The construction of the normative persuasion of social and environmental reporting regulation

Mercedes Luque-Vílchez
Departamento de Economía Agraria, Finanzas y Contabilidad,
Universidad de Córdoba, Córdoba, Spain

Javier Husillos
Departamento de Gestión de Empresas, Institute for Advanced Research in
Business and Economics (INARBE), Universidad Pública de Navarra,
Pamplona, Spain, and

Carlos Larrinaga
Departamento de Economía y Administración de Empresas,
Universidad de Burgos, Burgos, Spain

Abstract

Purpose – This study aims to understand why some social and environmental reporting (SER) regulations are more successful than others in modifying collective corporate reporting behaviour and expectations. More specifically, it presents a qualitative and historically informed exploration of the construction of the enabling conditions for corporate adoption of SER regulation in a national context.

Design/methodology/approach – Drawing on insights from structuration theory and the sociological approach to legal studies, the authors examined the normative persuasion of the first regulation in Spain requiring firms to disclose social and environmental information in a stand-alone report: Article 39 of the Spanish Sustainable Economy Law. The case study is based primarily on 38 semi-structured interviews with relevant actors involved in this SER regulation from 2008 to 2014. Other sources such as legal and policy documents, historical documents, books, press reports and field notes from attendance at technical meetings related to the phenomenon under study help inform and complement the analysis of the interviews.

Findings – The analysis reveals that the agency of regulators, regulatees and other relevant actors involved in the SER regulation led to the law becoming a dead letter. However, only by examining the structural...
Recent decades have witnessed a worldwide surge in formal legislation on social and environmental reporting (SER)\(^1\) \((\text{Bartels et al., 2016; KPMG, 2013, 2020; van der Lugt et al., 2020})\). Cases in point include the European Corporate Sustainability Reporting Directive (Directive 2022/2464/EU) amending the Non-Financial Reporting Directive (Directive 2014/95/EU), the requirement for state-owned companies in India to produce sustainability reports and the South African King Code on Corporate Governance (King III). The growing prominence of SER regulation is aligned with evidence showing that corporations play a central role in addressing sustainability challenges \((\text{Folke et al., 2019})\), and with reported concerns about the lack of neutrality, objectivity and comparability of voluntary SER \((\text{Cho et al., 2012; Deegan, 2002; Gray, 2006, 2010})\).

Although formal SER legislation seems a reasonable approach to improve corporate accountability, there is mounting evidence that the corporate response to formal SER legislation tends to be rather limited in terms of the quantity and quality of the information disclosed \((\text{e.g. Chauvey et al., 2015; Chelli et al., 2018; Criado-Jiménez et al., 2008; Haji et al., 2023; Korca et al., 2021; Larrinaga et al., 2002; Luque-Vilchez and Larrinaga, 2016})\). In this vein, Bebbington et al. (2012, p. 90) argue that “formal legislation alone may not be sufficient” to modify the collective behaviour of firms and social expectations about SER. They suggest that regulation should be analysed as a process that leads to a particular standard of behaviour around which expectations converge, rather than just a set of formal written rules, as in a particular standard or law. These ideas resonate with how regulation has been characterised as a social construction, where “the meaning of law is shaped by widely accepted ideas within the social arena that law seeks to regulate” \((\text{Edelman, 2016, p. 12})\), with law being described as “a construction dependent upon the mutual generative activity and acceptance of the governing and the governed” \((\text{Brunnée and Toope, 2000, p. 48})\).

Following this approach to regulation, different aspects of SER laws and standards such as their functionality and clarity, complexity and enforcement mechanisms, integration in a pre-existing normative framework and congruence with established practices have been associated with their capacity to modify collective reporting behaviour and expectations \((\text{Bebbington et al., 2012; Larrinaga and Senn, 2021; Senn and Giordano-Spring, 2020})\). For
instance, Senn and Giordano-Spring (2020) have shown how the poor design of environmental reporting regulation (its imprecise nature, weak definitions and lack of guidelines) makes it difficult to enforce. Furthermore, poor design of environmental reporting regulation encourages strategic behaviour, hindering the potential of regulation to produce “homogeneity of disclosing behaviours among companies” (p. 1387).

Bebbington et al. (2012) also argue that the mobilisation of expertise and knowledge in the design of laws and standards and their application, along with a regulatory process that is inclusive and deliberative in nature, are all elements that facilitate a common understanding and the convergence of expectations around a set of specific SER standards, facilitating firms’ adhesion to them. By involving different voices and engaging with actors potentially affected by the law, the regulatory process facilitates the acceptance and legitimacy of the legislation, making it more effective (Siddiki et al., 2012; Wiener, 2019). In this vein, Chelli et al. (2018) suggest that the long, multi-stakeholder debate about the Grenelle de l’Environnement (French legislation that requires companies to report on their social and environmental performance) could explain why it achieved a higher degree of compliance than previous attempts to introduce SER standards in that country.

In contrast, Bebbingon et al. (2012) found that some SER requirements were difficult to interpret by Spanish companies as the law was not in line with the existing practices and standards, eroding their legitimacy and, therefore, their normative persuasion. Conformity of new legislation with the social context and prevailing practices is crucial to its normative persuasion (Brunnée and Toope, 2011). Following Humphreys (2010), May (2014, p. 11) explains that the norm “is about more than the laws themselves; it is concerned with the social values that are expressed through those laws, and whether these values are legitimately furthered or promoted through a legal system”. Larrinaga and Bebbington (2021) empirically illustrate this idea by showing how changes in societal beliefs about corporate responsibilities from the 1970s to the 1990s created a “fertile ground” (p. 139) for the emergence and development of SER standards.

If SER regulation aims to improve business transparency, it is crucial to consider the elements that enhance the normative persuasion of regulation, because those elements mediate between the law and its outcome (Edelman, 1992; see also Gilad, 2014). However, the process by which historical and socio-political contextual factors are involved in the construction of the normative persuasion of SER regulation remains underexplored. For instance, Chauvey et al. (2015) and Chelli et al. (2018) infer normative persuasion from environmental disclosure practices. Likewise, Bebbingon et al. (2012) analyse the ability of SER standards to modify the behaviour of firms in Spain and the UK, but do not address the socio-political roots and the historical background that created the conditions for normative persuasion (see also Senn and Giordano-Spring, 2020, or Luque-Vilchez and Larrinaga, 2016). Although Larrinaga and Bebbington (2021) analysed the conditions that gradually transformed SER practices into a social and business norm, their analysis focuses on the foundation of the Global Reporting Initiative (GRI) in the 1990s, a period characterised by voluntary disclosure and the absence of SER regulation.

The aim of this research is to shed light on why some SER regulations are more successful than others in modifying collective corporate reporting behaviour and expectations. More specifically, it presents a historically informed, qualitative exploration of the construction of the conditions for firms’ acquiescence to SER regulation in a particular national context. By way of case study, we analyse the first law in Spain requiring firms and public sector entities to disclose social and environmental information in a stand-alone report; namely, the Sustainable Economy Law 2/2011 (hereafter SEL). Luque-Vilchez and Larrinaga (2016) reveal that, despite the new legislation, the quantity and quality of sustainability reports produced by the companies affected by the law remained low, indicating the failure of the SEL to change the collective behaviour and expectations of Spanish companies. Larrinaga et al. (2018) also report that this law failed to increase the transparency of public sector entities in terms of the quantity...
and quality of sustainability accounting practices. The case study relies on semi-structured interviews (38) with relevant actors in the Spanish SER regulation field, participant observation in public technical meetings, as well as a documentary analysis of legal and policy texts.

This study contributes to the literature on the normative persuasion of SER regulation by conducting an in-depth, historically grounded, qualitative investigation. This investigation reveals that in order to understand how the normative persuasion of law emerges we need to consider the influence of social structures in this process, some of which may be idiosyncratic to the national context, intertwined with the agency of different actors. The analysis of regulation at national level is particularly relevant since “transnational regulatory requirements often operate alongside national requirements or may even rely on traditional national actors for their acceptance and implementation” (Canning and O’Dwyer, 2013, p. 170).

The rest of the paper is structured as follows. Section 2 describes the theoretical insights that motivated and informed this study. Section 3 outlines the process and context of SER regulation in Spain, which provides the basis for the field study. Section 4 describes the research method. Section 5 presents the findings of the field study, and finally, Section 6 discusses the findings and draws some conclusions and implications.

2. The nature of normative persuasion
The theoretical insights informing this paper, in order to understand the dynamics of normative persuasion, are based on the characterisation of regulation as an endogenous process and the mobilisation of insights drawn from structuration theory and the sociological approach to legal studies.

2.1 The endogenous nature of regulation
A full understanding of how law emerges requires the consideration of regulation as a dynamic process in which actors’ behaviour is intertwined with social structures (Brunnée and Toope, 2000, 2012; Edelman, 1990, 1992, 2005; Gilad, 2014; Talesh, 2020). Regulation is neither determined by institutional forces, independent of the agency of interacting regulators and regulatees, nor a mere reflection of the interests of different actors with different values and power (Edelman and Stryker, 2005; Edelman, 2016; Gilad, 2014). Law “is not a unidirectional projection of power” (Brunnée and Toope, 2011, p. 311); rather, its emergence is a complex phenomenon that involves both actor interaction and institutional driving forces. It is a continuous co-constructed process that does not end with the enactment of the law but extends into the subsequent intersubjective interpretation and reinterpretation of the law and what it means to comply with the law.

Under the traditional exogenous understanding of law, the agency of the regulatee is limited to deciding whether and how to comply with the law, in a more or less strategic way. Problematising this understanding has helped unveil the dynamics of regulation, including the process by which actors involved in the regulatory process construct both the meaning of law and compliance. For instance, in areas as diverse as anti-discrimination regulation (Edelman, 1992), consumer law (Talesh, 2009, 2014) or a prison rape ruling (Jenness and Smyth, 2011), the analysis of regulation as an endogenous process has shown how law and “the meaning of compliance [are] understood in ways that incorporate managerial values, logics, and ways of understanding the world” (Talesh, 2020, p. 6). Regarding accounting regulation, authors such as Bozanic et al. (2012) and Canning and O’Dwyer (2013, 2016) analyse the construction of regulation, turning their attention to the influence of specific institutional actors in the regulatory process. Bozanic et al. (2012) observe how the legal profession and the security and investment industry exerted a remarkable influence on the U.S. insider trading law enacted by the SEC. Canning and O’Dwyer (2016) examine the agency of specific individuals in instigating changes in the Irish accounting regulation by creating an independent regulatory body. The Irish accounting
regulatory regime was also studied by Canning and O’Dwyer (2013). They analyse the different strategies of regulators and examine how regulatees sought to influence and adapt to their interests the new accounting rules in the field of disciplinary procedure oversight, developed in response to a series scandals affecting the accounting profession (see also Alon and Dwyer, 2016; Tollington, 2006, for an analysis of the endogeneity of the SEC’s acceptance of IFRS-based financial reporting, and the construction of the FRS10 on Goodwill and Intangible Assets).

These and similar studies provide an understanding of the complexity of accounting regulation when crucial actors and institutions mediate the writing of the law. However, they pay less attention to how the endogenous process of law formation and interpretation affects the capacity of law to shape the collective behaviour and expectations of regulatees (the normative persuasion of law). In our analysis, we address the formation of the normative persuasion of law, responding to the call made by Covaleski et al. (2013) to draw on structuration theory, depicting “regulations and their areas of application as being mutually endogenous, as influenced by the actions of a variety of cultural entrepreneurs possibly intertwined in a duality of structure in which the regulatory system is marked by a dialectic of control” (p. 359).

2.2 Structuration theory and the normative persuasion of law

Structuration theory provides a framework to explain regulation through the recursive relationship between the social structures and the agency of actors in the regulatory process (Havinga, 2006; Terpstra and Havinga, 2001; Tollington, 2006).

Central to structuration theory is the notion of the duality of structure. In the process of structuration of social systems “structure is both the medium and outcome of the reproduction of practices” (Giddens, 1979, p. 5). This duality expresses the mutual dependency of the agency of actors (the ability of a reflexive and knowledgeable actor to act otherwise) and the social structures (in which the interactions between actors take place), so that social structures and human agency “presuppose each other” (Sewell, 1992, p. 4).

According to this theory, there are three intertwined social structures that enable and constrain social practices: legitimation, signification and domination structures. The legitimation structure materialises in norms and values that provide the criteria for evaluation and enforcement (Giddens, 1984). Norms and values are translated into “specific rights and responsibilities” addressing the context in which interactions take place (Pullman and Dillard, 2010, p. 750) and they are “accompanied by sanctions and/or rewards” (Yuthas et al., 2004, p. 231) shaping the behaviour of actors in their daily practices. The signification structure constrains and enables social action governing the communication among social actors through the interpretative schemes: shared “frames of reference” and ‘stocks of knowledge’ used by actors in the production of interaction” (Conrad, 2005, p. 4). These schemes consist of a set of beliefs and codes of meanings that facilitate communication between the actors. Finally, resources are “the vehicles of power” (Giddens, 1979, p. 69) and a crucial element in understanding how the structure of domination works. The resources that actors bring into action enable them to command commodities and other objects (allocation resources), as well as social events and people (authoritative resources). According to structuration theory, the exercise of power is always two-way because “none is entirely without resources” (Conrad, 2005, p. 6). This bi-directional nature of power relations between the social actors is called the dialectic of control, where “all social relations involve both autonomy and dependence” (Conrad, 2005, p. 4).

Structuration theory provides insights that can help us to understand the emergence of the normative persuasion of law, unravelling the process by which regulation codifies the criteria for judging regulatees’ behaviour in a given social realm. This includes the study of how the meaning of these criteria is shaped through the intersubjective interpretation and reinterpretation of actors. Brunnée and Toope (2011) argue that when
a law meets certain conditions, the law will be legitimate and “actors will be able to reason with rules because they will share meaningful standards” (p. 310, emphasis added). In such cases, the law attracts its “own adherence”, creating what Brunnée and Toope call “fidelity to the law” (p. 312), or what in this work we call the normative persuasion of law.

An important insight from structuration theory when it comes to understanding the endogenous construction of regulation is the relevance attributed to the actors’ consciousness in the production and reproduction of the social structures (Giddens, 1979, 1984). Giddens argues that actors act reflexively and can transform the “routine course of social interaction” (Giddens, 1979, p. 92). Through reflexivity, actors can distance themselves from the existing structures, allowing them to question the existing rules; they thus have some room for manoeuvre to change (or reproduce) established rules through control over resources that have (or are acquiring) value in their social systems (Giddens, 1979, 1984). While the dynamics of the legitimisation and signification structures are more associated with the embedded sphere of action (unconscious acceptance of structural rules) (Giddens, 1979, 1984), the mobilisation of resources is associated with reflexivity. These insights from structuration theory can help to shed light on how the strategic behaviour of social actors can shape the conditions for the emergence of the normative persuasion of regulation. Resources are “media through which power is exercised” (Giddens, 1984, p. 16), and their relative importance and distribution among the social actors is crucial to an understanding of how regulation is constructed by the strategic behaviour of actors involved in the regulatory process.

Therefore, as Giddens shows, understanding how and why some specific laws are more likely to be observed than others requires an exploration of how social structures and the agency of actors interact to construct the shared understandings needed for a law to be recognised as binding. In the field of SER regulation, this phenomenon has been analysed by problematising the difference between social norms (the convergence of expectations about accepted behaviour, which results in a collective pattern of behaviour) and formal standards (as stated in the law). This distinction has provided significant insights into SER regulation, helping to trace the path that reporting standards follow from their introduction in a field to their internalisation by the actors therein (Larrinaga and Senn, 2021). It has helped shed light on why some laws fail to change companies’ reporting behaviour, while certain voluntary standards can drive companies to make more and better disclosures (Bebbington et al., 2012). Furthermore, this distinction has helped to show how the characteristics of the standards influence managers’ translation of SER regulation into different disclosure strategies (Senn and Giordano-Spring, 2020); or it has evidenced the need to take stock of the past (the historical trajectories of social phenomena) to understand the present (Larrinaga and Bebbington, 2021).

However, the process by which historical, socio-economic and political contextual elements create the conditions for formal SER standards to transform into a social norm still needs to be unravelled. The present study aims to do just that for the case of a specific SER law in Spain.

3. The Spanish social and environmental reporting regulation
To analyse the normative persuasion of the SER regulation, we comprehensively analyse the requirement to produce a corporate sustainability report introduced in 2011 in Spain by the SEL. The analysis spans the period from 2008 to 2014. In 2008, the socialist government created the State Council on corporate social responsibility (CSR) (hereafter SCCSR) to supervise and advise on the Spanish CSR regulatory process. The SCCSR played a crucial role in the design and scope of the 2011 SEL sustainability reporting regulation. In 2014, the subsequent conservative government passed the Spanish CSR Strategy watered down the socialist government’s ambitions. This section provides some background information about the case analysed (see Figure 1 for a timeline of key events described in this section).
Until 2000, the Spanish Government had a rather passive attitude in this area, “restricting its action mainly to the partial regulation of environmental information in annual financial reports” (Archele et al., 2011, p. 330). In 2002, the Socialist Party, completing its sixth year in opposition, submitted to Parliament a proposal for a new law on CSR. Among other aspects, the proposed law would have required listed companies to disclose social and environmental information in a stand-alone report. However, the then ruling Popular Party (conservative) did not support this move (for further details, see Archele et al., 2011). The Socialist Party’s proposal thus resulted in a failed attempt to regulate SER.

In 2004, the Socialist Party won the general elections and CSR became a higher priority in the Spanish Government’s agenda. It was at that juncture when Spain, following the lead of countries such as Italy and Greece, opened up a period of consultation among the different social actors, creating different consultative fora (Forum of Experts in CSR, Parliamentary Sub-Commission on CSR and a working group in the Roundtable on Social Dialogue) to explore the implementation of public CSR policies (Archele et al., 2011; Lozano et al., 2008; Valor and De la Cuesta, 2008). The Forum of Experts in CSR was constituted in 2005 and formed by different civil society representatives such as NGO delegates, academics and public officers. Although most representative trade unions and business associations were invited to participate in this forum, they preferred to retain the traditional tripartite forum with the government (the Roundtable on Social Dialogue) and add CSR to their industrial relations agenda (Archele et al., 2011; Roundtable on Social Dialogue Report, 2008). In contrast, all interests (including unions and employers) were represented in the third forum created in 2005, the Parliamentary Sub-Commission on CSR.

After the end of this consultative period, following recommendations made by the three aforementioned fora, the SCCSR was created in February 2008. The SCCSR was a “collegiate, advisory and consultative” body in the area of CSR that reported to the Ministry of Labor (Art 2.2, Royal Decree 221/2008[2] and became pivotal for Spanish SER regulation (Archele et al., 2011; Valor and De la Cuesta, 2008). The SCCSR comprised 56 members, 14 from each of the four groups: employers, trade unions, CSR organisations (foundations, NGOs and academic institutions) and government (national, regional and local officers).

The SCCSR first met in January 2009 and the Socialist Party’s ambitions finally crystallised in November 2009 with the elaboration of a proposal for a new Sustainable Economy Law. Regarding SER, the 2009 draft diluted the 2002 proposal for mandatory reporting into a voluntary accreditation system to be monitored by the SCCSR. Nevertheless, after different...
amendments introduced by political parties in parliamentary debates between April 2010 and March 2011, the approved SEL established more specific SER requirements in Article 39, especially for large companies. The law also incorporated an unequivocal SER mandate for state-owned corporations and business entities controlled by local and national governments (Article 35). Under Article 39, the SCCSR was commissioned to provide reporting guidelines, register corporate reports and monitor the results of CSR policies. However, the law was rather vague concerning the resources granted to the SCCSR to accomplish this mission.

The debates for the approval of SEL were still echoing in Parliament when, in November 2011, the conservative Popular Party won an absolute majority in the elections. This meant that a government with a significantly different agenda was responsible for implementing the law and for defining the areas of ambiguity left by the SEL, regarding both large companies’ SER requirements and the resources allocated to the SCCSR. If the pendulum had begun to swing towards SER regulation between 2010 and 2011, in 2012 it swung back in the direction of voluntary compliance with policies such as the 2014 Spanish Strategy on CSR. The Spanish CSR Strategy essentially drains Article 39 of any binding power because the Popular Party did not develop the tools necessary to implement Article 39 (see Spanish Government, 2014).

4. Research method
This study consists of a qualitative and interpretative analysis of the Spanish SER regulation that allows for an in-depth examination of the process by which historical and contextual elements create the conditions for the emergence of the normative persuasion of this regulation (Adams and Larrinaga, 2019; Archel et al., 2011; Senn and Giordano-Spring, 2020). The case of the Spanish SER regulation provides an opportunity to delve into interpretations of regulation as a process that evolves in a specific context. The empirical material of this case study is primarily based on interviews with relevant actors in Spanish SER regulation. Insights from interviews are complemented with field notes and observations from attendance at technical meetings and key events related to the phenomenon under study, the analysis of legal and policy documents, historical documents and books and press reports.

4.1 Interviews
A total of 38 semi-structured interviews were conducted between November 2014 and November 2022. Of these, 20 interviews involved SCCSR members (at least two individuals from each of the four groups of stakeholders) and 18 additional interviews were carried out with actors that were knowledgeable about the Spanish SER regulation process in the Spanish context. These additional interviewees included academics, officers representing accounting associations, executives of private companies and public sector organisations and consultants (see Appendix 1 for a detailed description of the interviewees). Three rounds of interviews were conducted. The first round (including pilot interviews) took place between November 2014 and June 2015 and consisted of 12 interviews. A second round provided the opportunity to address concerns that appeared in previous interviews (Berg and Lune, 2012). This second round took place between November 2015 and January 2017 and involved 21 interviews, four of which were with individuals that had already been interviewed in the previous round. The bulk of our observations come from the interviews conducted up to 2017, as an adequate level of saturation was achieved regarding the findings. Finally, between December 2017 and November 2022, we conducted five additional interviews to further explore some of the insights that emerged in the previous two rounds. Each interview lasted between 20 and 180 min; 31 interviews were conducted in person and the rest over the phone.
One benefit of semi-structured interviews is that they allow “the interviewers both to ask a series of regularly structured questions […] and to pursue areas spontaneously initiated by the interviewee” (Berg and Lune, 2012, p. 114). The use of a guide is essential for conducting semi-structured interviews. The first draft of the interview guide was developed drawing on previous relevant literature analysing the Spanish stakeholder dialogue processes (Archel et al., 2011) and on a review of legal and policy documents that served as an overview of the regulatory context. Two pilot interviews were carried out to improve the guide with a member of the SCCSR who had experience in CSR forums at the European level and with a senior CSR consultant who had assisted different SCCSR members. New questions were added to the interview guide in response to the ideas and expertise of the two pilot interviewees. The core questions addressed in the interviews are presented in Appendix 2. The guide was adapted in the second and third rounds of interviews, to further explore concerns that emerged in previous rounds of interviews (Miller and Crabtree, 1999).

All but one of the interviews were recorded and transcribed. During the interview process, we also took field notes (Hammersley and Atkinson, 2007). These field notes captured nuances such as the gestures the interviewees made and their emotions regarding the research topic. Considering the nature of this research, it was necessary to “elucidate the understanding of the individuals involved in producing and transmitting […] messages, that is, the ways in which they understand what they are doing, what they are producing and what they are trying to achieve” (Thompson, 1990, p. 305).

We analysed the interviews in a reflexive, iterative and interpretative way (Berg and Lune, 2012; Cassell, 2015; Miller and Crabtree, 1999; Wengraf, 2001), informed by other sources of information. We reviewed the interview transcripts and reflected on them periodically (Hammersley and Atkinson, 2007) until saturation in the findings was achieved (Eisenhardt, 1989). In this iteration, thematic codes were created (Braun and Clarke, 2006) to capture the themes that emerged from the transcripts. This process, which helped us to reduce the amount of information, involved different iterative steps. First, we read each interview several times and codified it. Codes and sub-codes allowed us to identify subjects that were key to interpreting the case study. For example, codes and sub-codes about the power of the different actors, their resources, conflict situations, actors’ dissatisfaction with the process, the weight of Spanish institutional arrangements, how the different actors understand CSR or the role of the economic crisis in the regulatory process. The second step consisted of reducing the number of codes and synthesising them into more general categories corresponding to the central elements of the theory; for example, codes about the institutional arrangements, the economic crisis or the dominant position of some actors provided insights to characterise, for instance, the legitimisation, signification and domination structures, and their influence on the mobilisation of resources and the agency of actors in the regulatory field. Finally, although it overlapped with the analysis, we wrote different drafts of the story until we arrived at our final interpretation of the case.

4.2 Other sources

The analysis of the interviews described above was informed and complemented by the insights derived from the analysis of different documents related to the SER regulation process, historical documents and secondary sources on Spanish history, documents generated in the legislative process itself and media reports and blogs, as well as from participation in public technical meetings.

The documents generated in the legislative process itself, the documents produced by the SCCSR and its different presidents over time, media reports and blogs (see Appendix 3) were selected because they provide information about the different events, participants, interests
or positions that can be examined to trace the evolution of the regulatory process. Historical documents and secondary sources on Spanish history were particularly useful for shedding light on the setting (Hammersley and Atkinson, 2007) and its social structures. We conducted a documentary analysis of the different sources containing information on the phenomenon under study (Bailey, 1994), using an inductive approach that provided additional information about the insights drawn from the interviews.

Regarding the public technical meetings, one of the authors attended four public technical meetings held to monitor the progress of the Spanish SER regulation process. Those meetings took place throughout the research period and were organised by business associations, social organisations and the Spanish Government. Attendees at those meetings included corporate CSR managers, consultants, academics, senior officers of international sustainability reporting standardisation bodies, civil society representatives and public officers. Field notes were taken during the meetings. These notes detailed the themes that emerged in those meetings, how CSR and its regulation was understood by different stakeholders, as well as gestures and other forms of nonverbal communication. The author’s attendance at the public meetings complements the analysis of the interviews and documents, helping to confirm the reliability of the findings.

The material provided by these sources was reflexively and interpretively analysed in the context of the interview analysis process (Berg and Lune, 2012; Cassell, 2015; Miller and Crabtree, 1999; Wengraf, 2001).

5. Constructing the conditions for the emergence of normative persuasion

For analytical purposes, the insights derived from the analysis are organised around three different nodal points that help to understand the endogenous process involved in constructing the conditions for the normative persuasion of the SEL. These nodal points are intertwined; they cannot be understood in isolation. First, history provides meaning and helps understand the institutional arrangements that prevent the process from being participative and allow the detachment of regulation from knowledge and expertise. Second, the analysis of the conflict and strategic interaction between the actors involved in regulation is useful for visualising the micro-dynamics that prevented a collective understanding of CSR and the incorporation of the legal requirements into the existing SER practices and norms in Spain. Finally, exogenous situational factors such as the economic crisis and the political cycle also shed light on the formation of essential factors for the normative persuasion of the law, including the characteristics of the law (clarity and specificity) and its enforcement mechanism.

5.1 The weight of history and the disengagement of expertise

Since its creation in 2008, the SCCSR had been central to CSR and SER standard setting in Spain (Olcese and Alfaro, 2014). From the beginning, it was structured into different working groups and engaged a broad range of stakeholders to discuss the main topics of SEL. This kind of inclusive and participatory engagement has been associated with the construction of collective meanings around standards, and therefore with the likelihood of the regulation being internalised by regulatees (Bebbington et al., 2012; Wiener, 2019), contributing to the normative persuasion of law.

Since the SCCSR engaged actors highly involved in the field of CSR, it was initially characterised by enthusiasm, commitment and a willingness to compromise:

In the first meetings, we were all very excited. We felt it was important for us to be there, we were convinced of the need to move forward (SCCSR G3.1).
It was a nice moment, a hopeful one (SCCSRG2.1).

In the early days, there were several working groups and many representatives of civil society participated, discussing issues that were important for all of us (SCCSRG2.3).

However, according to the interviews, once launched, the SCCSR gradually lost its initial inclusive and participatory spirit, falling gradually under the control of three factions: government officers, trade unions and employers:

- In the SCCSR, dialogue is led by the Government, one of the country’s most influential employers’ associations, and the most representative trade unions. For the rest of the SCCSR members, it is almost impossible to participate in this debate (SCCSRG3.5).

Dialogue [in the SCCSR] is understood as the bargaining among Government, one of the country’s most influential employers’ associations, and the most representative trade unions. The other members are there watching how they negotiate (SCCSRG3.7).

The lack of power of a wide range of social actors in the SCCSR, such as academics, CSR experts or NGOs, meant that not only their interests but also their knowledge and expertise were overlooked. The finding that “the technical part does not seem to be very important” (SCCSRG3.1, similarly SCCSRG3.3) in this regulatory process may have had a major impact on the normative persuasion of the SER legislation. Literature on norm development (Botzem and Hofmann, 2010) refers to “expertise” as a means “to integrate actors into decision-making procedures” (p. 22) and views experts’ knowledge and skills as crucial to address compelling and complex sustainability topics (Bebbington and Larrinaga, 2014; von Wehrden et al., 2019). This is especially important in terms of the normative persuasion of SER regulation because social and environmental indicators presented at an appropriate level of aggregation, comparable with external benchmarks, and integrated with an established framework (e.g. GRI) can lend legitimacy to the regulation and thus improve the likelihood of it being followed (Larrinaga and Bebbington, 2021; Leong and Hazelton, 2019), being the role of experts crucial to develop this kind of indicators.

Marginalisation also resulted in a growing loss of commitment and motivation among the actors, who felt that their voices and opinions carried less weight in the SCCSR discussion. Demotivation appears to have particularly affected NGOs with social, environmental and sustainability stakes in the process:

- Despite the hope that this type of forum offered for organisations such as NGOs, they soon lost faith in the SCCSR when they saw what was happening (O7).

They are very aware of the problems of unsustainability, many of them have put themselves in danger many times […] they are struggling every day with issues as critical to SER as climate change […] but the voice of the greens was muted in this type of forum […] they were very tired of the dynamics there (SCCSRG3.6 regarding the organisation Greenpeace).

The NGOs are particularly important actors, especially with regard to the social part, but they quickly dropped out of this type of forum […] they saw that they were not being listened to […] that everything was in the hands of others […] At the beginning, international NGOs like Amnesty International were there, but it later dropped out. Oxfam was also there (SCCSRG3.5).

However, it was not only social and environmental NGOs that grew frustrated with the predominance of trade unions and employers’ organisations; delegates from the most proactive Spanish firms in the field of CSR were also frustrated. One interviewee from a proactive Spanish business association was very clear when deeming the disproportionate...
authority given to the employers’ representatives offensive because these organisations had “no idea about CSR” (SCCSRG3.7) and therefore were “not valid interlocutors” (SCCSRG3.7) representing the business community in this area.

To understand the decoupling between the agency of actors in the regulatory process and resources such as knowledge, experience and expertise, it is worth examining the origins and evolution of the Spanish social structure that enables the privileged position of unions and employers’ associations. This requires a brief analysis of recent Spanish history. Employers’ organisations and trade unions are essential building blocks of the most significant social and political changes in 20th century Spain (Preston, 2018a). One early expression of this importance dates to General Primo de Rivera’s military dictatorship (1923–1930) (Ben-Ami, 1980). To avoid conflict [3], Primo de Rivera set up a dialogue that would allow labour and capital camps to compromise. This dialogue was formalised with the creation in 1926 of the so-called “Joint Committees” under the supervision of the Ministry of Labor. The Joint Committees were composed of members representing workers and business agents in equal measure. Some of the major trade unions existing nowadays in Spain, such as Unión General de Trabajadores (UGT) (the General Union of Workers, also present in the SCCSR), had a place in these committees. Trade unions were also of vital importance in the revolution against General Primo de Rivera’s military dictatorship (González Calleja, 2005). This revolution led to the Spanish Second Republic (1931–1939), a period characterised by greater social advances in which trade unions played a fundamental role [4]. This time was followed by the 40-year dictatorship of General Francisco Franco, during which unionism was banned in Spain [5]. With the death of Franco in 1975, a process of democratic transition began, and the Spanish Constitution of 1978 restored the role of employers’ organisations and unions as privileged socio-economic actors. From this period of democratic transition to the present day, the process of dialogue between trade unions and employers has played and continues to play a fundamental role in the construction of the main socio-economic institutional agreements in the Spanish context (Pérez-Infante, 2009).

The identification of specific rights and responsibilities among actors in the social realm is the starting point for the documentation of legitimisation structures that shape specific codes of conduct (Giddens, 1979, 1984; see also Dillard and Pullman, 2017; Yuthas et al., 2004). The historically grounded legitimisation structure of Spanish society confers on the government, trade unions and employers the right (and duty) to co-organize and coordinate any negotiations in matters affecting business and the economy, a structure that is reproduced in the SCCSR.

However, the dominant position of trade unions and employers is not only intertwined with the legitimisation structure but is also reproduced by the signification structure that governed the patterns of communication and forms of dialogue in the SCCSR:

The form of dialogue between unions and employers stems from the type of debate they traditionally engaged in when negotiating labour relations issues. Interestingly, this debate is reproduced here, albeit on a different stage: the SCCSR (O7).

The attempt to co-construct the meaning of law and compliance by unions and employers in the SCCSR through the communication process is enabled by particular shared codes of communication, knowledge and complicity (interpretative schemes). These are very clearly summarised by one of the interviewees, who said of the unions and employers that: “a glance was enough to understand each other” (SCCSRG2.3). As several interviewees seem to indicate, this attempt to co-construct the meaning includes shaping what we should understand by CSR in the regulatory process by determining the key topics of discussion (and their scope):
Labor and social issues dominated the dialogue and environmental issues became less salient (SCCSSRG3.5).

Labor issues were one of the main problems raised in the SCCSR. Unsurprisingly, the unions insisted on this issue all the time (SCCSSRG4.4).

5.2 Disagreement, conflict and disregard for previous practices and frameworks

From the beginning of the process, it was clear that not all SCCSR members shared the same interests, ideas and values about CSR. Indeed, from the outset, the intention was that the SCCSR should represent a range of sensitivities and approaches to CSR. However, what was supposed to be one of the strengths of the SCCSR in terms of normative persuasion (its inclusive and democratic nature) (Bebbington et al., 2012) became, in fact, one of the main obstacles to achieving a convergence of actors’ expectations about the law, especially since it was agreed that all decisions should be taken by consensus [6].

According to the interviewees, the difficulty of bridging the gaps between the different approaches to CSR was further accentuated by the ambiguous and complex nature of the CSR phenomenon. This made actors lean towards different interpretations more closely aligned to their values and interests, fuelling divergence rather than convergence in views. This observation is in line with Freeman and Hasnaoui’s (2011) claim that even after decades, we still lack a globally adopted definition of CSR, which is further complicated by the use of “ambiguous terms in the proffered definitions [of CSR]” (p. 419). The same ambiguity has been found regarding the SER concepts (e.g. Neu et al., 1998) and the definition of sustainability, which have been related to shaping social perceptions to serve the interests of the most powerful social actors (Joseph, 2012).

The convergence of expectations around regulation is an essential component of normative persuasion. However, the obstacles for compromise within the SCCSR, due to the consensus rule and the ambiguous and complex nature of CSR, became evident when the different stakeholders discussed a critical point: the voluntary vs mandatory nature of CSR:

The issue of CSR is very broad and very complex at the same time and is subject to many interpretations in the sense of whether it is voluntary or not. Some people think that if CSR were to become mandatory, it would not be CSR (O5).

The debate about the voluntary vs mandatory nature of CSR is traditionally one of the issues at the heart of the strategic struggle for who gets control of CSR (Archel et al., 2011). In the Spanish regulatory process analysed here, the contempt for CSR knowledge, experience and expertise that could have helped to reduce ambiguity and manage complexity, together with the uneven distribution of agency in the Spanish SER regulation field (issues analysed in the previous subsection), paved the way for some critical actors in the regulatory process to adopt a position of strength throughout the legislative process. In a clear example of reflexivity and agency, some dominant actors were “capable of putting their structurally formed capacities to work in creative or innovative ways” (Sewell, 1992, p. 4), adopting a position aimed at curbing the SEL’s interference in the activities of business organisations. This excerpt from the interview with the representative of a prominent employers’ association illustrates the fundamentals of this position:

Some of the things that unions and third sector organisations ask companies—for example, disclosure of certain confidential information—are impossible. The objective of the companies is the creation of economic value. They are not NGOs (SCCSSRG1.2).
The way in which the term “confidential” is used above leaves it unequivocally up to companies to decide what should be reported. Along with the unbridgeable differences claimed by the interviewee between the social and the economic realms (“they are not an NGO”), this is a clear example of how the position is articulated by conscious use of a specific narrative in a self-interested way by the more conservative wing of the regulatory process. What is being raised here by the employers’ association is the apparent incompatibility between the level of transparency and the accountability required by unions and the third sector and the survival (or the very nature) of business organisations. This narrative aims to influence the meaning and scope of CSR in the regulation process, making the Government believe that it must choose between demanding more transparency from Spanish firms beyond what they consider appropriate and the good performance of those firms.

In 2012, one of the most important economics newspapers in Spain revealed, in an article titled “CEOE wants to eliminate the SCCSR”, the existence of an internal document prepared by the main Spanish business organisation using the same arguments to request the dissolution of the SCCSR and the removal of Article 39 of the SEL underlining the strong disagreements that exist within the SCCSR. According to this document, Article 39 provokes a “distortion of free competition and a breakdown of the single market”, and the SCCSR should be disbanded because the “debates and documents that are developed are aimed at evaluating and examining the companies’ actions in corporate social responsibility by public administrations, trade union, consumer and other civil society organisations whose contributions may not be the most constructive for the best promotion of CSR in Spain” (Cinco Días, 2012).

Disagreement between key actors on essential issues was not only observable at the discursive level; it can also be traced to specific actions throughout the regulatory process. This becomes evident when analysing how the SCCSR dealt with other crucial SER-related issue in developing the SEL: building the list of indicators on which companies should report.

Article 39 of the SEL states:

[... ] the Government will provide them [the companies] with a set of characteristics and indicators to use for self-evaluation in matters of social responsibility, as well as reporting models or references, all following international standards in this field [...].

However, this specific mandate was not developed by the SCCSR, causing frustration in the Socialist Party that had designed the law:

The indicators already exist. In fact, if you look at the Sustainable Economy Law [Art. 39 and Art. 35] you can see how this law refers to international indicators. We [the Socialist Party] merely appealed for more thought and reflection on them, but employers and union officers did not understand what we meant (SCCSR G4.1).

The Socialist Party advocated incorporating existing indicators without “reinventing the wheel” (SCCSR G4.1). For instance, the SER practices had converged around the GRI in Spain (Ortiz Martínez and Marín Hernández, 2014) and worldwide (KPMG, 2020). It was thus the intention of the Socialist Party to integrate the SEL into this kind of internationally accepted guidelines, something which could have enhanced its normative persuasion.

However, the SCCSR working group on ‘transparency, communication and reporting standards and sustainability reporting’ obstinately decided to build its own list of 358 indicators (SCCSR working document 2013). One of the trade union representatives in the SCCSR tried to justify this decision by stating that the GRI guideline is “a piece of shit” (SCCSR G2.7). When the discussion in this group turned to the selection of the core indicators the disagreements within the SCCSR meant that no list of indicators was finally passed by
the SCCSR in its plenary session (Diario Responsable, 2015). This posed a severe problem for the normative persuasion of Article 39, as companies were not provided with a roadmap for implementation.

As time went by, the “adversarial climate” was turning into a situation of “total polarisation” (SCCSR3.6) in SCCSR meetings and working groups. This gradually led to the SCCSR becoming inoperative, where the goal was not “to achieve agreements between the members; quite the reverse” (SCCSR3.2). Despite the significant role attributed to the SCCSR by the socialist Spanish government in the SER regulation, the SCCSR was convened ever less frequently: “Only three meetings have been held since 2012” (SCCSR2.4) and “working groups have had no continuity” (SCCSR1.1). By 2015, the tensions had become so acute that the media claimed the lack of consensus and failure to reach any significant agreement would render the SCCSR non-functioning and lead to its demise (Diario Responsable, 2015); indeed, this seems to have been the case.

The SCCSR was not involved in the last SER initiatives adopted by the conservative Spanish government (which won the general elections at the end of 2011, soon after the approval of SEL in March 2011). For instance, the SCCSR did not participate in the discussion about the stance adopted and actions developed by the Government in 2017, in the first stage of the transposition of Directive 2014/95/EU into Spanish law to meet EU requirements for non-financial information.

5.3 Lack of an enforcement mechanism for an unclear and imprecise law

The analysis of the outcome of the Spanish SER regulatory process requires a consideration of exogenous fluctuations. The financial crisis that hit the world in 2008 was a factor that played a major role in the watering down of the final version of the SEL, including Article 39, and therefore strongly influenced its capacity to shape firms’ SER behaviour.

The SEL came into existence, and had to be developed and implemented, in the hardest years of the Spanish financial crisis. The law was passed by a very weak Socialist Party just before they lost the general election because of their much-criticized management of the economic crisis. According to some interviewees, this weakness of the Socialist Party significantly influenced the unclear and imprecise nature of the SEL in terms of its requirements and enforcement mechanism. An interviewee made this point very clear when referring to Article 39 of the law:

The Socialist Party was in the last year of its legislature. The Government at that time was very weak and consequently what was passed was more a declaration of principles than a law, with almost no executive character. In fact, what is written in the law is no more than a declaration of intentions for which the government established a register [public database] and where a series of indicators would appear that were never approved. Given the weakness of the Socialist Party Government at that time, everyone believed that there was going to be a change of government, so the law stayed where it was. They wanted to go a little further, but the truth is that no agreement was reached, and that is the reason why the law is so weak (SCCSR1.1).

The social impact of the financial crisis in Spain was dramatic, affecting the Spanish legitimation structure shifting the priorities of Spanish society from sustainability to economic conservatism, thus aligning with the conservative narrative. The unemployment rate doubled (reaching more than 50% among young people during the first quarter of 2012) (Spanish National Institute of Statistics, 2012), public debt grew from 35% in March 2008 to 69.9% in December (Spanish Bank, 2011) and the public deficit in Spain soared from a 2.2% surplus in 2007 to a 9.4% deficit in 2011 (Spanish National Institute of Statistics, 2011). Therefore, it is not surprising that the economic dimension took centre stage in the debate about SER regulation. Economic considerations prevailed in the regulatory process “more
than ever, after the crisis” (SCCSRG3.2), weakening the position of groups advocating the social and environmental dimensions of sustainability. The renewed emphasis on jobs and the rise to power of the conservative party enabled the conservative discourse to intervene in a more legitimate way in the course of social interactions. This was clearly illustrated by a high-level public officer in charge of CSR actions under the mandate of the Popular Party, who openly deployed discursive elements that were socially unacceptable before the onset of the economic crisis. Indeed, these arguments are the antithesis of the discourse used by the Socialist Party 10 years earlier in the initial stages of the regulatory process:

I look at it from the people’s perspective wondering how the government is now talking about these issues considering the current high unemployment rate in Spain. I believe that people are not ready to understand it and are thinking that the government is somehow taking it lightly and thinking about environmental issues and hiring people with disabilities. What they really think needs to be done is to hire 50 workers instead of wasting time or effort on hiring others. So, I think that economic cycles can exert a limit on this matter (SCCSRG4.3).

The head of CSR actions appointed by the Popular Party seemed to justify the non-development of the SEL by claiming that Spanish society was not “ready” to prioritise sustainability, and that a focus on sustainability would suggest that the government was taking the crisis “lightly” by targeting its efforts at environmental issues or helping “people with disabilities” when the priority should be to “hire 50 workers”. The economic crisis “translated into meaningful symbolic structures” (Yuthas et al., 2004, p. 235) that enabled the government’s advocacy for practices aligned with a conservative discourse, justified their political inaction and resulted in the incomplete implementation of the law [8].

This undermined the capacity of the SEL to shape the collective reporting behaviour of firms because, without proper development of its Article 39, it became a dead letter:

The SEL needs regulatory development. The law will not detail what kind of information they have to disclose and how that information has to be presented. […] The new Government did not pay attention to this issue (SCCSSRG3.6).

Without these developments [about what and how to report] it was almost impossible for the SEL to have any effect on corporate behaviour (O6).

The endogenous process analysed here reveals how the state contributed to the softening of SER regulation, and therefore to its lack of normative persuasion. After the crisis, when the government passed the Spanish CSR Strategy in 2014, it could have taken up the work done by previous governments on SER legislation, by giving effect to Article 39 of the SEL through the development of appropriate enforcement mechanisms, the allocation of more resources to the SCCSR and the development of specific indicators for companies. However, the government did not do any of this and so the article lacked the power to modify the behaviour of Spanish companies.

6. Discussion and conclusions
Drawing on insights from structuration theory and the sociological approach to legal studies, this research presents an in-depth historically informed, qualitative exploration of the construction of the conditions for the normative persuasion of SER regulation. The analysis reveals that the constitution of these conditions is an on-going process, shaped by the recursive relationship between agential and structural elements surrounding the regulation process. This process evolves as the different actors, with their particular resources and conditioned by specific structural rules, engage in the development of the regulation. By incorporating structuration theory into the analysis, we have gained a better
understanding of the dynamics governed by structural and agential forces and of the role played by exogenous factors (e.g. the economic crisis) in the construction of SER regulation.

As a result of the Spanish SER regulatory process, Article 39 of the SEL did not possess the attributes that confer legitimacy on a law, or what Brunnée and Toope (2011, p. 312) call “the criteria of legality” necessary to create “fidelity to law”. The law was confusing, its reporting requirements were not aligned with the pre-existing SER practices, there were no clear enforcement mechanisms, and the legislation process was not inclusive in nature, resulting in the exclusion of knowledge, expertise and experience from the process as well as the interests of important actors. Moreover, due to the effect of the severe economic crisis on Spanish society, the SEL was not aligned with social priorities, which favoured more conservative narratives in the process, contributing to the dilution of its contents by paralysing the developments that the law needed to be effective after it was passed.

An analysis of the historical background of Spain has been fundamental to understanding why the conditions for the normative persuasion of the law did not emerge. Our case study shows why and how the Spanish social structure penetrated the SER regulation, conferring a dominant position on the employers’ association and largest trade unions in the legislative process, by transferring pre-existing historically embedded legitimation and signification structures from the socio-political and economic arena to the SER regulation field. Consequently, as the legislative process progressed, the vibrant SER discourse that had characterised the early stages of the process mutated into a much narrower labour relations imaginary, hindering the convergence of expectations and beliefs around the legislative process and eroding the conditions for the SEL to produce normativity. The legitimation structure of Spanish society means that it was taken for granted that trade unions and employers’ organisations were the only legitimate interlocutors with the government on issues related to the functioning of business organisations (including the CSR phenomenon). This was despite the existence of a consolidated “epistemic community” (Cantó-Milá and Lozano, 2009) or, in the words of Brunnée and Toope, “a community of practice” (Brunnée and Toope, 2011) in the Spanish field of CSR, which was very soon relegated to a marginal position. Resources like CSR knowledge, experience, commitment or expertise were not “media through which power is exercised” (Giddens, 1984) in this social realm. This was very problematic in terms of the scope of the regulation because companies’ contribution to sustainable development is cross-cutting and exceeds the capacities of unions and employers’ associations. Moreover, regarding the potential normative persuasion of the law, it hindered the convergence of expectations among the actors involved in SER regulation necessary for the law to encourage adherence (Brunnée and Toope, 2011). This finding differs from those reported for other countries, such as the UK, where, without any identifiable legal mandate, there was a convergence of expectations and practices that led to environmental reporting normative persuasion (Bebbington et al., 2012) and where the boundaries of CSR have for some time been expanding to accentuate social and environmental issues. The analysis carried out in this work shows that even in the age of globalisation, there are still domains, such as the accounting regulation field, where the national history and local regulatory contexts are influential (see also Canning and ODwyer, 2013; Malsch and Gendron, 2011).

However, while the Spanish legitimation structure reduced the number of dominant actors in the legislative process to three, the economic crisis that hit Spain made “the norms and values gravitate towards financial growth and return on investment and away from a responsibility for the public interest” (Yuthas et al., 2004, p. 234). This change in the legitimation structure in Spanish society removed the progressive discourse from its
dominant position, enabling the employers and the conservative government to determine the meaning of law and compliance. In a clear example of reflexivity, the representatives of the conservative discourse knew what they were doing and why. And they were able to do it because of their dominant social position (strengthened by the change in the Spanish social structure). This had a significant effect on the normative persuasion of the SEL, exacerbated by the inaction of the conservative Government, which inherited the mandate to develop the already highly watered-down law passed by the Socialist Party.

The endogenous nature of the process of law formation shown in this study implies that any significant advance towards more transformative SER regulation would require conducive structural settings. Just as structural factors can explain the limits of SER, they can facilitate the conversion of SER into an instrument that contributes to the resolution of current social and environmental problems. Our findings not only confirm previous evidence on the different aspects of the laws and regulatory processes that can undermine the conditions for an SER law to become normative (see Bebbington et al., 2012; Chelli et al., 2018; Senn and Giordano-Spring, 2020, among others), but also advance the understanding of the normative persuasion of law. In that regard, they show the need to unravel the process of formation of these aspects and underline the relevance of considering history and socio-political roots to understand why some laws are more successful than others in modifying collective reporting behaviour and expectations in a particular context.

This study has yielded another insight that could help to understand transformative SER regulation: conflict did not only arise between conservative and progressive discourses (between the corporate block and alternative voices as reported in Archel et al., 2011) but also within those factions. In this regulatory process, the progressive approach to CSR was monopolised by unions, relegating potentially progressive change agents from civil society. Environmentalists, human rights organisations and feminist movements, among others, had very little opportunity to engage in the regulation. Paradoxically, the marginalisation of those groups may have contributed to the triumph of the voluntary compliance approach to SER, preventing Article 39 of the SEL from acquiring the necessary attributes to change the collective reporting behaviour of Spanish firms. Furthermore, the lack of legitimacy attributed by the leading companies in the field of CSR to the prominent Spanish employers’ association raises the question of who this association (which has dominated the conservative discourse in the regulatory process) represents and the nature of the rationale supporting its power. This paper has tried to answer the second question, showing the relationship between the legitimation, the signification and the domination social structures in the Spanish context, while the first one remains open. Showing the dynamics of these internal conflicts on both sides of the CSR discourse, we present a story of segmentation in the discourse of CSR regulation with multiple logics competing for control of this phenomenon in Spain. Therefore, we present a story of potential institutional change in the future (Seo and Creed, 2002; Greenwood and Suddaby, 2006).

It is also implicitly understood in the narrative presented here that critical events could alter structural processes, allowing new segments of the community to mobilise their resources to influence state policy and thus develop new ideas, thoughts and expectations that could shape SER regulation. The Spanish legitimation and signification structures give unions and employers’ associations authoritative resources; they have “the capability to organise and coordinate” (Conrad, 2005, p. 4) social practices in the Spanish context. Changes in the legitimation and signification structures that would give a more relevant role to resources such as knowledge, commitment, experience and expertise in the field of CSR would shape the domination structure in the Spanish context in the field of SER regulation,
opening the door to greater involvement of actors such as innovative firms, academics, scientists or environmentalists in SER regulation. The latent fissures found both in the capacity of the unions to mobilise the entire progressive spectrum around CSR and in the disappointment of the businesses most actively engaged in SER could be evidence that a dialectic of control is operating in this social context and that the necessary changes in Spanish social structures and the distribution of agency are already taking place. The end of the monopoly of these two organisations in the field of CSR could have a very significant effect on the future SER regulation in terms of its normative persuasion. However, we also note that it is essential to study in the future whether those changes could also potentially damage the position of unions and workers in Spanish society. Further studies are needed to clarify the extent to which CSR could be a Trojan horse ushering in changes in the position of labour and employers’ association in Spain.

Finally, as noted at the beginning of this paper, analysing the construction of regulation at the national level is not only of local interest but also of global interest. Transnational laws must be adopted and developed in the national context by national actors and institutions. Consequently, the endogenous dynamics that led to the loss of prominence of the SCCSR in SER legislation in Spain also led to its failure to participate in the first phase of the development and implementation of Directive 2014/95/EU in Spain. The body chosen to carry out this task was the Instituto de Contabilidad y Auditoría de Cuentas (Institute for Accounting and Auditing), an independent agency attached to the Ministry of Economy in charge of the financial accounting standards setting. It was commissioned to lead the transposition of a European directive on non-financial reporting to the Spanish legislation to an expert body on financial reporting and auditing. Analysing the impact that the process examined in this paper had on the transposition of the European Directive 2014/95/EU in Spain is beyond the scope of the present research, but lessons can be learned about how local narratives and histories could shape the global roadmap of SER regulation.

As this research has shown, in the future development of supranational SER regulations developed and implemented at the national level (e.g. the EU directive on sustainability reporting and IFRS sustainability standards), legislators cannot take it for granted that the local actors involved in the construction of SER regulation who are the most knowledgeable, experienced and commitment to CSR and SER will play a significant role. Nor can it be assumed that the construction of a regulatory space open to different actors with different interests and values, where decisions have to be taken by consensus, is equivalent to the construction of a participatory and truly democratic process. There is thus a need for further qualitative studies to explore how policymakers can ensure that these and other conditions for the emergence of the normative persuasion of SER regulation are met. The present work has revealed that in order to do so, it is crucial to have a better understanding of the historical and idiosyncratic trajectories of the local social structures and how they are constitutive of the distribution of agency among the actors involved in the regulatory process. It is similarly crucial to understand this phenomenon at global level, where global structures of legitimation, signification and dominations can determine not only the ability of regulation to increase the accountability of organisations but also our success in tackling important issues such as climate change and social inequality. This is particularly relevant in the current scenario given the proliferation of supranational regulations in the field of SER, and the emergence of new global actors (with different agency and approaches to CSR) participating in the global regulation process of SER, such as the European Union/EFRAG in collaboration with the GRI and the IFRS/ISSB.
Notes

1. The activity of organisations periodically disclosing information on a wide array of environmental, ethical and social topics goes by different names: corporate responsibility reporting (KPMG, 2017), corporate social responsibility reporting (e.g., Archel et al., 2011), non-financial reporting (European Directive 2014/95/EU) or sustainability reporting (e.g., the Spanish Sustainable Economy Law 2/2011). This paper uses the term social and environmental reporting to refer to this activity in general, but it will also reflect the usage of different terms in specific institutional developments.

2. This consultative body was created by Royal Decree 221/2008 (2008) and modified by Royal Decree 1469/2008 (2008).

3. The 1910s saw violent attacks by labour representatives against employers. Later, during General Primo de Rivera’s military dictatorship (1923-1930), serious disputes again occurred (Ben-Ami, 1980).

4. In fact, the leader of the UGT during that period was also the Minister of Labour (1931-1933) and the President of the Council of Ministers (1936-1937) (Preston, 2018b).

5. The Spanish Trade Union Organization (Organización Sindical Española), commonly known as Vertical Trade Union (Sindicato Vertical), was an institution of compulsory membership for employers and workers, fully controlled by the dictatorship of General Francisco Franco (1940-1975).

6. Decisions within the SCCSR were to be taken by consensus but “SCCSR members did not reach a consensus even about the meaning of the term ‘consensus’” (SCCSR member, independent expert 1). After lengthy discussions about the meaning of “consensus” without reaching any agreement, the SCCSR decided to make a formal request to the Spanish Abogacía del Estado (State’s Legal Counsel) for clarification on the meaning of the word, as both media reports and interviews reveal (Diario Responsable, 2015).


8. The lack of political determination could also be observed in the meetings and seminars monitoring the progress of the Spanish SER regulation process. For example, in a meeting organized by the Spanish Government (December 1, 2016), to discuss the latest advance in non-financial reporting, the Government did not comment on the SEL. In addition, nothing was said about this law in another meeting about non-financial reporting monitoring (November 14, 2016) in which the Government participated.

References


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(continued)
<table>
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<tr>
<th>Interviewee</th>
<th>Organization</th>
<th>Role in SCCSR</th>
<th>No. of interviews</th>
<th>Interview code</th>
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<td><strong>Panel B: No SCCSR members (N = 18)</strong></td>
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<td><strong>Private companies</strong></td>
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<td>Director</td>
<td>CSR consulting services (and academic)</td>
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<td>CSR manager</td>
<td>Corporation in the automobile parts manufacturing industry</td>
<td>n/a</td>
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<td>PCompany 2</td>
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<td>CSR manager</td>
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<td>Marketing director</td>
<td>Corporation in the food processing industry</td>
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<td>PC company 4</td>
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<tr>
<td>Human resources director</td>
<td>Corporation in the automobile parts manufacturing industry</td>
<td>n/a</td>
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<tr>
<td>Risk manager</td>
<td>Large subsidiary, car manufacturing industry</td>
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<td>PCompany 6</td>
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<td>State-owned company 1</td>
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<td>1</td>
<td>SCompany 1</td>
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<tr>
<td>PR manager</td>
<td>State-owned company 2</td>
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<td>SCompany 2</td>
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<tr>
<td>CSR manager</td>
<td>State-owned company 3</td>
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<td>SCompany 3</td>
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<td>Institutional relations and CSR Manager</td>
<td>State-owned company 4</td>
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<td>SCompany 4</td>
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<td><strong>Others</strong></td>
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<td>Technical director</td>
<td>NGO for mental disability</td>
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<td>O1</td>
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<tr>
<td>Director</td>
<td>Lobby of accounting professionals</td>
<td>n/a</td>
<td>2</td>
<td>O2, O3</td>
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<td>CSR assistant</td>
<td>Social organization focusing on physical disability</td>
<td>Assistant to the member that represents the part of the SCCSR related with disability</td>
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<tr>
<td>Fundraising director</td>
<td>NGO fighting poverty and social discrimination</td>
<td>Works with the member that represents the part of the SCCSR related with NGOs</td>
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<td>CSR senior consultant</td>
<td>CSR consulting organization</td>
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<td>Academic</td>
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<td>Researches on CSR</td>
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<td>O8</td>
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</table>

**Source:** Authors’ own creation
Appendix 2. List of questions included in the interview guide

1. What are the origins of your organization?
2. What are the main activities undertaken by the organization you represent?
3. How does the organization you represent define CSR?
4. What kind of activities do you carry out in the field of CSR?
5. To what extent do you perceive that CSR practices are implemented in Spain?
6. Why do firms pursue, or not, these practices?
7. What are the roles of the market, regulation and social awareness as mechanisms to enhance CSR in organizations?
8. What is your opinion about the role that CSR reports play and should play in CSR?
9. What do you think about the State Council on CSR?
10. What do you think about the public consultation process initiated by the Spanish Government?
11. What is your evaluation of the Sustainable Economy Law and its requirements for CSR reporting?
12. What do you think about the other reporting initiatives (Spanish Strategy on CSR of 2013, Order ESS/1554/2016 of 29 September) that were proposed by the Spanish Government after the Sustainable Economy Law?
13. How (and when) do you think that the Spanish Government will transpose Directive 2014/95/EU on non-financial information into domestic law? / What do you think about the way in which the Spanish Government has transposed Directive 2014/95/EU on non-financial information into law?

(Questions 1-10 adapted from Archel et al., 2011).

Source: Authors own creation

Appendix 3. Documents analyzed

1. Documents produced by SCCSR and its presidents:
   - Plenary’s decision note fully supporting the SEL (May 2011).
   - Table with indicators proposed by one of the largest trade unions to the SCCSR in 2011.
   - Table with indicators approved in the SCCSR plenary in May 2011.
   - Reports of the five working groups (one report for each working group) that dealt with different issues in the 2008–2011 period. The topics of the working groups were “the role of CSR in the crisis”, “transparency, communication and reporting standards, and sustainability reporting”, “consumption and socially responsible investment”, “CSR and education” and “management of diversity, cohesion and cooperation for responsible development”.
   - Reports of two of the three new working groups (one on CSR promotion and another on socially responsible investment for pension funds) that dealt with different issues since the end of 2011.

2. Report published by the Spanish Ministry of Labor related with the SCCSR activity.

3. Media reports and blogs:
   - Articles published in the main Spanish periodicals (Cinco Días, Compromiso RSE, Corresponsables, Diario Responsable, Servimedia) reporting about the impact of the SEL and the SCCSR on the process of regulation of non-financial information in Spain.
• News and reports published in the blogs of the main associations of business representatives and the largest trade unions, showing opinions on both sides about the impact of SEL and the SCCSR on the process of regulation of non-financial information in Spain.

(4) Historical documents:
• Gazeta database: database containing the historical collection of the Official Gazette and news published in the official newspapers which were the predecessors of the current “Official State Gazette” from 1661 to 1959. It was consulted for information on when the “The Joint Committees” were approved and their characteristics.

Source: Authors’ own creation

Appendix 4. List of acronyms
King III = South African King Code on Corporate Governance
SCCSR = State Council on CSR
SEL = Sustainable Economy Law 2 / 2011
SER = Social and Environmental Reporting
UGT = Unión General de Trabajadores

Source: Authors’ own creation

Corresponding author
Javier Husillos can be contacted at: javier.husillos@unavarra.es

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