services and infrastructure, and controlling pollution; unplanned and informal settlements habitation; resilience, climate change, disaster and risk management”. The second one is related to the “inclusive governance; inclusive urban planning; citizenship; enabling participation, transparency, and democratization”. The last one evolves the “recognition of social actors—including gender—for migration and refugees; embracing identity, cultural practice, diversity, and heritage; safer cities, livelihoods, well-being, and welfare; poverty risk and employment vulnerabilities; inclusive economy and solidarity economy”.³³ The three pillars resume the theoretical debate on property usufruct, the adequate right to housing and real estate finances in an intergovernmental document. The fragment of the first pillar, we can read:

Housing policy is largely concerned with numbers of units built, and mortgage finance rather than with housing and residential inequalities. Home ownership has been

³¹ See the A/71/310, pp. 9-10.

³² Read *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), Third session, October, 2016, A/CONF.226/PC.3/14*, p. 7. For a definition on the concept, see “Right to the city = spatially just resource distribution + political agency + social, economic and cultural diversity”.

³³ Read *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), Third session, October, 2016, A/CONF.226/PC.3/14*, p. 2

supported as the principal tenure through policies and private sector supply, to the exclusion of the urban poor. Rental housing must be a policy priority and recognize the value of popular investment in urban housing (e.g. in informal and unplanned settlements). A critical problem has been the marketization of urban space disregarding the social function of land and housing. There is thus an urgent need to: challenge land speculation linked to gentrification and economic growth, accommodate housing needs through diverse housing tenure choices, and ensure a continuum of affordable and adequate housing (including socially produced and community-led housing).³⁴

We call the attention to the issue of land speculation that is intimately connected to the usufruct of the right to property. As seen before, the economic dimension imposes certain dynamics for cities once urban planning is usually captured by market needs and do not reflect citizenship.³⁵ This is why the *Preparatory Committee (Habitat III)* has insisted governments should pursue principles harmonising city, rights and social function with the life of people: “The right to the city values the social function of land understood as the use and enjoyment of land by inhabitants to perform all the activities which are necessary to have a full and decent life, thereby prioritizing the human experience of land and habitation. It recognizes a legal form to protect the right of access to adequate housing, which, together with a reformed property rights system, aims to act as a legal barrier against forced evictions”.³⁶ Another key action yet in the first pillar for the right to the city and adequate housing says it is indispensable “To recognize the bundle of property rights, hence the need for the continuum of land ownership and occupancy rights in land policies and legislative frameworks” to avoid evictions. It is one of the most sensitive topics that worries cities all over the world. As we suggested before, the usufruct of the property has to be connected “To use urban

³⁴ Read *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), Third session*, October, 2016, A/CONF.226/PC.3/14, p. 9

³⁵ See Sassen, S. (2005). The global city: introducing a concept, *Brown Journal of World Affairs*, 11 (2), 27-43. Read “Global capital and the new immigrant workforce are two major instances of transnationalized actors that each have unifying properties across borders internally, and find themselves in contestation with each other inside global cities”, p. 39

³⁶ Read *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), Third session*, October, 2016, A/CONF.226/PC.3/14, p. 16

planning mechanisms to capture increases in land value, redistribute this towards social housing and public space provision, and minimize vacant property rates”.³⁷

The Resolution A/RES/71/256 in its point 165, which was adopted by the General Assembly on 23 December 2016, endorses a global view on the importance of “sustainable urbanization and human settlements, in collaboration with other United Nations system entities, recognizing the linkages between sustainable urbanization, and, inter alia, sustainable development, disaster risk reduction and climate change”. As a result of the United Nations Conference Habitat III, the document *Quito Declaration on Sustainable Cities and Human Settlements for All* declaring the relevance to implement the 2030 Agenda for Sustainable Development to make cities and human settlements more inclusive: “The implementation of the New Urban Agenda contributes to the implementation and localization of the 2030 Agenda for Sustainable Development in an integrated manner, and to the achievement of the Sustainable Development Goals and targets, including Goal 11 of making cities and human settlements inclusive, safe, resilient and sustainable”. A series of human and social rights are linked to the concept we called before the right to the city, but urbanisation and housing are central in that process. As a shared common view, point 11 of the document, it is said: “We share a vision of cities for all, referring to the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all. We note the efforts of some national and local governments to enshrine this vision, referred to as “right to the city” in their legislation, political declarations and charters”.

Such perception supports the notion of adequate judgments beyond what courts and tribunals decide, but stating a legal framework once the organisation understands its resolutions as a moral mandate. The letter “b” of the point 13 corroborates a political activism to promote an umbrella of rights through civil society participation. It is interesting the emphasis on the roles that can be played by communities,

³⁷ Read *Preparatory Committee for the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)*, Third session, October, 2016, A/CONF.226/PC.3/14, pp. 16-17

neighbourhoods and people in public spaces in cities where human settlements that are: “[...] participatory, promote civic engagement, engender a sense of belonging and ownership among all their inhabitants, prioritize safe, inclusive, accessible, green and quality public spaces that are friendly for families, enhance social and intergenerational interactions, cultural expressions and political participation, as appropriate, and foster social cohesion, inclusion and safety in peaceful and pluralistic societies, where the needs of all inhabitants are met, recognizing the specific needs of those in vulnerable situations”. *Quito Declaration on Sustainable Cities and Human Settlements for All* also approved a resilient agenda to combat what we previously conceptualised as *poor demography* in order to: “Achieve gender equality and empower all women and girls by ensuring women’s full and effective participation and equal rights in all fields and in leadership at all levels of decision-making, by ensuring decent work and equal pay for equal work, or work of equal value, for all women and by preventing and eliminating all forms of discrimination, violence and harassment against women and girls in private and public spaces”. The content of the Policy Paper 1 A/CONF.226/PC.3/14 on urban issues and decent work, which was part of the Third Session that happened in Surabaya, Indonesia, preparing Quito’s event, was also linked to property system, housing and the efforts all nations should make to avoid land speculation as it is seen in the point 14, letter “b”, in order to: “Ensure sustainable and inclusive urban economies by leveraging the agglomeration benefits of well-planned urbanization, including high productivity, competitiveness and innovation, by promoting full and productive employment and decent work for all, by ensuring the creation of decent jobs and equal access for all to economic and productive resources and opportunities and by preventing land speculation, promoting secure land tenure and managing urban shrinking, where appropriate”. The point 111 reinforces the right to an urban environment where housing and work among other legal matters that can be used to prevent cities from vulnerable socioeconomic conditions: “We will promote the development of adequate and enforceable regulations in the housing sector, including, as applicable, resilient building codes, standards, development permits, land-use by-laws and ordinances, and planning regulations, combating and preventing speculation, displacement, homelessness and

arbitrary forced evictions and ensuring sustainability, quality, affordability, health, safety, accessibility, energy and resource efficiency, and resilience”.³⁸

2. REITs and the role of public international law

The right to housing in the EU through the connecting factor of consumerism

The *Charter of Fundamental Rights of the European Union*, article 34, in its intents 1 and 3, calls the attention to need for coherent legal and institutional practices to harmonise economic activities with the Community Law. However, the Court of Justice of the European Union (CJEU) has appreciated a conflict in which a bank had demanded in the Spanish tribunals the foreclosure of a mortgage that was not paid by its client. Before making effective the eviction of the family, the local judge addressed a question to the CJEU. So, the case *Mohamed Aziz v. Caixa d'Estalvis de Catalunya, Tarragona i Manresa Catalunyacaixa*, document C-415/11, November 8, 2012, reached the tribunal of the organisation as a clear example of our debate on how the economy of REITs had ignited abusive performances in the property market. The aggregate demand shrinking with high rates of unemployment and the concentration of wealth disturbing Europe again after the 2008 crisis called also the attention of the EU legal powers.

After being appreciated by a local judge from the 3rd Commercial Court in Catalonia, the object of the controversy was submitted to a consult at the Court of Justice of the European Union in order to clarify whether Mr. Mohamed Aziz had his rights violated according to the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. The first issue addressed to the juridical institution of the EU raised the question of incompatibility in the Spanish law with what would be considered fair terms of a consumer contract. The article 3 of the Council Directive aforementioned affirms that any clause in a contract shall be negotiated individually and the conditions for the debt payments must observe the principle of *bona fide*: “[...] in order to assess whether the imbalance arises ‘contrary to the requirement of good faith’, it must be

³⁸ *United Nations. United Nations Habitat III Programme on Housing and Sustainable Urban Development Conference. New Urban Agenda* [on-line]. A/RES/71/256. Resolution adopted by the General Assembly on 23 December 2016, Seventy-first Session [Accessed on 29 May 2017]. Retrieved from <http://habitat3.org/the-new-urban-agenda/>

determined whether the seller or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to the term concerned in individual contract negotiations”. Until that time in Spain, mortgages used to be sold without a personal criterion assuming equivocally that all consumers could be treated as just one economic body. Other conflictual point was about the interest rates applied automatically to those consumers in case of default. The European Court saw as an uncommon practice the annual amount of 18.75% without any need for notice, but did not declare in its opinion whether the Spanish State permitted such unfairness. However, based upon the concept of “significant imbalance”, article 3.1, Directive 93/13, Spain had to assess: “[...] in the light of an analysis of the rules of national law applicable in the absence of any agreement between the parties, in order to determine whether, and if so to what extent, the contract places the consumer in a less favourable legal situation than that provided for by the national law in force”. The court also emphasised the unfair practices in consumer rights predicted in the article 3.3 of the Directive 93/13 was not exhaustive, but indicative.³⁹ Although the case *Mohamed Aziz v. Caixa d’Estalvis de Catalunya, Tarragona i Manresa Catalunyaacaixa* was more a legal debate on consumer law, its effects favoured the concept of the right to the individual protection based upon the article 47 of the European Charter of Fundamental Rights as the Catalan judge mentions in his final decision.⁴⁰ Other aspect is the international dimension in that debate of how local legislation shall implement European rights. Other positive consequences generated by the case were the limits Spain should take into account for conflicts evolving evictions. Mr. Mohamed Aziz was evicted from his house with his family without having the right to defend himself once

³⁹ See Court of Justice of the European Union, First Chamber, Press Release N. 30/13, Luxembourg, 14 of March, Judgment in Case C-415/11, *Mohamed Aziz v. Catalunyaacaixa*. In May 2013, after having the declaration on abusive clauses from the Court of Justice of the European Union, the judge José María Fernández Seijo conformed his decision to the article 695 and the following provisions of the Spanish Civil Code averting the consumer defense in that case was clearly limited. He adds the individual protection of the consumers in Spain was not plainly exercised once the national law for mortgages foreclosures imposed also material obstacles. See SJM B 21/2013, Tercer Juzgado Mercantil de Barcelona, Recurso N. 13/2011, Sentencia, May 2013.

⁴⁰ Juliane Kokott was the general lawyer that conducted Aziz’s defence at the Court of Justice of the European Union. She has been a professor of the St. Gallen University in Switzerland and fought for the importance of reviewing the contracts containing abusive clauses in the European context. Retrieved from <http://curia.europa.eu/juris/document/document.jsf?text=&docid=129481&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=475722>

there was not a legal instrument permitting the affected to face his mortgage foreclosure at that time. For the Spanish society, a simple defense of consumer law intimately connected to a property was symbolic among the social movements fighting for the right to housing in times of crisis.⁴¹

The right to housing in the UN system

The individual protection in case of defaults in mortgage contracts resulted in a debate on up to a certain extent the Spanish State had violated the right to housing in a case known *I.D.G v. Spain*. The plaintiff was a client of private bank and paying a housing mortgage when stopped the monthly payments. The lending institution immediately after demanding in full the loan given proceeded to enforce the mortgage's debt through a foreclosure procedure in the 31st Trial Court of Madrid. After the formal request of the bank in initiating the foreclosure procedure, the judicial power had failed in communicating to the national the bank's intention in auctioning and evicting her at the beginning of the litigation. Ms. I.D.G. was finally aware of what was happening and contested the court position in not making effective the information arrival in order to give her the possibility of an appropriate defense. According to her, the ordinary court had to nullify the bank's petition, because its procedures corroborated the violation of her rights predicted in the Spanish Civil Procedure Act in informing properly the affected. However, the Court of Madrid stated "[...] it had no jurisdiction to annul the auction order of 11 February 2013, under articles 5 and 562, paragraph 2, of the Civil Procedure Act and article 455 of the Organic Act on the Judiciary".⁴²

The possibility of the plaintiff in defending herself was reduced once she could not even know an auction was undergoing under her name. Therefore, without being aware of the foreclosure procedures published on the Official Gazette, Ms. I.D.G. presented a motion

⁴¹ See Micklitz, H. (2013). Unfair contract terms. Public interest litigation before European Courts. In Colaert, V. & Terry, E. (Eds). *Landmark cases of EU consumer law: in honour of Jules Stuyck* (pp. 639-652). Cambridge: Intersentia. Read also Sánchez, S. I. (2014). Unfair terms in mortgage loans and protection of housing in times of economic crisis: *Aziz v. CatalunyaCaixa*. *Common Market Law Review*, 51(3), 955-974.

⁴² *Committee on Economic, Social and Cultural Rights (CESCR)*, Communication No. 2/2014, Views adopted by the Committee at its fifty-fifth session (1-19 June 2015). It is relevant in that case the presence of the *amicus curiae* represented by the International Network for Economic, Social and Cultural Rights (ESCR-Net).

affirming her right to a defence and effective legal protection, *inter alia*, was violated under the articles 156 and 164 of the Spanish Civil Procedure Act. The 31st Trial Court of Madrid declined her petition. In May 2013, Ms. I.D.G. files an appeal in *amparo* and presented it at the Constitutional Court affirming her rights to an effective individual protection under the articles 24 and 25 of the Spanish Constitution of the State party had been violated. The plaintiff pointed out the Court of Madrid had failed to exhaust: “all available means of serving notice in person, in accordance with articles 155, 156 and 683 of the Civil Procedure Act”. In October 2013, the Spanish Constitutional Court disesteemed the plaintiff’s appeal and confirmed the previous decision dictated by the Court of Madrid: “manifest absence of violation of any fundamental right covered by *amparo*”. As a final decision, the constitutional mentioned its interpretation of the case was “in accordance with articles 44, paragraph 1, and 50, paragraph 1 (a), of the Organic Act on the Constitutional Court”.⁴³

Regarding the article 91, paragraph 1, of the Optional Protocol of the *International Covenant of Economic, Social and Cultural Rights*, as Spain a State party of the document, Ms. I.D.G claimed her rights on the lack of effective access to the courts in protecting the right to adequate housing. Bearing in mind the lack of effective access to the Spanish courts in protecting her right to adequate housing, Ms. I.D.G. requested the Economic and Social Council whether the Spanish State as party of the Optional Protocol had disrespected or not the articles 11 and 2, paragraph 1, about the right to an adequate housing and the individual protection. The economic crisis was used to contextualise her own demand: “[...] the author missed several mortgage repayments, totalling around € 11,000”. In addition, Ms. I.D.G. said the bank was not prepared to negotiate: “On 21 June 2012, the Court admitted the enforcement application in the amounts of the € 381,153.66 (principal), € 5,725.80 (ordinary interest) and € 856.77

⁴³ “It adds that the Constitutional Court has found that the mortgage enforcement procedure, and more specifically articles 695 and 698 of the Civil Procedure Act, do not affect the right to effective judicial protection as regards the equality of the parties and the right to decent and adequate housing, since the ruling handed down in this procedure does not produce effects of *res judicata* and the ordinary procedure is always available”. See *Committee on Economic, Social and Cultural Rights* (CESCR), Communication No. 2/2014, Views adopted by the Committee at its fifty-fifth session (1-19 June 2015). It is relevant in that case the presence of the *amicus curiae* represented by the International Network for Economic, Social and Cultural Rights (ESCR-Net), p. 5.

(default interest)".⁴⁴ In response to the Economic and Social Council, the Spain affirmed: "With the aim of ensuring the effectiveness of the right established in article 11, paragraph 1, of the Covenant, the State party promulgated Act No. 1/2013 of 14 May, on measures to strengthen protection for mortgage holders, debt restructuring and social rents; and Royal Decree-Law No. 27/2012 of 15 November, on urgent measures to strengthen protection for mortgage holders. Moreover the State party is of the view that the mortgage enforcement procedure regulated by the Civil Procedure Act strictly meets the obligations arising from the right to effective judicial protection". At the end, the Economic and Social Council declared Spain violated the right to an effective remedy in ensuring that the auction of the plaintiff's property should not proceed until the moment a due procedural protection and due process guaranteed. The Committee called the attention to the State parties that the Economic and Social Council's General Comments Numbers 4 and 7 had the mission of avoiding evictions. Then Spain had to "reimburse the author for the legal costs incurred in the processing of this communication". Related to the general recommendations, the Committee said: (a) Ensure the accessibility of legal remedies for persons facing mortgage enforcement procedures for failure to repay loans, (b) Adopt appropriate legislative or administrative measures to ensure that notification by public posting of notice in mortgage enforcement procedures is strictly limited to situations in which all means of serving notice in person have been exhausted [...], (c) Adopt appropriate legislative measures to ensure that the mortgage enforcement procedure and the procedural rules contain appropriate requirements (see paras. 12.1-12.4 and 13.3-13.4 above) and procedures to be followed before going ahead with auction of a dwelling, or with eviction, in accordance with the Covenant and taking into account the Committee's general comment No. 7".⁴⁵

3. The effort of central banks for more transparency in REITs

⁴⁴ *Committee on Economic, Social and Cultural Rights (CESCR)*, Communication No. 2/2014, Views adopted by the Committee at its fifty-fifth session (1-19 June 2015). It is relevant in that case the presence of the *amicus curiae* represented by the International Network for Economic, Social and Cultural Rights (ESCR-Net), p. 3.

⁴⁵ *Committee on Economic, Social and Cultural Rights (CESCR)*, Communication No. 2/2014, Views adopted by the Committee at its fifty-fifth session (1-19 June 2015), pp. 15-16.

EU authorities, REITs and the lack of transparency

Transparency is an effective legal tool and a reasonable mechanism to promote a more regulated REITs market. In order to achieve that goal, the harmony of laws, regulations and administrative provisions regarding the undertakings for collective investments in transferable securities have been some of the cornerstones to securitise financial practices in the European Union (EU).⁴⁶ However, the Directive 85/611/EEC and works published by the Committee of European Securities Regulators illustrate the political efforts made by the Council of Ministers during the 1980s still insisted in more transparency in the movement of capitals entering Europe. The 2008 economic global crisis made evident how the European regulation on foreign capital crossing the borders of the organisation had been insufficient to contain the abuses of opaqueness in stock exchange markets backing speculative practices and the lack of a private productive spirit in an effective free-open market of capitals in the EU.

As a response to that toxic and contagious composite of negative externalities affecting the confidence of economy, politics and fair production of real property market, the Council of Ministers approves the Directive 2009/65/EC. The article 2 (n) paved the path to set amendments and reform the previous legal framework establishing the European Securities and Markets Authority (ESMA) as a subsidiary organ of the European Systemic Risk Board. In 2010, the European Commission (EC) concluded a series of tasks to conform a programme and ameliorate the protection of funds from investors in European Union by the document IP/10/869. Nonetheless the efforts made to comply with a more stable arena for investments especially in real estate markets were followed by a persistent lack of transparency about the capital flows in the EU. As it is averred in the 2015 Explanatory Memorandum of the EC, the speculative quality of

⁴⁶ The transferable capital is that part of the REITs' portfolio that puts in motion capital inside and outside national frontiers. One stock exchange market can leverage an amount in country A and the capital is re-invested in countries B, C, D etc. The marginal capital return and the real interest rates serve as allurements for this sort of risky activity. As in Spain, REITs must comply with housing investments for letting, it is highly probable in a near future the low income families and individuals are more exposed to the supply of real estate investment trusts.

the assets still nurtures uncertainties for the national economies in the region.⁴⁷ As a result of the present conflict of interests between the economic speculative investments in property market and the political-financial response given by the EU authorities in regulating inward undertakings, but taking into account that more control may produce negative effects or lower investments in the housing market.⁴⁸

However, the nature of the speculative market of the REITs generates constant tensions with social and economic rights affecting democratic values as announced in the article 3 of the Treaty on the European Union. Other negative externality of the REITs is the lack of transparency present in the formation of prices and, consequently, the distortions of the supply-demand logic since the marginal returns in property businesses are usually guaranteed by rents, sales and mortgages. Prices that are progressively controlled by these sorts of investments whether their housing units in EU are temporarily empty or not. Other aspect that diverges from the essence of the REITs is the direction of social demands for more affordable places to live. The accountability offered by the real estate firms, which are defended by their owners as sustainable and constructive, has brought up a public mistrust of the EU authorities. By accountability, we understand also the numbers and the protocols of the REITs that may generate confidence in the EU market. As stated in a study carried out by the European Commission, *Reflection Paper on the Deepening of the Economic and Monetary Union*: “Before the crisis, the euro area was the symbol of continuously increasing prosperity. Real income per inhabitant in the euro area rose steadily between 1999 and 2007. This was partly fuelled by favourable credit conditions and by large capital flows moving towards the Member States with increasing current account deficits. However, these flows did not always translate into sustainable investment. In some cases they rather fuelled “bubbles”, such as in the real

⁴⁷ Read the publication 2015 Explanatory Memorandum C(2015) 9160 and the footnote number 4. As it is said: “Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1–95)”.

⁴⁸ The legal arrangement and procedural matters in the field of economic and political policies for more transparency and regulation of the inward investments for the functioning of the EU market derives from the article 114 of the Treaty on the Functioning of the European Union.

estate and construction sectors, as well as an increase in government spending”.⁴⁹ As it seems to be the consensus, the challenge for more transparency is a macroeconomic variable originated and controlled solely in the EU, but from the worldwide capital forces concentrating more and more credits in an oligopolistic structure.⁵⁰

EU banking system, REITs and transparency

So, as an attempt to separate risky financial activities from retail banking, the Council of Ministers approves the Directive 2009/65/EC. The article 2 (n) paved the path to set amendments and reform the previous legal framework establishing the European Securities and Markets Authority (ESMA) as a subsidiary organ of the European Systemic Risk Board. In 2010, the EC concluded a series of tasks to conform a programme and ameliorate the protection of funds from investors in European Union by the document IP/10/869. Nonetheless the efforts made to comply with a more stable arena for investments especially in real estate markets were followed by a continuous lack of transparency about the capital flows in the EU and how the money had been negotiated in different banking sectors. In 2012, an article published the British newspaper *The Guardian* called the attention to the member States of the EU to “Separate risky financial activities from retail banking”.⁵¹ There was also an effort made by Erkki Liikanen who chaired the well-known work resulting in the report *High-level expert group on reforming the structure of the EU banking sector*.

⁴⁹ See *European Commission* [on-line]. Reflection Paper on the Deepening of the Economic and Monetary Union, p. 12 [Accessed on 15 October 2017]. Retrieved from https://ec.europa.eu/commission/sites/beta-political/files/reflection-paper-emu_en.pdf

⁵⁰ The numbers on real estate firms show that the productive sector of housing and property markets for the construction sector are mostly micro-enterprises. However, the credit system is still driven by giant and concentrated capital flows operating through stock exchange markets, public funds for infrastructure and taxpayer money bailing out private banks. Read the reports by the *Eurostat* and the *European Public Real Estate Association* (trust-oriented) retrieved respectively from: http://ec.europa.eu/eurostat/statistics-explained/index.php/Real_estate_activity_statistics_-_NACE_Rev._2 and http://www.epra.com/media/INREV_EPRA_Real_Estate_Real_Economy_2016_Report_1466582653897.pdf

⁵¹ Treanor, J. (2012, October 2). Separate risky financial activities from retail banking, EU report recommends. *The Guardian*. Retrieved from <https://www.theguardian.com/business/2012/oct/02/bankers-bonuses-bonds-eu-report>

The idea of Erkki Liikanen's report was to reinforce the separation of the adventurous capital seeking fast-easy gains in public debt, real estate speculation and other risky activities from the functioning of the domestic commercial banks. So, the Group took into consideration two avenues: "The first avenue was based on the important role of recovery and resolutions plans and left the decision on the possible separation of bank's activities conditional on the assessment of these plans; it is also included proposals to tighten capital requirements". The second relied on the "[...] mandatory separation of bank's proprietary trading and other risky activities".⁵² Two years later Liikanen's work with other experts, the Directive 2014/17/EU tried to create more restrictive criteria for register, operation and capital of the real estate firms or financial investors in the sector that they have resulted in a hard law binding control with the appearance of not imposing a schism. The directive was formulated by the EC with the supported opinion elaborated by the European Central Bank and the European Economic and Social Committee in order to harmonise the rules on credit agreements for consumers relating to residential immovable property and also the amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

As it is averred in the 2015 Explanatory Memorandum of the European Commission, the speculative quality of the REITs' assets still nurtures uncertainties for the national economies in the region.⁵³ As a result of the present conflict of interests between the economic speculative investments in real estate and the political-financial response given by the EU authorities in regulating inward undertakings, the European Central Bank with the Council of Ministers have expressed their worries about the lack of transparency involving housing issues.⁵⁴ The data and statistics produced by the *Eurostat* on real estate investments and the studies by the *European Central Bank* through its competent authorities provide a solid basis on the need of macroprudential

⁵² Liikanen, E. (2012, October 2). *High-level expert Group on reforming the structure of the EU banking sector* [Final Report]. Brussels: Bank of Finland. Retrieved from http://ec.europa.eu/internal_market/bank/docs/high-level_expert_group/report_en.pdf

⁵³ Read the publication 2015 Explanatory Memorandum C(2015) 9160 and the footnote number 4. As it is said: "Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (OJ L 83, 22.3.2013, p. 1–95)".

⁵⁴ The legal arrangement and procedural matters in the field of economic and political policies for more transparency and regulation of the inward investments for the functioning of the EU market derives from the article 114 of the Treaty on the Functioning of the European Union.

policies in Europe to regulate the property market (Hartmann, 2015). We will also use the institutional and legal observations by the European Commission on investments and speculative practices to support our initial inquiry on the formation of oligopolistic systems of credit for urban development.

Lessons from the tax system for transparency

Up to a certain extent, Thomas Piketty and Tigran Poghosyan point out how taxes and property market are intimately connected to democratic alternatives on the production of surplus value. Moreover, progressive taxes are less conflictive conductor for families, individuals and companies to comply with once the distributive conflict is solved based on the expansion of aggregate demand, employment and distribution of wealth. As we point out, the effectiveness of the right to housing in the EU may end up in a more stabilised and harmonised system of ownership to not incentivise highly speculative profiles in real estate equities. The cases of Spain and Sweden support two different responses to the same problem on what to do with the excess of capital produced (surplus value transformed into taxes) by the real estate investments. Progressive taxes on non-residential properties and the re-direction of the surplus value in real equities generated by these fiscal policies tend to create a window of opportunity to a more democratic economy in the sector: “One of the two most important such projects is a democratized market economy, uncommitted to a single version of itself and hospitable to permanent disruption and innovation. The other such project is a deepened, high-energy democracy that through the sets of institutional innovations I earlier sketched meets the triple test of mastering the structure, weakening the power of the dead [for instance, tradition of property system] over the living, and diminishing the dependence of change on crisis”.⁵⁵ An attempt to formulate new possibilities for an economic and legal framework with radical alternatives for the “Spanish effect” countries tends to

⁵⁵ Unger, R. M. (2015). The vocation of legal thought now. In *The critical legal studies movement: another time, a greater task* (p. 72). New York: Verso.

point out the need for macroeconomic and transparent policies in the property market devoted to housing demands.⁵⁶

4. Limiting REITs through the social function of property

Legal prerogatives in the Spanish constitutional system

In Spain, the article 33.2 of the 1978 Spanish Constitution declares the right to property shall comply with the same principles of the social function of property. There are other legal mechanisms of expropriation to put forward the general interest in housing matters, but very expensive and without necessarily re-directing the surplus value from risky speculative real estate investments.⁵⁷ The competences for urban land planning, urban issues and housing are stated in the article 148.1.3 of the Magna Charter.⁵⁸ In addition, the 7/2015 Spanish Legislative Real Decree for territorial development and the sustainability of the urban areas affirms in the article 3.1 public administrations must use strategic measures to implement public policies on regulation for planning, occupying, changing and using the urban areas with due respect to the general interest.

⁵⁶ The scholars of the critical legal studies do not offer only an interdisciplinary approach on economic, political and social issues through law, but mostly an alternative plan for the construction of democracy overcoming the binary view between the vulgar neo-Keynesianism policies relying on consumption or credit expansion and the neoliberal responses demanding less State-orientated democracies. See Kennedy, D. (1982). The stages of the decline of the public/private distinction. *University of Pennsylvania Law Review*, 130 (1), 1349-1357; Calabresi, G. (2003). An introduction to legal thought: four approaches to law and to the allocation of body parts. *Stanford Law Review*, 55 (6), 2113-2151; Atienza, M. (2007). Prólogo. In Courtis, C. & Atienza, M. (Eds.), *Observar la ley: ensayos sobre metodología de la investigación jurídica* (pp. 9-12). Madrid: Editorial Trotta; and Unger, R. M. (2015). *The critical legal studies movement: another time, a greater task*. New York: Verso.

⁵⁷ The right to pre-emption in property matters is called in the Spanish Civil Code as “tanteo y retracto”, which is basically the preference the proprietor, in case of a property sale, shall give to the tenant. Public administrations have also the right to pre-emption with general interest: “La Ley 4/1989, de 27 de marzo, de conservación de los espacios naturales y de la flora y fauna silvestres, faculta a la Administración competente para el ejercicio de los derechos de tanteo y retracto en las transmisiones onerosas intervivos de terrenos situados en el interior de un espacio declarado protegido (art. 10.3). El Tribunal Constitucional, por su parte, ha aceptado el uso que la legislación sectorial —en su mayor parte autonómica— viene haciendo de estos derechos con cualquier finalidad constitucionalmente legítima (STC 170/1989, de 19 de octubre)”. See Pérez, J. I. M. V. (2004). Los retractos legales a favor de las administraciones públicas. *Revista de Administración Pública*, 1(165), 53-85.

⁵⁸ Read Doménech, I. P. (1997). El principio de proporcionalidad y la jurisprudencia constitucional. *Jueces para la Democracia*, 28 (1), 70; Martens, P. (1992). L’irrestible ascension du principe de proportionnalité. In *Presence du droit public et des droits de l’homme: mélanges offerts à Jacques Velu* (pp. 49-68). Bruselas: Bruylant. And also Ferrer, J. C. (1985). Una aproximación al control de proporcionalidad del Consejo de Estado francés: el balance costes-beneficios en las declaraciones de utilidad pública de la expropiación forzosa, *Revista de Derecho Administrativo*, 45 (1), 71-83

The article 3.2 says the public powers must pursue a complex legal framework backing the sustainable development principles in order to guarantee the rational use of the natural resources. The provision includes also the notion of land use in harmony with economic needs, employment, social cohesion, equal treatment and opportunities for people, health, safety and the protection of the environment. There is also the inclusion of legal matters related to flora and fauna, the protection of the cultural inheritance and landscape. Moreover, the rural zones' protection is lawfully in connection with the idea of urban development as it is seen in the letters "a", "b", "c" and "d" of the article 3.2 in which public powers have also the obligation to predict future problems in these matters.⁵⁹ The article 3.3, letters "a", "b" and "g", calls the attention of the public administrations to promote the residential use of the property to reinforce the housing matters in accordance to a more sustainable urban planning. There is a legal normative framework with reference to other rights ownership must realise as well. The socioeconomic dynamism is understood as a tool for adaptation, rehabilitation and occupation of empty housing units or those places not used. Therefore, the urban matrix shall commit with the residential function contributing to the equilibrium of city developments. So, the: "equilibrio de las ciudades y de los núcleos residenciales, favoreciendo la diversidad de usos, la aproximación de los servicios, las dotaciones y los equipamientos a la comunidad residente, así como la cohesión y la integración social". Furthermore, the article 3.4 says the public powers have to create the conditions to support the rights and duties for citizens to guarantee the effectiveness of the present legislative decree. As it is explicitly mentioned in the 7/2015 Legislative Real Decree: "Los poderes públicos promoverán las condiciones para que los derechos y deberes de los ciudadanos establecidos en los artículos siguientes sean reales y efectivos, adoptando las medidas de ordenación territorial y urbanística que procedan para asegurar un resultado equilibrado, favoreciendo o conteniendo, según proceda, los procesos de ocupación y transformación del suelo".

⁵⁹ The *Real Decreto Legislativo 7/2015, de 30 de octubre, por el ue se aprueba el texto refundido de la Ley de Suelo y Rehabilitación Urbana*, is a very progressive document in those questions related to the use of commons as it is seen in the article 3. Water, air, soil, habitat and rural areas are conceived in connection to the Spanish cities development. We interpret that effort as the notion of the legislator in intuitively understanding the property in city context and urban lands as dependent on the use and protection of nature.

Legal prerogatives and judgments in Catalonia

The idea of transcendence can be seen with the appreciation of the right to property belonging not to individuals. The conflict starts when a bank called Bankia S.A. receives an order to make the housing unit available in the market by a local administration for not respecting the Catalan Housing Act 18/2007. In its article 41.3, it is said all dwellings shall not be unoccupied for more than two years predicting pecuniary penalties varying in different amounts.⁶⁰ In case the proprietor disrespects the administrative order to avoid vacant houses, the owner breaches the constitutional prerogative of the social function of property. If the owner does not put in practice the condition of occupancy within the time established, the city is able to enforce the law including some sanctions for the proprietor. The rationale of obliging the use of the property within the interval predicted is based upon the social function of property stated in the Preamble, Part II, and the article 5 of the same act. The idea of “social” is also an urban contribution proprietors are expected to pay back to public resources once the equity of their ownerships comes from taxpayer money invested in the surroundings of the property. The bank disagreed with the local power saying that it had complied with the law provisions once the date presented by the city had been mistakenly counted. The institution showed documents to confirm the possession of the property was in fact ulterior the time calculated by the administration. The City of Terrassa did not accept such allegation, because the property had had its water supply contract interrupted for more than two years. The conclusion was that the place had not been occupied and the institution could not use the argumentation of possession to defend itself against the fine. The process came to the public eye in Catalonia as the *Bankia S.A. v. Ajuntament de Terrassa*.⁶¹

⁶⁰ In Spanish, the expression is “utilización anómala de la propiedad”, which means literally in English “anomalous use of property”, refers in general to a non-effective residence since the housing unit has been vacant for more than two years.

⁶¹ *Bankia S.A. v. Ajuntament de Terrassa*, Recurso 472/2014-J Recurso ordinario, NIG: 08019 - 45 - 3 - 2014 – 8009897, Sentencia Núm. 192/2015, 10th Administrative Court of Barcelona, July 2015. Retrieved from <http://www.aclegalabogados.com/noticias/>. In the case *Banco Popular Español S.A. v. Ajuntament de Terrassa*, Procediment Ordinari 155/2015-B, Sentència N. 255/2016, 5th Administrative Court of Barcelona, October 2016, the judge points out other ways of checking the dwelling in that situation was unoccupied beyond water bills. Among them, resident register in the City of Terrassa, the consume of gas, electricity and other registers.

The conflict continued in other ordinary administrative court with the concept of *possessio* being presented again by the bank. The case was known initially as a legal battle between cities fighting for the right to housing in Catalonia and financial agents owning several homes still unused. The institution stressed its interest in denying its responsibility in that situation and, as a consequence, not paying the fine reasoning it was an inadequate procedure. The ordinary court appreciated the claim interposed in order to review the administrative penalty, but it held in low regard the proprietor's claim and disesteemed the legal recourse. The water supply contract was a material proof to give reason to the Terrassa City Council. The fine was understood as proportional and had to be paid regarding the bank was also responsible in making effective the social function of property.⁶²

The same bank and the Terrassa administrative power had another legal debate since Bankia S.A. tried to convince the court the dominium of the property was not effective when another fine was applied for a different vacant housing unit: “[...] la Administración no tuvo en cuenta que la actora no había adquirido el dominio de la finca [...]”.⁶³ The financial institution also tried to convince the court an agreement for cooperation was signed with the Catalan Housing Agency in order to make the unit occupied in a two-year term.⁶⁴ The Catalan administration refused that argumentation once there was not a formal communication from the bank about any sort of co-work with other public agencies.⁶⁵

⁶² A similar case is also found in *Criteria Caixa Holding S.A. v. Ajuntament de Terrassa*, Procedimiento Abreviado 137/2015, Sentencia [no number], 9th Administrative Court of Barcelona, December 2015.

⁶³ *Bankia S.A. v. Ajuntament de Terrassa*, Procedimiento Ordinario 475/14-2A, Sentencia Núm. 179/2015, 12th Administrative Court of Barcelona, July 2015. See also the same parts in another case, *Recurso Ordinario 467/2014 F-1*, Sentencia 315/15, October 2015. The judgment favoured the local public administration of Terrassa once the bank could not prove its effort in making effective the social function of property.

⁶⁴ *Generalitat de Catalunya* [on-line]. Agència de l'Habitatge de Catalunya [Accessed on 4 december 2017]. Retrieved from <http://agenciahabitatge.gencat.cat/>

⁶⁵ See also the case *Bankia S.A. v. Ajuntament de Terrassa*, Procedimiento de Ordinario N. 469/2014-A, Sentencia 372/2015, 8th Administrative Court of Barcelona, December 2015.

As the previous case, the dispute between private ownership and the public power arrived at the 12th Administrative Court of Barcelona. The court reiterated the same legal foundations presented by the Terrassa City Council and shed light on the definition of what would be considered a vacant housing unit. In addition, the sentence brings the fact of an adjudication decree transmitting the *dominium* of the property and the inexistence of a water supply contract. The judge called the attention to two aspects in that case. The first one has to do with enforcing the proprietor in renting the place. The second one is about the expropriation of the property usufruct. Both affirmed respectively by the articles 5 and 42.6, Catalanian Housing Act 18/2007. The court did not accept the procedural motion presented by Bankia S.A. and the fine had to be paid once the housing unit was unoccupied for more than two years. Another case evolving Criteria Caixaholding S.A. and the Ajuntament de Terrassa had the same debate of non-complete dominium of the proprietor to make effective the social function of the property. The judge did not accept the reasons presented by the litigant, because it was proved the bank did not have any impediment to formally possess the housing unit. Moreover, the judge said a decree of award in favour of the bank had transferred the property in question in a time that made the proprietor a legal ownership being totally responsible for the usufruct of the place. Therefore, the administrative fine and understanding of the situation cannot be considered illegal as requested the representatives of Criteria Caixaholding S.A. against the Terrassa City Council.⁶⁶

The Judgment 343/2015 evolving Bankia S.A. and the Terrassa City Council is very innovative in the sense of a social usufruct. After two years of leaving a dwelling vacant, the local administration required the bank a formal concession of the place in order to make it available in a social housing list. According to the financial institution, the property had already been occupied and the council did not take into account such information. In addition, the plaintiff of the motion affirmed the City of Terrassa did not consider the nature of the contract between the bank and third part that was in possession of the property with a social rent contract. The litigation was appreciated by the 7th Administrative Court of Barcelona and the sentence dictated. In fact, the property

⁶⁶ We translate “decreto de adjudicación” into decree of award as found in the literature. Procedimiento Ordinario N. 137/2015-E, Sentencia 317/2016, 8th Administrative Court of Barcelona, December 2016.

was in use and accomplishing its the social function.⁶⁷ However, the judge pointed out that the housing unit had been vacant two years before the interval referred by the local administration. Although, it is observed in the decision that the economic crisis in Spain affected the usufruct of properties, the bank was not exempt in making effective its social function through the occupation of the dwelling: “[...] el no haber atendido la actora, en tiempo, al requerimiento de la Corporación local de Terrassa”. Moreover, the litigation in question shed light on the financial support from a public fund used to bail out banks and the judge used the article 3.1 of the Spanish Civil Code to construct in part his legal argumentation to reinforce a responsible usufruct of the property: “[...] la temática de fusiones-integraciones de la antigua Caixa d’Estalvis Laietana en Bankia, etc, son circunstancias todas ellas relevantes que justificarían cuanto menos parcialmente (se ha de estar la realidad social del tiempo en que han de ser aplicadas las normas, art. 3.1 CC) [...]”. The first instance recourse offered by the bank was partially esteemed regarding the period referred by the local administration, but the court recognised the importance in making effective the Catalan Housing Act 18/2007.⁶⁸

⁶⁷ The pecuniary penalty was also nulled for the same reason in the cases *Banco Popular Español S.A. v. Ajuntament de Terrassa*, Recursos Contencioso-Administrativo Ordinarios N. 156/2015-B and 176/2015-F, Sentencias 401/2015 and 402/2015, 7th Administrative Court of Barcelona, December 2015. The bank proved the housing unit was occupied by the time the administrative power imposed the fine. A real estate corporation was also adverted by the Terrassa City Council once the usufruct of the property did not meet its social function based upon the local power diligences. The proprietor Abanca Corporación, División Inmobiliaria SL, before NCG División Grupo Inmobiliario SL, proved the housing unit was available in open market and, posteriorly, was sold for a private resident. See Procedimiento Ordinario N. 427/2014-4, Sentence 18/2016, 1st Administrative Court of Barcelona, January 2016.

⁶⁸ *Bankia S.A. v. Ajuntament de Terrassa*, Recurso Administrativo-Contencioso Ordinario N. 472/2014-F, Sentencia 343/2015, 7th Administrative Court of Barcelona, September 2015. In the sentence, the judge mentions that the litigant received a financial support of 4.5 billion Euros from the Structural Fund for Banks in Spain, FROB in Spanish, Fondo de Reestructuración Ordenada Bancaria (FROB). Here, the implicit notion of tax payers money contributing to the financial system of property when the neoliberal rule is against of any public intervention in economy. In a different litigation with the same parts, the judge of the 1st Administrative Court of Catalonia, Procedimiento Ordinario N. 468/2014-4, Sentencia 189/2015, October 2015, put an end in the case for understanding the object of conflict was not vacant for unjustifiable reasons as mentioned by the local administration of Terrassa. The bank proved there was an agreement of cooperation between the institution and the Catalan Housing Agency. The proprietors also showed the lack of information evolving the local and regional agents: “[...] al encontrarse dicha vivienda ofrecida a la administración autonómica de vivienda desde el 21 de febrero de 2014 y, más tarde, efectivamente arrendada mediante contrato social de arrendamiento”. See the case *Criteria Caixaholding S.A. v. Ajuntament de Terrassa*, Recurso Contencioso-Administrativo Abreviado N. 132/2015-A, Sentencia 282/2015, November 2015, 15th Administrative Court of Barcelona. Recourse partially accepted favouring the bank, but not denying the responsibility of the proprietor in making effective the social function of property.

CONCLUSIONS

As an important tool for the construction of democracy in the EU, the understanding on how real estate investments are made in the organisation is essential to create new alternatives to avoid the violation of the right to housing. The question that seems to be relevant in our evaluation is what to do with the excess of capital from property market (surplus value transformed into taxes) in order to feed or re-direct wealth to productive sectors less dependent on speculative credits at the same time public policies increase the housing supply. One of the suggestions is a system of taxation that conducts the surplus value through excessive prices either from rents or sales produced with risky activities to sustainable, affordable and decent places to live. If governments trigger anti-speculative policies for real estate businesses, the investors still have incentives to remain in the property market. The marginal returns with rental capital and sales still compensate the participation of the REITs' funds. However, it is indispensable to invest massively in social housing in those countries we defined as "Spanish effect" realities.

Another suggestion is the effective protection of the right to housing connected to other rights in the city. Affordable rents and decent places to live supported by public powers can heat up the economy creating jobs and re-distributing the income.⁶⁹ Furthermore, the protection of the right to housing may transform the opaque practices of firms in the sector into sustainable protocols for consumers and EU States in residential immovable property markets. The Directive 2014/17/EU of the European Parliament and the Council on Credit Agreements refers to the financial education of consumers in its article 6 and the obligation of the European Union States in monitoring the residential property market as it is said in the article 26. Legal, economic and social mechanisms are necessary to impede the perpetuation of risky activities that may allure investments for a while, but, in essence, a sort of capital pregnant of an increasing greed for marginal returns.

In the beginning of the present work, the idea of persistent crisis in European Union has a myriad of causes and diagnostics. One of the them that is central in our debate has to

⁶⁹ We emphasise the notion of non-residential owners to distinguish them from those private actors that have up to three residential places to live using their ownerships for residential purposes. However, for both, we defend a proportional and progressive system of taxes for REITs as any other aggressive system of tax for highly speculative markets. Again, banks, real estate firms and the leverage of capital in stock exchange markets are in the core of our debate.

do with the violation of the right to housing incentivised by a model of property market with highly speculative archetypes. The three dependent variables introduced in the first chapter are other ones since the constraints on the aggregate demand, unemployment rates and the concentration of income will define which market is more profitable based on the contingency. In other words, a set of variables represented by low economic growth from one year to another, more people looking for jobs and impoverishment can create the conditions for rent speculation. If the scenario is the opposite, i.e., the credit is expanded and confidence restored, REITs will invest their energies and stocks of property to turn on the plug of mortgages with a wave of changes in interest rates, monetary policies, securities etc. As we tried to make evident in the second chapter with a comparative table between Spain and Sweden, only a progressive system of taxes may discourage speculative businesses in different sectors of the economies in the “Spanish effect” nations. The last chapter shows some legal tools and how the social function of property may incorporate the 2030 New Urban Agenda under the auspices of the United Nations Programme Habitat III to tackle the abuses of the right to property in the REITs market.

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