

# Reporting Models do not Translate Well: Failing to Regulate CSR Reporting in Spain

<https://doi.org/10.1080/0969160X.2016.1149301>

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## Abstract

This paper explores the regulation of corporate social responsibility (CSR) reporting for corporations exceeding 1000 employees introduced in Spain by the Sustainable Economy Law 2/2011 of 4 March. The relevance for this special issue stems from the fact that this law anticipates possible outcomes of the 2014/95/EU Directive to the Spanish context. Furthermore, the Spanish Law has been cited by the EU as a precedent for the Directive. This paper adopts a multi-method approach, based on content analysis and qualitative interviews to portray the state and evolution of such CSR reporting regulation. The results of the content análisis suggest that the regulation did not have any impact in terms of the number of reporters, but it is associated with a slight improvement in the

reporting quality of the published reports. Those findings are consistent with the argument made in previous literature indicating that governmental regulation of CSR reporting alone does not guarantee better disclosure levels and that structural elements are necessary to accompany changes in the law. With the help of qualitative interviews with relevant actors, the paper has examined three elements that seem to explain the limited effect of this regulation: (i) competing views about CSR and CSR regulation; (ii) CSR reporting patterns; and (iii) how power was mobilised to suppress the potential of CSR reporting regulation

## **1. Introduction**

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In October 2014, the European Union adopted Directive 2014/95/EU on non-financial disclosure<sup>1</sup>, with the stated aim of raising corporate social and environmental reporting to a similar level across all EU member countries. This Directive is part of the ‘renewed EU strategy 2011–2014 for Corporate Social Responsibility’ (European Commission, 2013), which stressed the need to encourage companies to work on the path of sustainable growth, responsible business behavior and sustainable employment generation to, among other things, restore the investor and consumer needed trust, lost in the economic and social crises. According to Directive 2014/95/EU companies of a certain size<sup>2</sup> are asked to make a minimum of social and environmental disclosures, including a description of the business, the policies related to those issues, the outcome of those policies, the main risks involved in those issues and key non-financial performance indicators.

As a Directive, this EU regulation will not affect companies until it is transposed into the domestic law in each EU member state. However, different EU member states had already developed initiatives to regulate corporate social and environmental disclosures. Such is the case of Spain, where the Sustainable Economy Law 2/2011 of 4 March (hereafter SEL), in article 39, mandates corporations exceeding 1,000 employees to publish a sustainability report. More specifically, this law establishes that the ‘State Council on Corporate Social Responsibility’ (hereafter SCCSR) will recommend for corporations, organizations and public and private entities a set of characteristics and indicators for CSR self-evaluation, as well as a set of reporting models or references in accordance with international standards in this area<sup>3</sup>. In the case of corporations, SEL establishes that they may publish annually a CSR report that respond to the previously mentioned international objectives, characteristics, indicators and standards, which, in any case, shall state whether it has been verified by a third party or not. Finally, the law states that, in the case of corporations exceeding 1,000 employees, this annual CSR report will be submitted to the SCCSR to allow proper monitoring of the degree of implementation of CSR policies by large Spanish companies. The same law (article 35) establishes the obligation to submit annual sustainability reports for state-owned companies. The SCCSR is a stakeholder consultation process sponsored by the Spanish Government that promotes, stimulates and monitors CSR (Archel, Husillos and Spence, 2011).

Such an attempt to regulate CSR disclosure is consistent with the argument often made in the literature that only regulation will

increase the quality and comparability of reported information and discharge the corporate accountability with stakeholders (see e.g. Deegan, 2002). However, this perspective has been problematized in studies reporting empirical evidence in comparative policy contexts (Bebbington, Kirk and Larrinaga, 2012; Chauvey, Giordano-Spring, Cho and Patten, 2015) that show how governmental intervention in CSR disclosure alone does not guarantee better disclosure levels from the private sector. Bebbington et al. (2012, p. 90) contend that ‘formal legislation alone may not be sufficient to create a norm’ and suggest that a fruitful research avenue is to investigate the ways in which actors recognise norms as binding (production of normativity). In a similar vein, Edelman (1990) notes that changes in legal rules may not be sufficient for the production of ‘institutional change’. A normative climate is also needed to create effective changes in the law, that is, changes producing norms. This normative climate resonates with previous ideas in social and environmental accounting literature about the relevance of structural elements (Bebbington et al., 2012) or institutional reform (Cooper and Owen, 2007) for a legislative corporate reporting reform to affect reporting practice. Bebbington et al. (2012) draw on the notion of normativity to explain how reporting norms have multiple sources and are not necessarily mandated and enforced by a hierarchical state. Arguably, this theoretical perspective illustrates how ‘environmental and sustainability reporting (hereafter SR) practices of organizations have converged internationally around guidelines designed by non-governmental organizations such as the GRI, which does not seek to enforce compliance’ (Bebbington et al., 2012, p. 78). These authors suggest that normativity is the outcome of (i) the agency of

some (state/non-state) actors and (ii) structural elements, such as the existence of previous norms, the precise design of the regulation or the existence of relatively stable patterns of expectations.

EU working papers cited two laws as precedent of the EU Directive (European Commission, 2013): the Spanish SEL and the 2008 Act amending the Danish Financial Statement Act. The latter, approved the 16th of December 2008, requires large businesses, listed companies and state-owned companies to disclose their CSR performance in their annual reports (Danish Government, 2008)<sup>4</sup>. It is interesting to note that, according to different observers (Barañano, 2009; PWC, 2011), the Spanish regulation tried to emulate the Danish reporting model. However, while the latter had a substantial effect on CSR reporting practice (Danish Business Authority, 2013), the former failed, according to our analysis (see below), to generate a significant change in terms of the number of reporting companies and only produced a meagre increase in reporting quality.

This paper explores the specific regulation process followed in Spain and tries to provide insight into which were the structural elements that resulted in the outcome of the Spanish regulation. This study contributes to existing debates over CSR reporting regulation, providing insight into what is the role that the state can play (or is willing to play) in the regulation of CSR reporting. This study also contributes to our appreciation of the possible processes that might facilitate or impede the effective implementation of Directive 2014/95/EU.

To explore the regulation process and the circumstances of the Spanish regulation, this paper adopts a multi-method approach.

This is based on content analysis to portray the state and evolution of CSR reporting as a result of the Spanish regulation and on 12 qualitative interviews with participants in the stakeholder dialogue process, company managers and consultants, to understand how the law and the alleged reporting norms came into being. The rest of the paper is structured as follows. The next section describes the multi-method approach adopted in the empirical investigation. Section three describes the results of the content analysis, supporting the argument that the regulation was a failure. Section four tries to provide an explanation for the lack of normativity of the SEL, based on three main arguments: the lack of shared expectations about CSR reporting, the incongruence of the regulation with previous CSR reporting practice and the mobilisation of power by those opposing the regulation. Finally, section five provides some concluding comments.

## **2. Research methodology**

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Considering the complexity of the research question, the empirical investigation is multimethod in approach. This methodological approach is consistent with previous literature (Bebbington et al., 2012) and consists of a content analysis of the sustainability reports published by the largest Spanish corporations and qualitative interviews with relevant actors in the regulation field.

## **2.1 Content Analysis: The Quality and Comprehensiveness of Sustainability Reports**

We performed a content analysis of a sample of the sustainability reports published by large Spanish companies between 2010 and 2013 to explore whether the quality of SR changed as a result of the Spanish Government initiatives.

The first step in the analysis consisted in identifying the large Spanish companies that were producing CSR/sustainability reports. The SEL states that corporations with more than 1,000 employees will submit their CSR reports to allow the SCCSR to monitor the implementation of CSR policies in large Spanish companies. Therefore, we gathered from Sistema de Análisis de Balances Ibéricos (SABI) database and other sources<sup>5</sup> the list of Spanish corporations with more than 1,000 employees in 2012, resulting in 206<sup>6</sup> companies (see table 1.1). Considering that very little progress has been made in terms of the SCCSR receiving CSR reports from companies (see later) and that nothing like a SCCSR reports database existed, sustainability reports were identified by reference to the GRI databases and corporate websites. Accordingly, we checked whether the previously identified Spanish corporations had an entry in the GRI databases. We also navigated the corporate websites of all the corporations to identify CSR reports that were not included in the GRI database.

Among the 206 corporations a maximum of 53 entities in 2010 and a minimum of 43 in 2012 were found to publish CSR reports (see table 1.1, panel A). Over all the period studied, 65 entities among the regulated corporations<sup>7</sup> were identified as issuing CSR reports at

least in one year (see appendix 1.1). Furthermore, five of these entities produced more than one CSR report, that is, one or more subsidiaries were producing a CSR report, apart from the parent company (see footnote, appendix 1.1). For example, as depicted in appendix 1.1, two Abengoa subsidiaries (Befesa and Telvent) published CSR reports, apart from the parent company. Accordingly, the number of CSR reports included in the analysis goes from a minimum of 48 in 2012 to a maximum of 56 in 2010 (see table 1.1, panel B).

Although the Spanish Government and the SCCSR have failed to provide corporations with a set of suitable characteristics and indicators (see later), it makes sense to analyze not just the impact of the SEL regulation in terms of the number of reports disclosed, but also in terms of their quality. Accordingly, we developed a disclosure index and performed a content analysis (Abbott and Mosen, 1979) of all the reports to measure their quality and comprehensiveness, with the main purpose of assessing the evolution of reporting quality over the years, before and after the enactment of the SEL regulation. Results are displayed in table 1.1, panel B.

**Table 1.1:** CSR reporting by Spanish companies (>1,000 employees).

Panel A: Number of regulated and reporting companies				
	2010	2011	2012	2013
(1) Number of regulated companies (>1,000 employees in 2012)	206	206	206	206
Of which ...				
(2) ... disclosing GRI reports (percentage)	43	35	35	37
(3) ... disclosing non-GRI reports (percentage)	21	17	17	18
(4) = (2) + (3) ... disclosing CSR reports (percentage)	10	9	8	12
	53	44	43	49
	26	21	21	24
Panel B: Number of reports and CSR disclosure index				
	2010	2011	2012	2013
(5) = (6) + (7) = N	56	50	48	51
(6) = Number of GRI reports	46	41	40	39
(7) = Number of non-GRI reports	10	9	8	12
CSR overall disclosure index	0.268	0.286	0.300	0.294
CSR disclosure index (GRI reports)	0.304	0.318	0.331	0.346
CSR disclosure index (non-GRI reports)	0.107	0.138	0.146	0.125

We designed and applied a CSR disclosure index that measures the presence/absence of disclosure items and characteristics (Guidry and Patten, 2010). This index (see appendix 1.2) draws on Clarkson, Li, Richardson and Vasvari's (2008)<sup>8</sup> comprehensive environmental

disclosure index and the GRI guidelines (GRI, 2006, 2013). In that regard, we are aware of the criticisms of GRI (Gray, 2006), but this choice is justified by three reasons: (i) we do not venture to conclude about the absolute quality of CSR reporting, but only about its evolution at about the time the SEL regulation entered into force; (ii) SEL stated that the reporting models to be proposed to Spanish corporations should be in accordance with ‘international standards’ and, arguably, the GRI guidelines are those that best fit in this category (Ballou, 2006) and (iii) Clarkson et al.’s (2008) disclosure index was also developed from GRI categories. Compared to Clarkson et al.’s (2008) index, which focused on environmental issues, our CSR disclosure index includes a slightly lower number of environmental performance indicators (maximum score from 60 to 48), but includes economic and social performance indicators (maximum scores of 24 and 96, respectively), selected from those considered in G3 and G4.<sup>9</sup> Along the same lines, our CSR disclosure index only considers a selection of the non-performance disclosures considered by Clarkson et al. (2008), incorporating broader CSR issues (ISO26000 and SA8000) and the European certification scheme Eco-Management and Audit Scheme (EMAS).

Following thematic content analysis (Jones and Shoemaker, 1994; Milne and Adler, 1999), coding consisted in searching each disclosure item/characteristic in each sustainability report. As depicted in appendix 1.2, a value of one was given to every present disclosure items, excepted performance indicators. To account for the quality of performance indicators a 0–6 score was assigned, following Clarkson et al. (2008). Content analysis validity and reliability (Potter and Levine-Donnerstein, 1999) relied on the

described coding procedures designed for the thematic content analysis and the fact that disclosure items and characteristics derive from internationally recognised guidelines. Additionally, one of the authors coded all the reports and a second coder analyzed independently 27% of them. All discrepancies were discussed and agreed.<sup>10</sup>

## **2.2 Qualitative interviews**

We also carried out 12 qualitative semi-structured interviews (Alvesson, 2010; Miller and Crabtree, 1999; Wengraf, 2001) to explore the process of CSR disclosure regulation in the event of the Spanish SEL (see appendix 1.3). More specifically, these interviews are used to understand how the structural elements referred to in the introduction can provide some insight into the effects of the Spanish regulation of CSR reporting.

Interviewees were all involved in CSR activities and were active members in corporations, NGOs, one union, one business association and one academic institution. Among them, three were members of the SCCSR and three more were working with SCCSR members. The SCCSR was created by the Spanish Government in 2008 by Royal Decree 221/2008, as an ‘advisory and consultative’ body, under the Ministry of Employment. This body is (in legal terms) a relevant actor in the regulation of SR in Spain, because (i) the SEL regulation mandates the SCCSR to establish indicators and reporting characteristics and models and (ii) sustainability reports of large companies are to be sent to this institution so that it can monitor the degree of implementation of CSR in large Spanish

companies. The SCCSR consisted of 56 individuals that allegedly represented the 4 groups that were considered as having the greatest stakes in CSR (Olcese and Alfaro, 2014): the government itself, the business sector, the so-called most representative trade unions and other civil society organizations (especially non-governmental organizations). Although we were unable to interview government officers, we have analyzed secondary information available in the official SCCSR website, as well as interviews with the Director-General in charge of CSR in the Spanish Ministry of Employment.

Interviews were conducted between November 2014 and June 2015 and lasted between 15 and 50 minutes. Each interview commenced with a brief description of the research, followed by the interview itself. Consistent with the exploratory nature of this research, and the characteristics of qualitative interviews, the interview guide evolved, in an interactive process, as the interpretation progressed, with new questions being added for exploring concerns that emerged in previous interviews (Miller and Crabtree, 1999). Interviews were recorded and transcribed. As regards analysis, interview transcripts were read several times in an interpretive and reflexive way, rather than in a literal way (Miller and Crabtree, 1999). We made codes to categorise the insights from the interviews (Miles and Huberman, 1994), taking notes of specific interviews' statements.

### **3. The Quality of Sustainability Reports and its Evolution**

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The results of the content analysis are displayed in table 1.1. Between 35 and 43 companies produced at least one stand-alone

sustainability report in the years analyzed according to the GRI databases, that is, 17–21% of the companies affected by the regulation (table 1.1, panel A). Considering that corporations could choose not to follow the GRI guidelines to elaborate stand-alone sustainability reports and/or not submit their reports to the GRI databases, we also searched the corporate websites of the rest of the regulated companies and identified between 8 and 12 additional CSR (non-GRI) reports, which generally were less ambitious in terms of quality and the topics covered (see later). The results present a clear picture, indicating that from 21% to 26% of the regulated entities are producing CSR reports in the four years investigated. Further, contrary to our initial expectations, the passing of the new law was not associated with any increase, but with a decrease in the number of regulated companies issuing sustainability reports.

As regards the quality and comprehensiveness of CSR reports, table 1.1 (panel B) displays an overall disclosure score below 30% (between 30% and 35% for GRI reports and between 10% and 15% for non-GRI reporters)<sup>11</sup>. Concerning the evolution of reporting, there is a statistically significant increase of the disclosure score in the year the regulation entered into force and the subsequent year (2011 and 2012), compared to the reference year (2010)<sup>12</sup>. The disclosure index increased 0.018 from 2010 to 2011 (7%) and 0.032 from 2010 to 2012 (12%). This increase in quality should be balanced against the decrease in the number of reports and reporting companies. In 2012, the number of reporting companies dropped from 53 to 43, that is, 26% and 21% of the regulated companies (the number of CSR reports reveals a similar trend).

Table 1.1 displays movements in opposite directions for the last year examined (2013), with more companies reporting and a slight decrease in quality.

**Table 1.2:** Quality of CSR reports published by Spanish companies (>1,000 employees), by type of company.

	2010	2011	2012	2013
Domestic companies	0.256	0.272	0.270	0.335
Multinational companies	0.298	0.309	0.319	0.274
Subsidiaries of foreign companies	0.224	0.250	0.277	0.211

A further analysis inquired into the association between reporting quality and the type of company. The results of this analysis (table 1.2) reveal that there does not seem to be any substantial difference in disclosure quality between domestic companies, multinational companies and subsidiaries of foreign companies, although the disclosure index is generally higher for multinational companies than for domestic companies and subsidiaries of foreign companies. However, this difference is only statistically significant for 2013, when the disclosure index is higher for domestic companies.<sup>13</sup>

Overall, these results indicate that the Spanish regulation on CSR reporting has failed to produce the expected increase in either the number of reporting companies or the quality of the reports<sup>14</sup>. This situation contrasts with the results of the Danish regulation, which has significantly increased the scope of CSR reporting. According to the Danish Business Authority (2013), in the course of the first

three years of the legal obligation (since 2009) nearly 50% of the companies reported on CSR for the first time. In the following sections, we try to provide an explanation of the Spanish regulatory failure with the assistance of the insights obtained from qualitative interviews.

#### **4. An Interpretation of the Causes of the Regulatory Failure**

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This section reports the analysis of a set of qualitative interviews that were made with actors that participated in CSR reporting from different perspectives. This analysis is inspired by the literature that has looked at the regulation of CSR reporting (e.g. Bebbington et al., 2012; Chauvey et al., 2015), which recognises that governmental regulation on CSR reporting does not alone guarantee better levels of disclosure. In this regard, Bebbington et al. (2012) elaborated on the notion that reporting norms stem from the agency of a plurality of actors (the state, private regulators, norm carriers and companies themselves) and structural elements, such as the existence of previous norms, the precise design of the regulation or the existence of relatively stable patterns of expectations. These structural elements are described by Edelman (1990) as the normative climate necessary to accompany changes in the law. Following these ideas, the analysis of the interviews is structured around three themes that could explain the failure of the government's attempt to regulate this activity (Bebbington et al., 2012). First, rather than a common understanding about CSR reporting the interviews reveal a diversity of views about CSR and the opportunity of regulating it. Second, the practices suggested by the new regulation did not fit in the

existing reporting norms. And, finally, in the absence of previous practices and shared expectations about CSR reporting, the new regulation could have succeeded by relying on state authority. However, the government did not have (or did not choose to use its) power to enforce the regulation, something that was correlated with the political process and the mobilisation of power by those opposing the regulation.

#### **4.1 Competing Views about CSR Reporting and CSR Reporting Regulation**

The SCCSR is a privileged empirical setting to explore the understandings of CSR reporting in Spain (Archel et al., 2011). As explained above, the SEL attributed a major role to the SCCSR: according to the law, the SCCSR had to provide a set of guidelines to companies and CSR reports were to be submitted to this council. This ‘advisory and consultative’ body, under the Ministry of Employment, was created in 2008 by the then socialist government after waiting in vain for months for the Spanish business sector to sponsor a multi-stakeholder initiative to promote CSR. The SCCSR was organised into five working groups that dealt with different issues (Olcese and Alfaro, 2014): (i) The role of CSR in the crisis; (ii) transparency, communication and reporting standards and SR; (iii) consumption and socially responsible investment; (iv) CSR and education and (v) management of diversity, cohesion and cooperation for responsible development. However, soon after the approval of the SEL regulation in March 2011, the conservative Partido Popular won the general elections (by the end of 2011) and

SCCSR was reorganised into three working groups (Olcese and Alfaro, 2014): (i) CSR promotion; (ii) socially responsible investment for pension funds and (iii) corporate governance. By 2012 about 80 meetings had taken place (Cinco Días, 2012), but neither the business sector nor the representatives of civil society were happy with the results.

The working group on ‘transparency, communication and reporting standards and sustainability reporting’ was already active in 2008. A union officer that participated in the stakeholder consultation process describes the optimistic atmosphere of the moment:

*“In the early days, there were several working groups and many representatives of the civil society participated, trying to reach agreements and solutions.”* (SCCSR member, union officer)

However, those familiar with social and environmental accounting research will not find the problem encountered by this working group particularly unexpected: although issues such as indicators and reporting models were initially considered by some as neutral, very soon they became political, with different camps supporting different discourses, as Archel et al. (2011) have already described. As a result, for example:

*“When the civil society representatives proposed some issues to be reported, business representatives insisted that so much detail was unnecessary.”* (SCCSR member, independent expert)

Therefore, rather than by shared expectations, the CSR reporting field was characterised by competing views that, for the sake of simplicity, could be grouped in the corporate and the civil society camps. On the one hand, the former argued for the inherent

voluntary nature of CSR, which was conceived as a competitive advantage. But a somewhat cruder version of the business perspective about CSR emerged in 2012. In June, the Spanish Confederation of Employers' Organizations (Confederación Española de Organizaciones Empresariales; CEOE) made a case for abolishing the SCCSR and SEL's article 39, with three main arguments (Cinco Días, 2012): first, the SCCSR had been ineffective; second, the debates and the documents produced by the SCCSR assessing and examining CSR actions by the government, unions, consumer associations and civil society, were too inquisitorial and could discourage further companies to engage in CSR activities and third, SEL's article 39 would be a cost for Spanish companies that could harm their international competitiveness.

*“In the recently adopted EU Directive even the European Commission has refused to establish the indicators the company has to report. So, if this is the framework at the European level, it is useless to set a standard for Spanish companies which may affect competitiveness in the European context.”* (SCCSR member, business association)

On the other hand, civil society stakeholders had entirely different expectations about CSR reporting regulation.

*“In my organization, we strive to promote work integration of people with disabilities. But if companies aren't required to report their compliance with the minimum percentage of disabled people employed required by law, then the integration of disabled people in the job market is at stake.”* (CSR assistant, social organization)

*“Customers are demanding the regulation of CSR reporting by large corporations providing basic services, such as financial services.”*  
(SCCSR member, independent expert)

In summary, competing views about CSR reporting regulation were expressed in an overtly political way, with discussions about CSR framed from the outset in antagonistic terms and even the law (and the SCCSR itself) being a contested matter. The lack of shared expectations (Bebbington et al., 2012) was an obstacle for a CSR reporting norm to emerge.

## **4.2 CSR Reporting Patterns**

CSR reporting was an established practice among large listed Spanish companies, following GRI guidelines (De la Cuesta and Valor, 2013). According to García-Benau, Sierra-Garcia and Zorio (2013), 51% of the companies listed on the Spanish Stock Market produced CSR reports for the period 2008–2010. This established practice, consisting in CSR reporting by large listed Spanish companies, was more consistent with the Danish model, which focused on specific large companies and listed companies, than with the Spanish regulation. The CSR Director-General stated in March 2011<sup>15</sup> that, unlike the Danish legislation, the Spanish Government did not want to circumscribe this practice to listed companies, but had opted to expand the field of action to non-listed companies with more than 1,000 employees. Additionally, SEL’s mandate for the SCCSR to provide guidance on the characteristics and content of CSR reports (in accordance with international standards in this area) was probably impractical, given the overtly political situation

described above, but also unexpected, given the previous reliance on GRI reporting guidelines. The fact is that the SCCSR was unable to agree and issue such guidance (see later).

Bebbington et al. (2012) suggest that the normativity of CSR reporting depends in part on its congruence with previous similar practices. By 2011, CSR reporting was an increasing activity among large listed companies, showing a convergence of reporting practices in a different sphere than the nation-state (Higgins and Larrinaga, 2014), that is, much of this activity followed the international (GRI) guidelines, irrespectively of the firm's country of origin. In this state of affairs, a new domestic regulation that did not build upon such previous practice was unlikely to become a norm. The empirical evidence seems to confirm such explanation, since Spanish companies just ignored the submission to the SCCSR and, in essence, listed companies kept producing sustainability reports following the GRI model, as they were doing before the SEL was enacted.

### **4.3 Interest and Power**

The lack of previous practice and shared values about CSR reporting could have been alleviated by the enforcement mechanisms of a strong Westphalian state. However, after the Spanish law was enacted, and in contrast with the Danish case,<sup>16</sup> the state failed to implement enforcement mechanisms such as the guidelines for reporting metrics and the system for the submission of CSR reports. These failures have made unclear what is required for a company to meet the SEL regulation.

This failure to implement enforcement mechanisms can be explained by the erosion of state's power. Corporate regulation is presently characterised by the increasing power of large multinationals (Scherer and Palazzo, 2008) and by the emergence of an increasing number of actors that compete with the state in corporate regulation (e.g. the GRI in the field of SR). Archel et al. (2009) have described how contemporary governments play mediating and facilitating (rather than regulatory) roles.

Such was the case in the regulation of CSR reporting in Spain, where authority was distributed among a plurality of social actors with conflicting interests and views about CSR reporting.

*“The problem is that although the CSR Director-General takes no notice, she does not have enough authority to bring order. She needs an authoritative intermediary. There are too many antagonistic standpoints in the SCCSR.”* (CSR senior consultant)

Drawing on the work of Bourdieu, Archel et al. (2011) studied how a dominant discourse about CSR emerged from the discussions of the SCCSR in the period 2008–2010. They studied this council as a field (Swartz, 1997), as an arena for struggle about the monopoly over the orthodoxy. Archel et al. (2011) found that the heretic position of actors, such as NGOs, were marginalised and their participation served to legitimise the business case discourse. However, in our analysis of CSR reporting regulation we did not find a settled field that necessarily produced symbolic violence, but one characterised by ongoing struggle, with conflicting interests mobilising not only symbolic but also material resources. Lukes (1985) three dimensions of power are useful to make sense of these findings. According to Lukes, the most insidious form of power is

domination, a notion that is amenable to the Bourdieusian notion of symbolic violence, ‘were the dominated acquiesce in their domination’ (Dowding, 2006, p. 137). However, this form of power was not identified in the SCCSR, where competing views about CSR reporting regulation were articulated in an overtly political way and where the law and the SCCSR themselves were contested (see Cooper and Owen, 2007).

The two less sophisticated forms of power in Lukes (1985) are more fruitful for explaining the findings in this case. They are encapsulated in the observation of decisions about conflicts (first dimension) and the analysis of the forces that prevent potential conflicts (second dimension). The first dimension is concerned by the behavior and the decisions made about issues that entail an observable conflict, which often is linked with the political process (Lukes, 1985). The most obvious way in which this form of power has affected the regulation of CSR reporting was through the representation of different stakeholders in the SCCSR, whose composition has always been contested. Unions, NGOs and CSR advocates have complained about the overrepresentation of the business sector (Archel et al., 2011), disapproving, for example, the fact that:

*“Business lobbies count as stakeholders in the SCCSR, while in fact they are quite a different actor.”* (SCCSR member, union officer)

In contrast, the main business association (CEOE) considered that the composition of the SCCSR was unbalanced because, in their view, this institution should be piloted by the main actors in CSR – companies and the associations that represent them – suggesting that they should amount to 50% of the council (Cinco Días, 2012).

On similar grounds, the observable behavior included threats to leave working groups if certain aspects were discussed. For example, business stakeholders left the ‘indicators’ working group in protest for the discussion of tax avoidance schemes:

*“When the discussion switched to the regulation of tax avoidance reporting ... they [business stakeholders] left the group.”* (SCCSR member, union officer)

But the more far-reaching way in which this form of power shaped CSR regulation was through the political process. The Socialist Party platform for the 2004 elections included a clause on CSR stating that ‘a law will establish the obligation for listed companies to comply with transparency requirements in such a way that those companies prepare a triple bottom line account, on economic, social and environmental performance, as part of their annual report’ (PSOE, 2004, p. 135). As described by Archel et al. (2011), when this political party won the elections in 2004 it deployed a set of CSR initiatives that included the SCCSR and the SEL. This was an important resource for unions, NGOs and CSR advocates. However, those opposing the regulation of CSR reporting also deployed their resources, as described by Archel et al. (2011). As a result, where the 2004 platform said ‘obligation’, the SEL (approved in March 2011) established that the ‘CSR report will be submitted to the SCCSR to allow proper monitoring’ and, finally, the socialist CSR Director-General affirmed in June 2011<sup>17</sup> that non-reporters were not to be punished, but through this regulation a record would be left about whether or not they consider their social responsibility is important as they manage their businesses.

The Popular Party won the elections in November 2011 and was in charge of giving effect to the SEL approved a few months earlier. The CSR policy of the new government stressed the voluntary nature of CSR (e.g. Gobierno de España, 2014), something that provided legitimacy to the business position in the SCCSR. As discussed by Cooper and Owen (2007) in the case of Operating and Financial Review in the UK, the timid implementation of the SEL was interrupted by the government. For example, as explained above, it reorganised the SCCSR, eliminating the ‘transparency, communication and reporting standards and sustainability reporting’ working group, leaving CSR reporting to the imprecise ‘CSR promotion’ working group.

*“When the [Popular Party] came it eliminated all the previous work. And talking about priorities, well, you see that CSR is not a priority. We now have a strategy that allegedly recovered what was left from the Sustainable Economy Law, but actually it does not; because it has no landmarks, no clear objectives, no dates, no established measurement.”*  
(CSR senior consultant)

Lukes (1985) second dimension of power focuses on the forces that prevent making decisions about potential issues in which there is an observable conflict. The analysis of this second dimension of power requires identifying ‘non-decision making’ (15). Unlike the case reported by Cooper and Owen (2007), CSR reporting was framed in Spain by the non-decisions that the government of the Popular Party made with respect to two crucial issues: the non-production of the reporting guidelines requested by law and the non-establishment of the submission mechanism ordered in the same law.

As the former concerns, soon after the SEL was enacted, but before the Popular Party won the elections, the SCCSR had approved a working paper<sup>18</sup> that was meant to provide the basis for the reporting guidelines mandated by the law. This is an anonymous 23 pages' document without references that provides a shallow introduction to CSR, two reporting principles (transparency and comprehensiveness) and six criteria, along with a list of social, environmental and corporate governance issues without much explanation.

*“It’s true that there is a table with indicators approved in the SCCSR plenary in May 2011 (...). This table includes indicators, but very little progress was made in terms of what is the information that each indicator should include.”* (SCCSR, independent expert)

However, influenced by the political process, the activity of the SCCSR was gradually declining, transforming itself over the years into a forum for exchanging ideas (Coller, Cambra-Fierro, Gulatingeri, and Melero-Polo, 2014). Eventually, the (politicized) council was unable to produce the reporting guidelines. It could even be argued that this goal was set to fail, since external references, both in terms of accepted reporting guidelines and academic/professional experts were not included in the council. Similar observations can be made about the submission mechanism: the SCCSR did not establish any.

*“Furthermore, there isn’t any official way to deliver reports to the SCCSR as such. This is why the SCCSR does not receive any information from any company, as the [SEL] suggested.”* (SCCSR, independent expert, emphasis added)

These non-decisions were crucial for the failure to implement enforcement mechanisms, whose absence made very unlikely the success of CSR reporting obligation included in the SEL regulation. However, in contrast to Archel et al. (2011), we did not find evidence of such widespread symbolic violence. Our analysis of the SCCSR rather shows a field that remains contested, one in which observable (rather than symbolic) power is mobilised, not to legitimise the business case discourse, but to eradicate the debate.

## **5. Concluding comments**

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This paper explores the attempt to regulate CSR reporting for Spanish companies through the Sustainable Economy Law 2/2011. This regulation is relevant for Directive 2014/95/EU on non-financial reporting, since the preparatory EU documents cited the Spanish regulation as a precedent and, arguably, its analysis will provide information about how the Directive is transposed to the legislation of different EU countries.

The empirical investigation of this paper adopts a multi-method approach, based on content analysis and qualitative interviews. This investigation revealed that the Spanish regulation did not have any effect in terms of the number of companies disclosing sustainability reports. Rather, the number of reports decreased in 2011 and 2012, when the new regulation entered into force. Conversely, the content analysis revealed that, although reporting quality remained at very modest levels (around 30% for GRI reports and 15% for non-GRI reports), it increased modestly in 2011 and 2012. It has to be taken into consideration that this disclosure index only refers to the

sustainability reports that were actually published and the slight increase in average quality could be explained by the shrinking number of reports. The analysis by type of company reveals that while generally disclosure scores are generally higher for multinational companies, in 2013 it is significantly higher for domestic companies. Further research should explore whether this change persists and how it can be explained. In summary, these results illustrate the limited impact that CSR reporting regulation had in Spain.

Qualitative interviews with relevant actors, along with ideas about normativity (Bebbington et al., 2012) and power (Archel et al., 2011; Cooper and Owen, 2007; Lukes, 1985) allowed us to explore how different elements of the regulation explain the limited effect of this regulation: competing views about CSR and CSR regulation, CSR reporting patterns and the role of power. Finding a common ground in terms of the understandings about CSR and CSR reporting was improbable, since the discussions about CSR were framed from the outset in antagonistic terms and the law itself was a contested matter. A field characterised by ongoing conflict inhibited the emergence of any CSR reporting norm.

Further, CSR reporting regulation did not build upon previous reporting practices. The governmental policy of extending CSR reporting to non-listed companies turned out to be asymptotic to the previous practice: while the regulation did not seem to have any effect on non-listed companies, listed ones continued their reporting practices despite any regulation development.

Finally, the role of the state is problematic, since a plurality of actors have agency in this regulation. In this regard, despite the limited

effect of the regulation, we could not find a settled business discourse (Archel, et al., 2011), a dominant form of power (Lukes, 1985), but a field with ongoing struggle. Consistent with Cooper and Owen (2007), we found observable (rather than symbolical) power mobilised to suppress the potential of CSR reporting regulation.

This analysis shows that regulation needs to be read between the lines, that is, different attributes of the law erode its normativity, as Bebbington et al. (2012) suggested. Examples would include leaving the specifics to bodies that cannot reach an agreement or omitting the consequences of non-compliance. More specifically, the findings of this paper are important for analysing the prospects of Directive 2014/95/EU. The results of this paper suggest that it is important to analyze the attributes of the directive and how it is transposed into the domestic legislations and from them to corporate reporting practice, which is, reporting norms. Three important attributes of the Directive would be: (i) how reporting guidelines and reporting models are approached; the plans for publishing non-binding reporting guidelines are problematic, according to the Spanish experience; (ii) which mechanisms are devised, if any, for the enforcement of the reporting obligation and (iii) what is the process by which the Directive is transposed into the domestic legislations.

## Notes

1. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014.
2. Companies with more than 500 employees and either with total assets exceeding 20 million euros or with annual turnover surpassing 40 million euros are obliged under the Directive.
3. The law also mandated that those guidelines had to conform to the principles of transparency, good governance, commitment to the local communities and to the environment, respect for human rights, improving labor relations, promoting the integration of women, effective equality between women and men, equal opportunities, universal accessibility for the disabled and sustainable consumption. (SEL, article 39).
4. Following the 2008 Act, further initiatives by the Danish government include the Danish Action Plan for CSR (2012–2015) (Danish Government 2012). This plan contends that CSR and transparency are an essential part of the agenda for growth, in response to financial crisis. This plan also proposes to improve the guidance on CSR issues. As part of this regulation, the Danish government carries out an in-depth evaluation of the disclosure of CSR policies to the government (especially by listed corporations) and how those policies are implemented (2008, 2012).
5. SABI is a Bureau Van Dijk database containing more than one million companies in Spain and Portugal. SABI is the reference in the area of financial and governance information for Spanish non-financial firms (see <http://www.bvdinfo.com/en-gb/our-products/companyinformation/national-products/sabi>). For financial firms we referred to the financial industry yearbook published by the Asociación Española de Banca (2012).
6. The initial list of companies retrieved from the databases included more than 400 companies. But, subsequently this sample was reduced by considering only the parent company when two or more entities were found to be part of the same group.

7. It has to be remembered that, for the purposes of this study, companies refer to those that are regulated under LES (having separate legal entity and more than 1,000 employees). Some CSR reports identified in this study which were published by subsidiaries of those companies, were included in the analysis for the only purposes of analysing the overall evolution of CSR disclosure.

8. Clarkson et al. (2008) developed a comprehensive environmental disclosure scale. This 95-point index was largely based on GRI guidelines and consists of two major sections. Their 'hard disclosure items' include four sub-sections labelled as (i) governance and structure management, (ii) credibility, (iii) environmental performance indicators (EPIs) and (iv) environmental spending, whereas 'soft disclosure items' comprise three sub-sections classified as (i) vision and strategy claims, (ii) environmental profile and (iii) environmental initiative.

9. The purpose of this study is not to evaluate the influence of G4 over the quality/comprehensiveness of CSR reporting. However, the emphasis on materiality in G4 could, arguably, weaken the link between completeness and reporting quality that underlies our disclosure index. Nevertheless, G4 does not seem to affect our results, since we are analysing only 13 G4 reports (all in 2013) and the disclosure index of the G3 reports in 2013 ( $N = 26$ ) does not statistically differ from the disclosure index of the G4 reports ( $N = 13$ ) (Wilcoxon-Test = 941.000;  $p = .309$ ).

10. The main discrepancies between coders revolved around ISO 26000, SA 8000, internal environmental audits and the fine-tuning of the 0–6 scores of performance indicators. Internal validity is the key concern of this study, as it intends to evaluate quality disclosure evolution in the period 2010–2013.

11. The mean disclosure index for the GRI reports is significantly greater than the mean disclosure index of the non-GRI reports in all the years (Wilcoxon  $Z = -4.655$  (2010);  $-4.396$  (2011);  $-4.234$  (2012);  $-4.999$  (2013);  $p < .05$ ).

12. The mean disclosure index is significantly greater for 2011 and for 2012 than for 2010 (Wilcoxon  $Z = -3.634$  (2010–2011);  $-4.171$  (2010–2012);  $p < .05$ ). In the rest of the cases there are not significant differences ( $p > .05$ ).

13. Kruskal–Wallis  $H = 4.894$  (2010);  $2.729$  (2011);  $1.899$  (2012);  $p > .05$ .  $H = 7.125$  (2013);  $p < .05$ ).

14. A competing explanation could rely on the economic crisis, that is, the regulation could have a positive effect in some companies, compensated by the decision of other companies to discontinue CSR reporting due to the economic crisis. This explanation has, however, to be rejected. García-Benau, et al. (2013) conducted a study before the SEL entered into force and found that CSR reporting increased significantly during the 2008–2010 crisis period compared to the 2005–2007 pre-crisis period.
15. Servimedia. 22/03/2011. RSC. Más de 400 empresas tendrán que comunicar al Cerse sus políticas de responsabilidad social. Accessed July 27, 2015, from <http://www.servimedia.es/noticias/detalle.aspx?s=24andn=129411>.
16. As has been pointed out above, the Danish government provided guidelines to the companies and developed an in-depth evaluation process (2008, 2012).
17. Servimedia. 1/6/2011. RSC. Los informes de responsabilidad social no serán obligatorios en España, según Juan José Barrera. Accessed July 27, 2015, from <http://www.servimedia.es/noticias/detalle.aspx?s=24andn=145956>.
18. “Transparencia, Comunicación y Standards de los Informes y Memorias de Sostenibilidad” Accessed July 27, 2015, from <http://www.observatorio-rse.org.es/sitio/cerse.aspx>.

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## Appendixes

**Appendix 1.1:** Companies covered by SEL regulation disclosing a sustainability report at least in one year between 2010 and 2013 (N = 65).

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**Domestic corporations (N= 17)**

Atresmedia (previously Grupo Antena 3)  
Banco Sabadell  
Bankinter  
Bilbao Bizkaya Fundación Bancaria: Bilbao Bizkaya Kutxa  
Compañía Logística de Hidrocarburos (CLH)  
ESTEVE  
Fondo Reestructuración Ordenada Bancaria: Bankia and BMN†  
Fundación Bancaria Caixa: Critería Caixa  
Fundación Bancaria Ibercaja: Ibercaja Banco  
Fundación Bancaria Unicaja: Unicaja Banco  
Garibaldi\*  
Grupo Leche Pascual  
Mahou Group  
Martínez Lorient\*  
Mercadona\*  
Sar Residencial y Asistencial  
Sorea Sociedad Regional de Abastecimiento de aguas

**Multinational Corporations (N=29)**

Abengoa: Abengoa S.A, Befesa and Telvent†  
Acciona  
Acerinox  
ACS  
Banco Popular  
Banco Santander  
BBVA  
Enagas  
Ecros\*  
El Corte Inglés\*  
Endesa  
FCC: FCC Construcción and Aqualia†  
Ferrovia S.A: Ferrovia Servicios and Cespa†  
Gas Natural  
Gestamp  
Grupo Cortefiel  
Iberdrola  
Inditex

Indra  
Industria de Turbo Propulsores (ITP)  
Melía Hoteles  
Mutua Madrileña  
Automovilística\*  
NH Hoteles  
Inmobiliaria Espacio  
Red Eléctrica de España  
Repsol YPF  
Sacyr  
Técnicas Reunidas  
Telefónica España

**Subsidiaries of foreign multinational corporations (N=19)**

Accenture Spain  
Alcampo  
Amadeus  
AREAS  
Atento  
BSH Spain  
Carrefour\*  
Cepsa  
Danone\*  
Iberia Airlines of Spain  
Ikea Ibérica\*  
Nestlé Spain\*  
Peugeot Citroën\*  
Orange\*  
Heineken Spain  
Siemens  
Sopra\*  
Stef\*  
Vodafone Group: Vodafone España SAU and Vodafone ONO S.A†

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\* Non-GRI reporters.

† Four corporations (FCC, Ferrovia S.A, Fondo Reestructuración Ordenada Bancaria, Vodafone Group) produced two CSR reports and one corporation (Abengoa) produced three CSR reports at least in one year.

## **Appendix 1.2: CSR Disclosure Index.**

### **(1) Governance and structure management (max = 7)**

- (1) Existence of a Department and/or management position for environmental management (0–1).
- (2) Stakeholder involvement in the policies established in the organization (0–1).
- (3) Implementation of ISO 14001 at the plant and/or at the company level (0–1).
- (4) Implementation of ISO 26000 at the plant and/or at the company level (0–1).
- (5) Implementation of SA 8000 at the plant and/or at the company level (0–1).
- (6) Implementation of EMAS at the plant and/or at the company level (0–1).
- (7) Executive compensation is linked to social, economic and/or environmental performance (0–1).

### **(2) Credibility (max = 3)**

- (8) Table identifying the location of the standard disclosures in the report (0–1).
- (9) Policy and current practice with regard to seeking external assurance for the report (0–1).
- (10) How the organization has responded to stakeholder engagement (0–1).

### **(3) Performance Indicators**

#### **(3.1) Economic Performance Indicators (max = 24)**

- (11) EPI on direct economic value generated and distributed (0–6).
- (12) EPI on procedures for local hiring and proportion of senior management from the local community (0–6).
- (13) EPI on indirect economic impact, describing it (0–6).
- (14) EPI on the proportion of spending on locally-based suppliers at significant locations of operation (0–6).

#### **(3.2) Environmental Performance Indicators (max = 48)**

- (15) EPI on materials used by weight or volume (0–6).

- (16) EPI on energy use and/or energy efficiency (0–6).
- (17) EPI on water use and/or water use efficiency (0–6).
- (18) EPI on significant impacts of activities, products, and services on biodiversity in protected areas and areas of high biodiversity value outside protected areas (0–6).
- (19) EPI on greenhouse gas emissions (0–6).
- (20) EPI on waste generation and/or management (recycling, re-use, reducing, treatment and disposal) (0–6).
- (21) EPI on environmental impacts of products and services (0–6).
- (22) EPI on compliance performance (e.g. reportable incidents) (0–6).

### **(3.3) Social Performance Indicators (max = 96)**

- (23) SPI on the total number and rate of new employee hires and employee turnover by age group, gender, and region (0–6).
- (24) SPI on rates of injury, occupational diseases, lost days, and absenteeism, and total number of work-related fatalities, by region and by gender (0–6).
- (25) SPI on the average hours of training per year per employee by gender, and by employee category (0–6).
- (26) SPI on the composition of governance bodies and breakdown of employees per category according to gender, age group and minority group membership (0–6).
- (27) SPI on the ratio of basic salary of men to women by employee category, by significant locations of operation (0–6).
- (28) SPI on the percentage and total number of significant investment agreements that include clauses incorporating human rights concerns, or that have undergone human rights screening (0–6).
- (29) SPI on the total number of incidents of discrimination and corrective actions taken (0–6).
- (30) SPI on the number of operations and significant suppliers identified in which the right to exercise freedom of association and collective bargaining may be violated or at significant risk, and actions taken to support these rights (0–6).

(31) SPI on the number of operations and significant suppliers identified as having significant risk for incidents of child labor, and measures taken to contribute to the effective abolition of child labor (0–6).

(32) SPI on the number of operations and significant suppliers identified as having significant risk for incidents of forced or compulsory labor, and measures to contribute to the elimination of all forms of forced or compulsory labor (0–6).

(33) SPI on the number of operations that have been subject to human rights reviews and/or impact assessments (0–6).

(34) SPI on the percentage of operations with implemented local community engagement, impact assessments, and development programmes (0–6).

(35) SPI on the number of business units analyzed for risks related to corruption (0–6).

(36) SPI on the life cycle stages in which health and safety impacts of products and services are assessed for improvement, and percentage of significant products and services categories subject to such procedures (0–6).

(37) SPI on the type of product and service information required by procedures, and percentage of significant products and services subject to such information requirements (0–6).

(38) SPI on programmes for adherence to laws, standards, and voluntary codes related to marketing communications, including advertising, promotion, and sponsorship (0–6).

#### **(4) Compliance spending (max = 3)**

(39) Monetary value of significant fines and total number of non-monetary sanctions for non-compliance with environmental laws and regulations (0–1).

(40) Monetary value of significant fines and total number of non-monetary sanctions for non-compliance with social laws and regulations (0–1).

(41) Monetary value of significant fines for non-compliance with laws and regulations concerning the provision and use of products and services (0–1).

#### **(5) Vision and strategy claims (max = 2)**

(42) Statement from the most senior decision-maker of the organization (e.g. CEO, chair, or equivalent senior position) about the relevance of sustainability to the organization and its strategy to stakeholders (0–1).

(43) Data measurement techniques and the bases of calculations, including assumptions and techniques underlying estimations applied to the compilation of the indicators and other information in the report (0–1).

**(6) Sustainability profile (max = 3)**

(44) Description of key impacts, risks and opportunities (0–1).

(45) Markets served (including geographic breakdown, sectors served, and types of customers/beneficiaries) (0–1).

(46) Scale of the reporting organization (e.g. number of employees or number of operations) (0–1).

**(7) Sustainability Initiatives (max = 2)**

(47) Internal environmental audits (0–1).

(48) Protocols to cope with accidents at works (0–1).

**Total maximum possible score = 188**

Following Clarkson et al. (2008) performance indicators were assigned a 0–6 score to account for their quality. This score is the addition of the following informational aspects: (1) Performance data is presented; (2) Performance data is presented relative to peers/rivals or industry; (3) Performance data is presented relative to previous periods (trend analysis); (4) Performance data is presented relative to targets; (5) Performance data is presented both in absolute and normalized form; (6) Performance data is presented at disaggregate level (i.e. plant, business unit, geographic segment) (p. 313).

### Appendix 1.3: Interviews.

Interviewee	Organization	Role in SCCSR	No. Interviews
CSR	Business association	Member representing his/her organization	1
CSR Assistant	Social organization focusing on physical disability	Assistant to the member that represents the part of the SCCSR related with disability	1
Fundraising Director	NGO fighting poverty and social discrimination	Works with the member that represents the part of the SCCSR related with NGOs	1
Officer	Large trade union	Member representing his/her organization. Member of the Executive Council	2
Professor	Academic institution	Independent expert	1
CSR Manager	Corporation in the automobile parts manufacturing industry	None	1
Marketing Director	Corporation in the food processing industry	None	1
Human Resources Director	Spanish MNC in the automobile parts manufacturing industry	None	1
Technical Director	NGO focusing on mental disability	None	1
Risk Manager	Large subsidiary, car manufacturing industry	None	1
CSR Senior Consultant	CSR consulting organization	Works with different SCCSR representatives	1

