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CORPORATE GOVERNANCE DEVELOPMENTS IN SPAIN

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Recent "legal" developments in Spain

- Codes of Best Practice:
  - * Olivencia Report (1998):
    - 23 recommendations:
      - Structure of the Board:
        - » majority of non-executive directors
        - » setting up of specialized committees made up exclusively of non-executive directors (i.e. auditing, remuneration or appointment committees
        - » need to disclose directors' pay details
        - » Board size
        - » retirement age for directors
      - Corporate Governance Report: voluntary (comply or explain)
    - Limited success:
      - Questionnaire by the Spanish Supervisory Agency in 2000: mean compliance with the Code recommendations 81% among the 61 firms that answered the questionnaire. Only two firms complied with all recommendations.
      - Questionnaire in 2001: mean compliance was 77% for the 67 firms that answered the questionnaire, with only five firms implementing all 23 recommendations.
      - Low degree of compliance with the "comply or explain" rule, a large part of the companies did not publish a Corporate Governance Report.

Recent legal developments in Spain

- Codes of Best Practice

* Winter Report (2002)
* Aldama Report (2003):
  - Similar recommendations to Olivencia Report
  - Differential characteristics: transparency of information:
    - Corporate Governance Report
    - Web page

Recent legal developments in Spain

- Legislation:

* Law of Reform of the Financial System, Law 44/2002:
  - Compulsory Audit Committee with a majority of non-executive directors
* Transparency Law (Law 26/2003)
  - Reform of Company Law
  - Established the obligation to:
    - Publishing and filling an Internal Code of Conduct, Rule of the Board of Directors, Rule of the General Shareholders' Meeting
    - Publish an annual Corporate Governance Report
    - Disclose information on the web page
* Developments of the Transparency Law:
  - Orden ECO/3722/2003
  - Directive of the Spanish Supervisory Agency (March, 2004):
    - Disclosure of information

Corporate governance in Spain

- The Foundation of Financial Studies (Spanish Institute of Financial Analysts) in cooperation with researchers of the University of Oviedo promoted in 2003 the creation of an Annual Observatory of Good Practices for Spanish quoted companies.

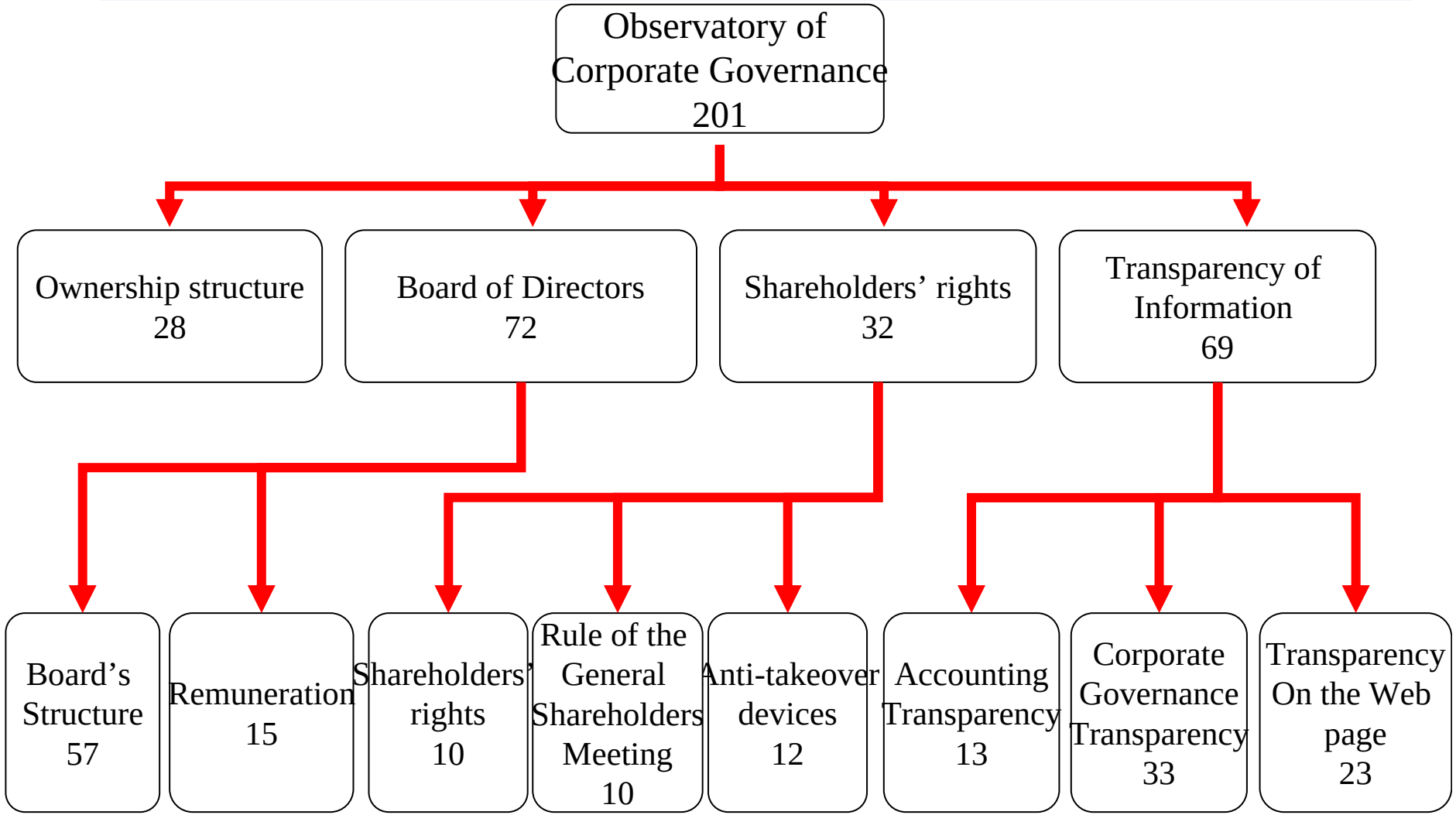
- The study will be presented every year to the Chairmen, CEOs and Secretaries of the Boards of the companies quoted on the Spanish Stock Exchange:

  * Promote discussion of the state of Corporate Governance in Spain by incumbent managers
  * Award (in cooperation with the press group Recoletos) to the Company presenting the Best Corporate Governance Practices.
    - Ranking to the Jury based on the Observatory

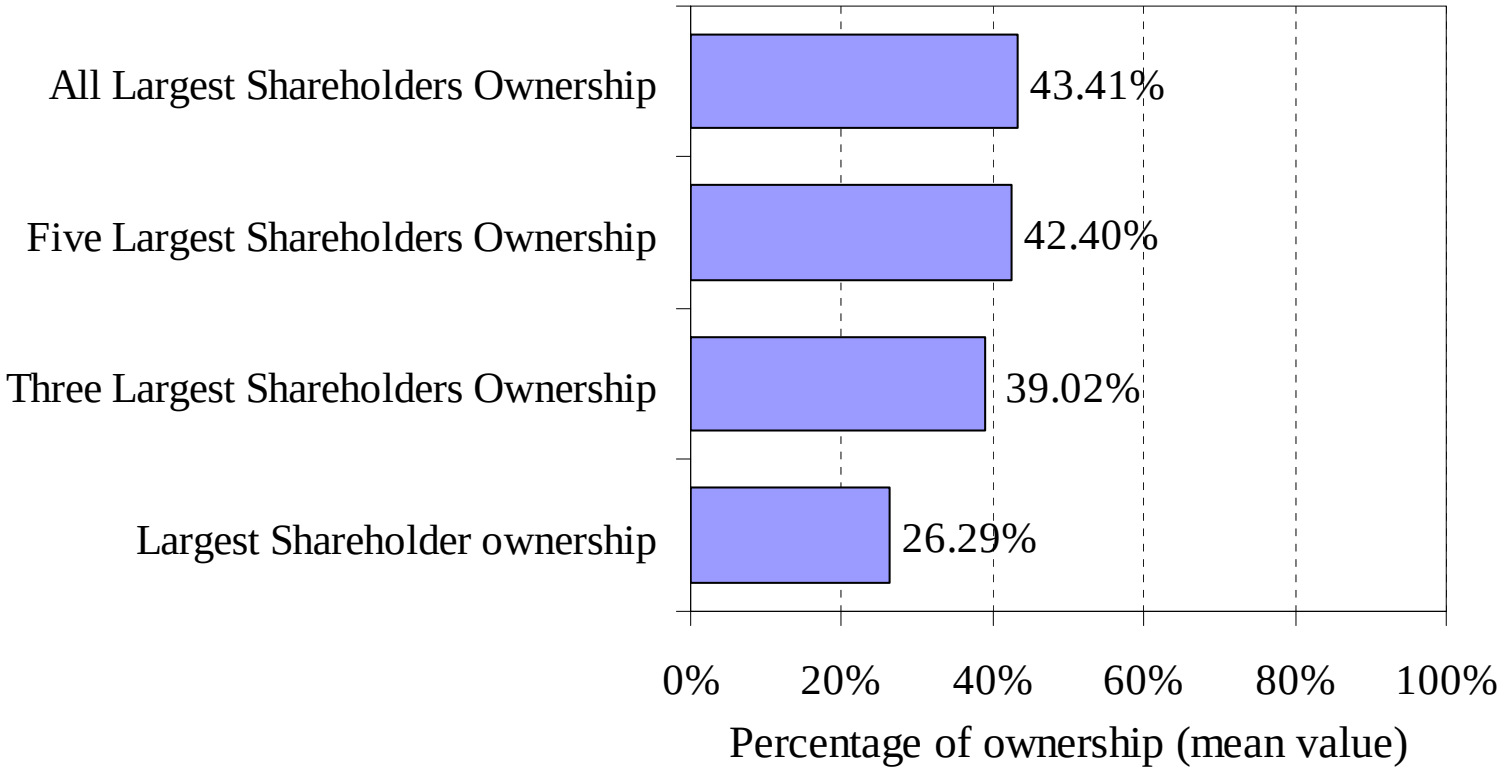
Structure of the Observatory in 2003

- 201 variables:
  * Ownership structure
  * Board of Directors' characteristics and structure
  * Shareholders' rights
  * Transparency of Information
- Definition of the variables:
  * Recommendations of Codes of Best Practices
    - Olivencia Code (1998)
    - Aldama Code (2003)
    - Legislation
- Sample:
  * 35 firms in the Ibex-35 Index, firms with the largest market capitalisation

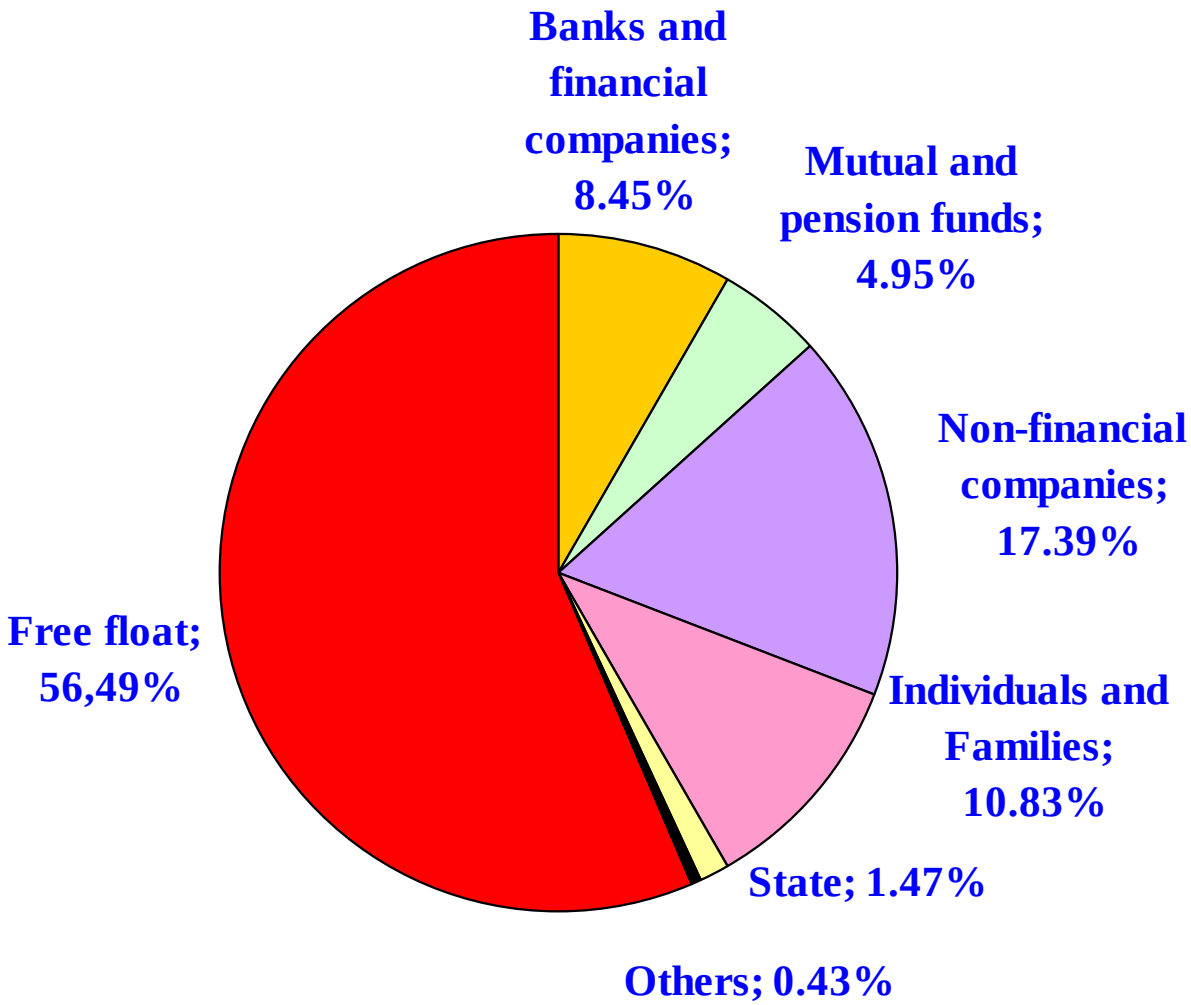
Methodology: Categories



Results: ownership structure –ownership concentration-



Results: ownership structure – large shareholders-

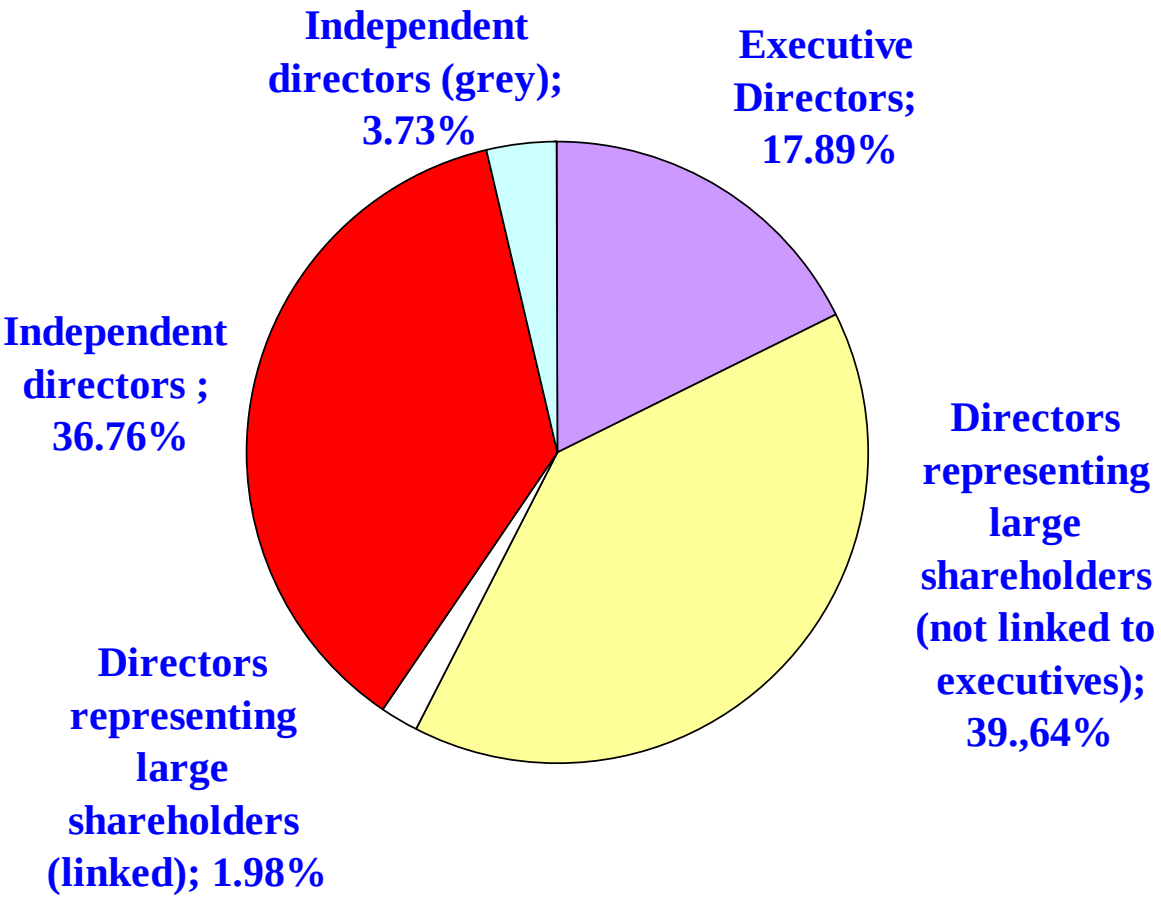


Results: Board of Directors' structure

- Relevant aspects:

* Mean Size:15
* Number of annual meetings: 10
* Composition of the Board: reflects the high ownership concentration of Spanish firms
* Separation of the posts of CEO and Chairman: No, 77%
* Secretary a director? 31%
* Limitations in the number of mandates of independent directors: Yes 9%

Results: Board of Directors – composition-



Results: Board of Directors' structure

- Relevant aspects:

* Board Committees: 3
* Executive Committee: 65.71%
* Audit committee: All (by law)
  - Chairman independent director: 71%
  - Chairman external director: 100%
* Remuneration and Nominees Committee: Almost all companies
  - Chairman external director: 100%

Results: Board of Directors', remuneration

- Relevant aspects:

* Almost all companies remunerate their external directors
* 68.58% use fixed payments
* Small percentage use option plans or variable remuneration schemes
* Mean remuneration to external directors: 56.537 euros

Results: Shareholders' rights –Grades-

	Shareholders' rights		Rule of the General Shareholders' Meeting		Anti-takeover devices	
	Non-weighted	**Weighted**	**Non-weighted**	**Weighted**	**Non-weighted**	**Weighted**
Mean	5.88	6.6	2.32	2.69	8.73	8.02
Median	6.43		0		9	
Maximum	9.29		8.89		10	
Minimum	3.57		0		6	
Standard Dev.	1.46		3.72		1.25	

Results: Transparency of Information –Grades-

	Accounting		Corporate Governance		Web Page	
	Non-weighted	**Weighted**	**Non-weighted**	**Weighted**	**Non-weighted**	**Weighted**
Mean	8.39	8.2	5.76	6.59	7.44	8.15
Median	8.64		5.97		7.83	
Maximum	10		8.45		9.57	
Minimum	6.82		2.17		3.91	
Standard Dev.	0.75		1.51		1.44	

Conclusions of the Observatory, 2003

- Positive aspects of Spanish Corporate Governance Practices:

* Low percentage of shares held by the State
* Size of the Boards of Directors
* Number of annual meetings of the Boards
* Composition of the Board
* Existence of audit and nominees and remuneration committees
* Office of the Shareholder
* Low degree of usage of anti-takeover devices
* High degree of Accountings' transparency of information
* High degree of transparency of information on the web page

Conclusions

- Aspects of Spanish Corporate Governance Practices that should be revised:

* Existence of pyramidal structures
* Low ownership held by directors
* Existence of grey directors
* No separation of CEO and Chairman
* The Secretary of the Board is not a Director
* 30% of the firms lack an executive committee
* Directors remuneration is usually not linked to the firm value
* Low degree of Corporate Governance's Transparency of Information