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Quello che conta. A Socio-Legal Analysis of Accounting for Sustainable Companies

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This one goes to my Family and to Chiara

Abstract

During more than three decades, corporate non-financial and sustainability reporting has been widely conceived as a voluntary practice, a matter of going beyond the requirements of the law. Therefore, it has been traditionally overlooked by legal and socio-legal scholars. However, during the last decade things have rapidly changed. We are currently witnessing the emergence of a mix of mandatory and voluntary regulatory approaches to *Corporate Sustainability Accounting (CSA)* and the integration of some elements of non-financial reporting into accounting standards. *What explains these changes in CSA regulation within the EU arena, at different levels of regulation and through varying modes of governance?* More specifically, which political and socio-economic actors are driving the current emergence of CSA regulation? What are their interests? How are these different actors organizing and mobilizing themselves? How and why do they succeed in creating regulatory changes?

This research has been based on three main sources of data: documents analysis; literature review; in-depth élite interviews (26). It has also been strengthened by a participant observation of five months at the EU Commission, collaborating to the legal drafting and Impact Assessment of the new EU directive on non-financial reporting. The criteria for designing the fieldwork have been based on the idea of mapping the position of six groups of actors interested in shaping the emergence of CSA regulation. The groups of actors considered are: managers of large corporations; organized labour; civil society and NGOs; institutional investors; public authorities; and professional experts (accountants; financial analysts; lawyers). The analytical framework deployed by this study is a Bourdieusian reflexive socio-legal approach (see Madsen and Dezalay 2002; Madsen 2011), used as an over-arching research strategy in conjunction with the existing literature (see Gourevitch and Shinn 2005; Graz 2006; Crouch 2011; Streeck 2011).

The study claims that the struggles for regulating CSA should be seen as a lens for analyzing broader changes in the field of European corporate governance regulation and in the relation between business and society. A main finding of the Doctoral Thesis, something that has been argued for throughout the study, is that the accounting field has developed a historically specific relation of *structural homology* with the economic field. Therefore, Chapter 3 argues that the

emergence of ‘social accounting’ regulation, in the 1970s, mirrored contemporaneous debates about ‘industrial democracy’. Similarly, the ‘financialisation’ of the 1990s and 2000s has mirrored the structuration of accounting standards narrowly focused only on financial information. Today, the emergence of ‘sustainability accounting’ regulation in Europe reflects and constructs the political attempt to build a regime of capital accumulation aimed at creating longer-term and ‘sustainable’ growth.

More specifically, drawing on interviews with key informants and documents analysis, the study argues that financial turbulences and corporate scandals at the beginning of the 2000s fostered the inception of a European ‘*transparency coalition*’ (see Gourevitch and Shinn 2005) led by investors and including NGOs and part of the trade unions, which drove a series of reforms in the areas of corporate governance and corporate responsibility. The 2008 financial crisis worked as a catalyst for strengthening this regulatory trend and for fostering a stronger role of the state in its regulatory role. Therefore, we are also witnessing the integration of corporate sustainability in company law and corporate governance regulation and the convergence of financial and non-financial aspects in the regulation of corporate reporting. However, it is too early to say whether this coalition will overcome the opposition of managers, who favour a voluntary approach and are lobbying against mandatory non-financial reporting. The study also questions the potential of the ‘transparency coalition’ to build a new regime of governance of the economy, not just corporate governance.

The dissertation consists of six chapters. Chapter 1 introduces objectives, questions and key concepts. It contains a preliminary conceptualization of the field of research and the research questions. Chapter 2 has been focused on the critical review of the literature and of existing explanations of the emergence of CSA regulation. Furthermore, it presents the socio-legal reflexive methodological and epistemological approach that has been adopted to explain the emergence of this new multi-level regulatory framework. In Chapter 3, the reader can find a summary of the long-term development of non-financial reporting during over four decades, starting from the 1970s’ (see also Annex I). Chapters 4 and 5 narrow down the empirical research, focusing on a more limited periodisation (mid-1990s to 2011) and on the case study of the struggles for shaping an EU-level regulatory framework for non-financial reporting. The aim of Chapter 4 and 5 has been to empirically strengthen the broader analysis outlined in Chapter 3, on the basis of the data collected during the fieldwork. Chapter 6 concludes summarising the key arguments and offering some reflections on future researches.

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This research has been a journey, full of events and people that gave me strength and made me stronger. Taking the risk of unintentionally forgetting too many of them, I would try to acknowledge at least some of those who have contributed to making the journey interesting and successful.

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As part of the Programme, I have been several times at **Sociology of Law Department of Lund University**, Sweden, and I have also been living there for a few months. There, I have been very lucky to work closely with my excellent supervisor Prof. Håkan Hydén. He has always supported me and he thought me to be 'constructive' in my approach to socio-legal analyses and to believe in my ideas. I am sure that if I managed to do anything good is because of his patience and support. All my gratitude goes also to Karsten Astrom, Matthias Baier, Måns Svensson and Per Wickendberg and also Johanna Olsson, Stefan Larsson, Melissa Hansen, Rustam Urinboyev and Julija Naujekaite who warmly welcomed me at the Sociology of Law Dpt and I am also thankful to Lilian Dahl and Celia Ahleberg, the administrative staff. *Tack* så *mycket!*

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At the beginning of 2011, I moved to The Netherlands to spend a few months at the **Faculty of Social Sciences at VU Amsterdam** with a cluster of critical political scholars that I admire. I am grateful to Henk Overbeek, Bastiaan van Apeldoorn and also Philipp Pattberg for early comments on my work. In October 2011, I moved to the **Law Faculty of Antwerp University**, Belgium, one of the universities associated with the Treves Int'l PhD Program. There, I was warmly welcomed by Bernard Hubeau and Kristina Mercelis and I had very interesting conversations with Koen de Feyter, Marco Goldoni and Tryantafyllos Goulas. *Dank U zeer!*

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In 2012, at a BBQ, I was introduced by Rocco Bellanova to Law Professor Paul de Hert, director of the **LSTS at VUB Brussels**. Paul kindly demonstrated to be interested in my research and gave me the support and facilities to stay at the VUB as visiting Ph.D researcher, to complete the fieldwork and the writing. Unfortunately, I was too brief, yet this experience also positively contributed to my research, through interesting meetings and relevant reflections.

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Time for a new journey.

D.M.

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List of Abbreviations and Acronyms

ACCA	Association of Chartered Certified Accountants
CGR	corporate governance regulation
CMEs	Co-ordinated Market Economies
CSA	corporate sustainability accounting
CSR	corporate social responsibility
DG EMPL	Directorate-General for the Employment, Social Affairs and Inclusion
DG ENTR	Directorate-General for the Enterprise and Industry
DG ENV	Directorate-General for the Environment
DG MARKT	Directorate-General for the Internal Market and Services
EC	European Commission
ECCJ	European Coalition for Corporate Justice
EMSF-CSR	European Multi-stakeholder Forum on CSR
EP	European Parliament
ESG	environmental, social and governance
ETUC	European Trade Union Confederation
GRI	Global Reporting Initiative
IASB	International Accounting Standard Board
ICAEW	Institute of Chartered Accountants in England and Wales
ICAEW	Institute of Chartered Accountants in England and Wales
IFRS	International Financial Reporting Standards
IIRC	International Integrated Reporting Council
ILO	International Labour Organization
ISO	International Organisation for Standardisation
KPI	Key performance indicator
LMEs	Liberal Market Economies
NFR	non-financial reporting
NGO	non-governamental organisation
OECD	Organisation for Economic Co-operation and Development
PRI	Principles for Responsible Investment

SRI	socially responsible investment
TNC	Transnational corporation
TUs	trade unions
UN HRC	United Nations Human Rights Council
UNEP	United Nations Environmental Programme
UNGC	United Nations Global Compact

1. An idea whose time has come.
Introducing objectives, questions and key concepts

There is one thing stronger than all the armies in the world, and that is an idea whose time has come.
Victor Hugo (1877) "The History of a Crime", Conclusion Chapter X

Make no mistake: a new world order is emerging. The race for leadership has already begun. For the winners, the rewards are clear: Innovation and investment in clean energy technology will stimulate green growth; it will create jobs; it will bring greater energy independence and national security.
Josef Ackermann (2010) CEO of Deutsche Bank

I used to dismiss Integrated Reporting as just another little fad. But after researching the subject more thoroughly I believe it is an idea whose time has come. The aim of the Integrated Reporting movement is one that is close to my heart: the holy grail of producing leaner, more meaningful reports that give a comprehensive view of the organization and concentrate on the main reporting areas investors and other stakeholders really want to know about – the company's strategy and how it's working.
Mark Spofforth (2012) President IECAEW

1.1 Introduction. The emerging regulation of corporate non-financial reporting

The object of this study is the struggles for regulating the corporate practice of accounting for non-financial information. This is a business practice which has been variously defined over time as 'Corporate Sustainability Accounting' (CSA); Environmental, Social and Governance (ESG) disclosure; Non-Financial Reporting (NFR); social and environmental reporting[1] and whose regulation has progressively emerged at different levels and through varying modes of governance. The research empirically focuses on the EU-level of regulation as an intersection where both national lawmaking and global norm-making processes are confronted and negotiated (see Braithwaite and Drahos 2000; Madsen 2006; Halliday 2009; Zumbansen 2011). Although the study (Chapter 3) presents a summary review of over four decades of struggles for the regulation of this social practice, it empirically focuses on the decade 2001-2011 (Chapters 4 and 5).

The global financial crisis and recent corporate scandals have worked as a catalyst for reviving the debate on the regulation of transnational corporations (TNCs). Among other aspects, it has put into question whether accounting standards should be revised to include non-financial disclosure, such as Environmental, Social and Governance (ESG) information. Indeed, during the last decade, a growing number of large companies voluntarily decided to engage in non-financial or sustainability

[1] As we shall see in the following chapters, the definition of this social practice is still ambiguous and contentious. According to a recent report by KPMG and others (2013: 84), "A sustainability report is an organizational report that gives information about economic, environmental, social and governance performance and impacts." EU regulators often preferred the term 'non-financial reporting' (NFR) to others such as 'ESG reporting', 'sustainability reporting' or 'social and environmental reporting'. See for instance the Single Market Act (Commission 2011a); the 2011 CSR Communication (Commission 2011b); the 2012 Corporate Governance Action Plan (Commission 2012a) and the current EC proposal on disclosure of non-financial information by companies (Commission 2013). However, this study prefers to adopt the concept of Corporate Sustainability Accounting (CSA) (Zadek et al. 1997; Lamberton 2005; Unerman et al. 2007; Tilt 2007; Cooper 2010). First of all, because it clearly anchors this business practice within the accounting field, therefore implicitly overcoming the idea that it is something distinct from traditional financial accounting. Furthermore, it stresses the link with the key problem of governing externalities (sustainability) and calls companies accountable for their complicity in an untenable model based on consumerism and unlimited growth. More specifically, this study purposely avoided the broad definition of NFR, arguing that the latter is only apparently neutral. In effect, it runs the risk of re-producing an harmful and arbitrary distinction between 'financial' and 'non-financial' which has increasingly characterised not only the sphere of accounting but, more generally, the economic field. Practically, such distinction would exclude or marginalise social and environmental aspects from financially-relevant aspects of economic life. More details on this choice have been provided in section 2.3. Overall, the concept of CSA is based on the idea of 'triple bottom line' reporting (see Elkington 1997). It typically concerns the practice of formally disclosing information about social, environmental and governance (ESG) aspects of corporate performances. For the scope of this study, however, CSA and other concepts such as NFR; ESG reporting; social and environmental accounting; sustainability reporting; integrating reporting; etc. are largely interchangeable, although it takes into consideration the fact that different definitions are historically rooted and part of the game that the different actors play to shape changes in the accounting field.

reporting. However, in absolute terms, the number of companies reporting is still rather modest[2] and various studies revealed that their quality and accuracy is mixed (see Henriques 2010; UNCTAD 2010; Van Wensen *et al*. 2011; SOMO 2013). Therefore, practitioners, academics and policy-makers are debating the merits and challenges of adopting a new regulatory framework. This should take into consideration vital interdependencies between economic, social and environmental aspects, reflecting the appearance of increasingly complex corporations, and address critical disclosure gaps in existing standards.

The rationale for this research is relatively straightforward: the study questions what explains changes in the European regulation of social and environmental disclosure over time. In fact, during the 1970s, there used to be a lively debate concerning the regulation of corporate social accounting and auditing. At the beginning of the 1980s, this debate suddenly came to an end. As a consequence, for over two decades non-financial disclosure was widely conceived as a voluntary practice, a matter of going beyond the requirements of the law (Unerman *et al.* 2007; Gray *et al.* 2009; Gray 2010a) and legal and socio-legal scholars largely overlooked the issue. However, since the end of the 1990s things have changed again. There has been an ongoing process of definition of what sustainability reporting means and of the contents and modes of its regulation. A 'smart mix' of mandatory and voluntary regulatory approaches has emerged, requiring large corporations to disclose more and better environmental, social and governance (ESG) information. There are ever-growing political, market and social pressures on large corporations to become more transparent with respect to their sustainability policies, use of resources and impact on society. As it has been pointed, for large companies, reporting has become "the norm, rather than the exception." (KPMG 2008: 4) More recently, it has been often claimed that sustainability reporting is *an idea or a concept whose time has come*[3]. Even the SG of the UN, Ban Ki Moon, said on 16 February 2012 that the time has arrived for sustainability reporting (Ban 2012).

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[2] According to the data provided by corporate.register.org, it is possible to estimate that the total number of EU large companies disclosing non-financial information through the Annual Report or a stand-alone report on a yearly basis amounts to *circa* 2500. While this number represents a consistent and remarkable increase as compared to the recent past, it also tells that over 90% of European large companies do not disclose such information on a regular basis, considering the number of large companies at circa 42 000 (see Commission 2013: 10)

[3]A part from Spofforth's interview (2012), which has been quoted at the very beginning of this chapter, this attitude of new confidence in the success of sustainability reporting, after decades of marginalisation, is mirrored in work of Eccles and Krzus (2010). However, perhaps the best example of this confidence can be found in the latest public speeches of Mervyn King. King is a South African judge, well known as the long-term Chairman of the GRI and the main architect of South Africa's corporate governance codes (King I, II and III). During the last two decades, he has been one of the most influential institutional entrepreneurs of CSA's global expansion. In his keynote address at the 2012 Australian GRI Conference he stated: "Integrated thinking involves identifying and prioritising short, medium and long term sustainability risks and opportunities and their impact on the business of the company. [...] The era of short term capitalism has

This growing support for CSA has resulted in a number of global regulatory initiatives for the disclosure of ESG information, including the Global Reporting Initiative (GRI); the UN Global Compact (UN GC); the ISO 26000 and, more recently, the attempt to develop a global framework for integrated reporting by the International Integrated Reporting Council (IIRC) [4]. In 2010, a survey of the practice of sustainability disclosure, limited only to 32 countries around the world, already detected 142 country standards and/or laws with some form of ESG-related disclosure requirements or guidance (KPMG *et al.* 2010). In 2013, a new survey, extended to 45 countries, revealed that this number increased to 180 standards and/or laws (KPMG *et al*. 2013). In general, there is a renewed activism of the state in its regulatory role. In 2010, 62% of the regulatory initiatives could be classified as mandatory and 32% as voluntary (KPMG et al. 2010). The 2013 survey shows that this proportion has further shifted in favour of mandatory reporting. Currently, over two thirds (72%) of the initiatives can be classified as mandatory and less than one third (28%) as voluntary (KPMG et al. 2013)[5].

At the EU-level, the 2003 Modernisation Directive first introduced in the EU Law a requirement on all companies to include "to the extent necessary for an understanding of the company's development performance or position" in their annual report "both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters"[6]. Since then, several Member States have already introduced requirements that go beyond the existing EU legislation (see Annex I). The 2011 Single Market Act (SMA) first announced that this obligation would be further expanded. Eventually, in April 2013, the EU Commission adopted a legislative proposal for a new directive enhancing the transparency of certain large companies on social and environmental matters. The legislative proposal is currently under discussion at the European Parliament. Outside the EU, similar regulatory initiatives have been recently undertaken by many states, including China, Brazil the US, India and South Africa[7]. Together with this new regulatory momentum, a whole corporate

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come to an end and the world is moving to sustainable capitalism. [...] The revolution of integrated thinking has been completed. The corporate bastille has been stormed. The evolution is only in the form of an integrated report. [...] Integrated reporting is a concept whose time has come." (King 2012)

[4] More details have been provided in Chapter 3 and Annex I.

[5] This data are even more significant if we consider that a very first survey, in 2006, which considered only 19 countries/regions had found only 60 regulatory initiatives, of which 35 (58%) could be considered as mandatory and 25 (42%) as voluntary (see KPMG et al. 2013: 9).

[6] See Directive 2003/51/EC of the European Parliament and of the Council,18 June 2003, amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, It can be retrieved at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:178:0016:0022:EN:PDF

[7] In the US, SEC issued the "Guidance Regarding Disclosure related to Climate Change" in 2010, requiring listed companies to disclose material climate change-related risks. In China, since 2008 all Chinese State–owned enterprises should establish a CSR information reporting system, on the basis of the Guidelines on

sustainability industry is rapidly expanding, which includes rating agencies, financial analysts, accountants and management consultants dedicated to corporate sustainability. Furthermore, the UN Guidelines on business and human rights, elaborated by the Special Representative Prof. John Ruggie and strongly supported by the EU, have attracted much attention on large undertakings' responsibility for respecting human rights (see FIDH 2010; Mares 2011). As transparency and due diligence mechanisms play a crucial role in the Guidelines, they have boosted the momentum for including human rights in the emerging global and EU regulation of CSA[8]. NGOs, such as the European Coalition for Corporate Justice (ECCJ), and organised civil society have increased their campaign activities to demand the Commission and the European Parliament as well as national regulators to include mandatory disclosure of information about business respect of fundamental rights and labour standards in the annual report.

Despite mounting interest in CSA, what is often absent from the current debate is sustained attention to changes in its regulation. As we shall see in Chapter 2, most of the existing explanations of CSA explosion tend to take changes in the regulation of CSA for granted, either as an independent variable or as the mere result of power asymmetries. Furthermore, they are overwhelmingly based on under-developed legitimacy theory perspectives. While the latter provide plausible explanations for managers' willingness to engage in sustainability reporting practices, they appear inadequate to explain the broader shift towards mandatory disclosure. In particular, legitimacy theory needs to be integrated and re-considered within broader social and political theoretical frameworks. Finally, most of the literature does not pay enough attention to the distinctive transnational character of the current emergence of CSA regulation. The next section will elaborate on the innovative contributions to knowledge of this socio-legal analysis.

1.2 Situating the study

The study looks at corporate sustainability accounting (CSA) regulation both as an object of analysis in its own right and as a lens for examining broader changes in transnational corporate regulation and governance, in the context of an increasingly globalised economy. It implies a broad

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fulfilling Corporate Social Responsibilities issued by SASAC. In India, since 2011 the Security Exchange Board (SEBI) requires listed entities to submit a Business Responsibility Report as part of their Annual Report, http://www.sebi.gov.in/sebiweb/home/list/4/23/0/0/Press-Releases. In South Africa, since 2010, the Johannesburg Stock Exchange (JSE) requires that all listed companies produce an integrated report, on a "report or explain" basis https://www.saica.co.za/tabid/695/itemid/2344/language/en-ZA/An integratedreport-is-a-new-requirement-for-list.aspx.

[8] See, in particular, Principles 3 and 21 of the UN Guiding Principles on Business and Human Rights (UN HRC 2011).

definition of 'regulation' as "all forms of formal and informal rule making pertaining to some collective (nations, groups, sectors) where those rules are either binding to the members of that collective or at least significantly constrain their behaviour. This involves both public and private (self-)regulation [...]." (van Appeldorn et al. 2007: 5)

This research presents three innovative aspects compared to the existing literature.
First of all, the study explicitly takes regulation as its *main explanandum*. Analysing the literature on corporate sustainability accounting (see section 2.2), regulation tends to be taken for granted, either as an independent variable – an "apolitical realm, an autonomous force that, as such, needs no further explanation" (van Apeldoorn and al. 2007: 8) – or as the mere result of conflicts and power asymmetries among different interest groups and constituencies. On the contrary, the study takes a position that equally differs from the legal instrumentalism of most activists-scholars as well as from the legal formalism of those who tend to present legal norms and prescriptions as 'neutral public goods' (see Bourdieu 1986). Objectivising CSA regulation, it "calls for somehow establishing the object of enquiry beyond these stakes and interests, yet in a way that allows them to be taken seriously as part of the object of enquiry [...]." (Dezelay and Madsen 2012: 437). Therefore, adopting a reflexive sociological approach, the researcher will attempt to avoid to be trapped in the symbolic discourses that characterise this subject-area – business 'responsibility'; 'sustainability'; 'accountability' – particularly because the actors involved in CSA tend to rely on academic or quasi-academic resources for legitimising their positions.

Secondly, the study takes a *long-term historical view* at the emergence of non-financial disclosure regulation. It draws on Bourdieu's suggestion of "restoring economics to its true function as a historical science" (Bourdieu 1997), as an antidote to the excessive use of the notion of economic rationality (Boyer 2003: 67). Notably, the research anchors this practice within the long-standing debate about corporate governance regulation (CGR) in the broader sense[9], seen as the problem of the 'architecture of accountability' (Parkinson 2006) of large corporations (Berle and Means 1932). This historical approach has been practically realised through an empirical research that has followed the establishment of CSA regulation over time as a social and historical

[9] Many definitions of corporate governance exist, reflecting the different development of business over time in various social and politico-economic realities. As a consequence any narrow and normative definition of corporate governance result rather problematic (see for instance the law and economics approach adopted by Shleifer and Vishny 1997) and should be adjusted to the context. For the scope of this research, I can refer to Aoki, who defines corporate governance as "the structure of rights and responsibilities among the parties with a stake in the firm" (Aoki, 2000: 11). Van Apeldoorn et al (2007: 4) broadly defined it as "the way the modern capitalist corporation is 'governed', that is, by whom (the issue of corporate control) and for whom, to which purpose. As such, it refers to the institutionalised practices that are both the medium and the outcome of the power relations between the various actors that have a stake in the modern corporation [...]." Gourevitch and Shinn (2005: 3) synthetically defined it "the authority structure of a firm" that "decides who has claim to the cash flow of the firm, who has a say in its strategy and its allocation of resources."

construction and constantly questions how it came about, identifying the key points of conflict and transformation and how this subject-area has emerged as a new field of regulation.

Lastly, most of the literature on sustainability reporting regulation focuses either on single regulatory initiatives[10] or national legal frameworks[11]. Comparative studies[12] are scarce and, even rarer are studies that provide a comprehensive picture of this rising regulatory regime[13]. Instead, this research explicitly recognises that current changes in the regulation of CSA require an integrated multilevel analysis[14]. Although empirically limited to EU-level initiatives, it underlines that, as business increasingly operates on a transnational scale, also business regulation and particularly accounting standards[15] are required to operate across interacting arenas and levels of governance (Braithwaite and Drahos 2000; Zumbansen 2011; Picciotto 2011). Adopting this perspective, the EU regulatory level becomes a privileged point of observation from which it is possible to explore not only the relation between national law-making and global norm-making but, crucially, also between law and non-law. This is not to claim that national and local legal-regulatory structures have become anyhow less relevant. It is rather to affirm that there is much to learn on the transformations of the corporate regulatory landscape adopting a *distinctly transnational perspective*.

The framework deployed by this study to explain the re-emergence of CSA regulation in Europe is drawing on a Bourdieusian reflexive socio-legal approach (see section 2.3). More specifically, it has benefited from Prof. Mikael Rask Madsen's outline of a *reflexive sociology of the internationalization of law* and attempted to further develop it (Bourdieu 1986; Madsen and Dezalay 2002; Madsen 2006; Madsen 2011). However, rather than a Bourdieusian study of CSA regulation, 'reflexivity' has been used as an over-arching research strategy in conjunction with existing studies of Corporate Governance Regulation (CGR); Corporate Sustainability and Corporate Social Responsibility (CSR) (in particular Gourevitch and Shinn 2005; Crouch 2006, 2009 and 2011; Graz 2006; Streeck 2011; Paterson 2009; Koch 2011)[16].

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[10] See, for instance, Levy et al (2010); Brown et al. (2007) on the case of the Global Reporting Initiative framework for sustainability reporting.

[11] For instance see the work of Karin Buhmann (2010) who uses a socio-legal approach to explain the case for the 2008 Danish Law; see Prof. Charlotte Villiers' (2006 and 2012) work on the emergence of narrative reporting in the UK under the Company Act 2006.

[12]See Unerman et al. (2007).

[13]See KPMG et al. (2010) and KPMG et al. (2013) for a broad review.

[14]For instance, the 2008 Danish law on social and environmental disclosure is a piece of national legislation which encourage but not oblige large business entities to disclose non-financial information on the basis of a number of generally accepted international frameworks, including private ones such as the Global Reporting Initiative (GRI).

[15]For a critical introduction see Dewing and Russell (2007).

[16] This is consistent with Bourdieu's own idea that his contribution should not been perceived as a 'grand sociological theory' but adapted, modified and practically employed for empirical sociological enquires.

Overall, in order to tackle questions of transnational corporate accountability and law, seemingly disparate research and policy agendas need to be better connected, especially with regard to the relation between law and new institutional economics (NIE)[17]; law and political economy and law and governance studies (see section 2.2). Working on this perspective, the study explores the giant corporation 'architecture of accountability' neither as a sub-set of state determinations; nor as a one-dimensional, 'under-socialised' and 'de-politicised' nexus of contracts but as a socially *embedded* yet relatively *autonomous* 'field of practice'[18].

Although questions of ‘transnational corporate law’ lie at the bottom of much of the present literature on ‘post-regulatory law’ and global governance, it should be underlined that mainstream legal studies are still uncomfortable with the paradigm shift ‘from government to governance’. In fact, some of the key contributions to this area of research come from fields other than Jurisprudence – such as Political Science; Geography; Regulatory Studies. Sociology of Law, instead, appears at the forefront of the current debate about corporate governance regulation and CSR and it is well equipped to address this inter-disciplinary subject-area. In fact, some prominent socio-legal scholars have already offered a variety of ground-breaking analyses[19]. As Zumbansen (2009: 13) wrote, this enquire about transnational law and corporate governance would revisit “the core question of any Sociology of Law, namely to investigate the correlation between law and other spheres of culture.” [20]

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[17] While scholars in the different variations of new institutional economics (NIE) and behavioural economics provide for fundamental insights into “the sticky nature of institutions and mindsets that shape economic development, there has been relatively little attention given to the evolving forms and instruments of legal regulation.” (Zumbansen 2009: 9) Where a more engaged dialogue has been initiated, important insights have been gained with regard to the relevance of social norms, routines, practices and networks that shape economic relations and developments. See Posner (2000), *Law and Social Norm*; Scott (2007), *Hoffmann v. Red Owl Stores and the Myth of Precontractual Reliance*.

[18]See Bourdieu (2000), *Les structures sociales de l'economie*. In particular, the included post-scriptum *Du champ national au champ international*.

[19] See on this issue, in particular, the recent excellent works of three socio-legal authors as different as Doreen McBarnet (2007); Sol Picciotto (2011); Ronen Shamir (2013).

[20] See early socio-legal works by Ehrlich (‘living law’) and Gurvitch (‘social law’) as well as more recent works from different perspectives, including Teubner (1992): *The Two Faces of Janus: Rethinking Legal Pluralism*; Sousa Santos (1987): *Law: A Map of Misreading. Towards a Postmodern Conception of Law*; Galanter (1981): *Justice in many rooms: Courts, Private Ordering and Indigenous Law*; and Moore (1973): *Law and Social Change: the semi-autonomous field as an appropriate subject of study*.

1.3 Research questions and conceptualisations

On the basis of the preliminary issues discussed in the previous sections, it is possible to formulate the following central research question[21]:

What explains the emergence of Corporate Sustainability Accounting (CSA) within the EU regulatory arena, at different levels of regulation and through varying modes of governance?

This central question gives rise to three sets of sub-questions:

a) What is the content of the changes in CSA regulation taking place in the EU regulatory arena?
b) How and through which modes of regulation do these changes take place?
c) What explains these changes in both the form and content of CSA regulation?

In order to start developing answers for each of the above mentioned questions, I started with elaborating a preliminary 'map' of the field of accounting regulation, drawing on the comprehensive topology developed by Graz (2006) in its analysis of international standardisation and corporate democracy. The aim has been to locate CSA regulation in the established regulatory debate about accounting standards and corporate governance and to organise a number of conceptual options in order to build a set of preliminary hypotheses. Rather than the classic public/private, or state/market divide, I would suggest that we should look at a rift confronting the advocates of *legally binding standards for corporate social accountability* (that is, bringing standard-setting bodies into the universal legal domain), and advocates of a set of *technical extra-financial accounting standards* (minimal sectoral and market-based standards, universally recognised). In the context of this study, I will argue that this tension can be potentially creative of a new regime of "economic governance—not just corporate governance, though it has implications for that, but also governance of the economy and even of society at large." (Maclean and Crouch 2012: 1) To consider CSA regulation in this way renders it explicitly political, and one of the most advanced examples of the mix of voluntary and mandatory strategies that attempts to gradually integrate the two poles of economic accounting and corporate social accountability.

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[21] The research questions have been elaborated drawing on the research questions outlined by Overbeek *et al.* (2007) in their study of recent changes in European corporate governance regulation.

Graz identifies four dimensions which have been represented in two Cartesian spaces in the following sections. For the scope of this study, the first grid (Fig. 1.1) has been used to map changes in the **content** of corporate accounting standards. The first two dimensions shed light on *who* defines standards, along an *institutional continuum* extending from markets-driven standardisation to the public law realm of regulatory policies. The other two dimensions involve *what* can be expected to be standardised, along a *material continuum* stretching from physical and invariable measures (tangible) to historically-bound societal values (intangibles). The second grid elaborated by Graz, instead, has been adapted to map out changes in their **mode** of corporate accounting standards (Fig. 1.2). It concerns differentiated processes of standardisation that emerge once an agreement has been reached on the definition and content of standards. Namely, it provides further explanation on *how* and (from) *where* accounting standards can eventually be recognised and implemented.

A. Conceptualising changes in the content of ESG regulation. What is the content of current changes in CSA regulation?

The starting point of this research is that groups of actors are engaged in coalitions and conflicts to shape a certain regulatory outcome (see Braithwaite and Drahos 2000)[22]. The strategy to address this question has been rather classic, focusing on the definition of three key aspects: the players, the space and the relations within the space or field (see also Graz 2010). Therefore, I have first identified the main groups of actors interested in shaping CSA regulation. Secondly, I have used Graz topology to explore the accounting field. Lastly, I have attempted to further analyse their dynamic relations amongst the key groups, drawing on Gourevitch and Shinn (2005) 'coalitional' approach to corporate governance regulation. Through this approach I have highlighted how the different actors organise and mobilise themselves in relation with changes in accounting regulation.

As regards the main groups of actors interested in shaping CSA regulation, I have chosen to rely on the very categories that the European Commission has elaborated throughout a decade-long process of consultations and dialogue with stakeholders on this issue[23]. Therefore, I identified six broad groups of actors that, during the last decade, have been present and active in the European

[22] While this dynamic is common even to private and hybrid regulatory initiatives, it is more explicit at the EU-level than elsewhere. In fact, the latter is organised in a way that has to *formally* take into consideration the instances of all the main stakeholder groups involved.

[23] See, in particular, the EC Workshops on non-financial disclosure (2009-2010) but also the public consultation on the EU Green Paper on CSR (2001) and the EU Multi-Stakeholders Forum (EMF) on CSR.

process of CSA regulation[24]. First of all, there are the preparers of corporate sustainability reports, typically financial and non-financial large *corporations*, generally represented by and organised into business associations, such as BusinessEurope at the EU-level. Afterwards, there are the users of such information, the main groups of actors that are interested in the content of such reports. Here the focus has been on four main groups: *investors*; organised labour and *trade unions* (TUs); civil society and *non-governmental organisations* (NGOs); *public authorities*, particularly Member States; the EU institutions[25] (the European Parliament; the European Council and the Commission) and intergovernmental organisations (e.g. UN; OECD). Lastly, I have identified a sixth group of actors made of *professional experts* (in particular, accountants; financial analysts; lawyers).

Overall, this conceptualisation appears consistent with the existing literature on CSR and corporate governance (CG). It refers to the ‘trinity’ – capital, management, labour – that is central in most CG analyses (see Aguilera and Jackson 2003; Gourevitch and Shinn 2005). Furthermore, it recognises the key role of professions in shaping global business regulation. Moreover, it acknowledges the rise of an active, transnational civil society (including NGOs; consumers and media). Lastly, the category of ‘public authorities’ represents the views of state actors (in the broad sense) themselves organised at different levels of regulation (international, European, national, regional) and holding relevant stakes of the market, through fully or partly publicly controlled enterprises. While the list of actors could have been improved and integrated, in order to give more space to e.g. consumers, SMEs or different types of investors, the rationale for choosing these groups of actors is related to the attempt of building a reflexive sociological approach (see section 2.3). Therefore, rather than creating new categories, the challenge of this study has been to try to analyse the categorisation that are already widely used.

The second challenging aspect that I had to address concerns the definition of the field, the social space where the regulation of CSA practices applies and where it can be studied. Drawing on

[24] It is worth to stress that, within each group, we can identify a ‘plurality’ of voices, interests and positions. Groups are more or less organised and structured through various modes of political (government and law), social (association, network, communities) and economic (market, organisations) governance (see Crouch 2006) that allow them to operate not just at the European but at multiple levels. For instance, while TUs and large European companies are typically joined through associational national and international mechanisms of governance; investors and NGOs tend to be more freely organised through loose social and regulatory networks that allow them to operate across borders, on a transnational scale. While a detailed account of the specificities and heterogeneity of those different ‘constellations’ has been already developed elsewhere and cannot be discussed here (see Cafaggi 2005), it has been constantly taken into consideration through the research.

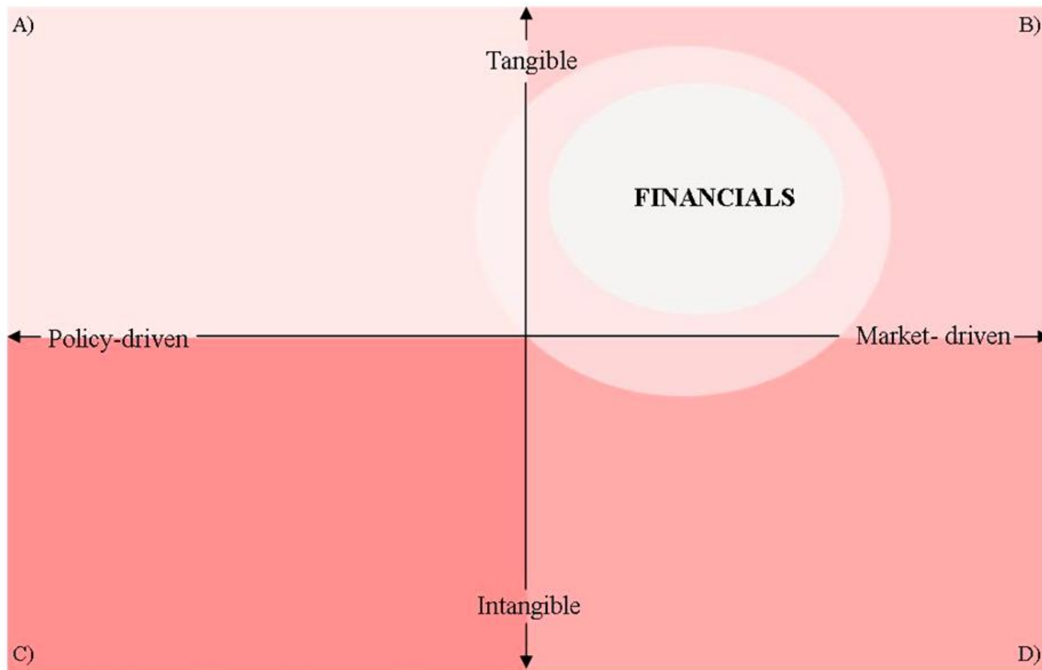
[25] The role of the EU deserves some further comments. In the context of this study, its role is both crucial and ambivalent: it ultimately acts both as actor (public authority) and structure (regulatory arena). However, the object of this Doctoral Thesis is not primarily related with European studies. The EU is rather used as a political laboratory, from which it is possible to effectively assess broader changes in the regulation of non-financial disclosure at different levels of regulation and through varying modes of governance.

Graz (2006) topology, I have conceptualised this space looking at the relation between who sets the standards and what is the content of such standards.

As regards *who* defines standards, the continuum is between a ‘market-shaping’ approach, leaning towards a regulatory intervention of public authorities in the field of corporate accountability, and a ‘light touch’, ‘market-making’ approach, in which professional bodies and experts are setting the standards (on the difference between ‘market-shaping’ and ‘market-making’ approaches and its application to EU policies see Lucia Quaglia 2010). For the scope of this study, the two poles provide an indication of the degree of relative autonomy of the accounting field from external social and political control.

As Graz (2006: 123) points out: “Market mechanisms and policy choices both affect the agents involved in the field, but they do so in various ways, which may be seen as located in an *institutional continuum*.” On the one hand, there are standards that belong more to the sphere of economic activity, governed by its own economic rationality and requiring companies to disclose only financially-relevant information. It has been from this ‘market angle’ that financial analysts, large mainstream investors or rating agencies are increasingly looking at some forms of ESG (Environmental, Social and Governance) disclosure. For instance, the German association of financial analysts (DVFA) has created in March 2008 a list of KPIs (Key Performance Indicators) for the integration of ESG into financial analyses. On the other hand, accounting standards can also be seen as belonging to the broader public sphere of political action, characterised by a different distributive rationality (Streeck 2011). For instance, public authorities might require firms to disclose environmental information on the basis of a precautionary principle or to disclose information about anti-bribery and corruption policies. It is from this other angle that some NGOs are demanding policy-makers to introduce mandatory, verifiable, legally binding rules for the disclosure of information about the respect of human rights in TNCs’ supply chains. Along this institutional continuum we can encounter a mix of business-driven and politically-driven initiatives involved in various processes of standardisation of sustainability reporting, with considerable variations across Europe. We can find private regulatory networks, such as the Global Reporting Initiative, which have created internationally accepted guidelines for sustainability reporting that have been subsequently amended on the basis of a consensus among its various public and private stakeholders. The adoptions of consortium standards enable a mix of procedural transparency and flexibility and might shorten the time necessary to reach an agreement over the content of the information to be disclosed. Consortia have become more inclusive, typically involving both users (NGOs, TUs, investors and public authorities) and issuers (companies) in the standard-setting process.

Figure 1.1 The field of research: changes in the content of accounting regulation.



The other key dimension that defines the field of research (as represented in the Cartesian space above) concerns a material continuum delineating *what* can be standardised. According to Graz, this goes back to the relation between human beings and nature and ranges from natural and invariable physical measures (with 'indisputable' properties), to constructed and historically bounded societal values, which are always contestable. Graz notes that within the second category "we encounter a range of issues which have been relegated to the margins of the political agenda for perhaps too long." (2006: 125)

The image of a continuum on the dimension of history/nature is a bit stretched and it is subject to occasional overlaps. In fact, the stages by which standardisation processes moved from one pole to the other are themselves historically determined and have much to do, in particular, with the emergence and triumph of modernity and scientific rationality[26]. However, without falling into a very common instrumentalist view of technology, this conceptualisation might be useful to the extent that we consider that the object of any business accounting standard inevitably blend physical

[26] One case in point is the 'invention' of the decimal metric system by French revolutionaries inspired by the pursuit of a truly universal, invariable and natural standard.

and social aspects. Applying this scheme to corporate accounting standards, a widely adopted distinction is between 'tangible' and 'intangible' assets. There is a plethora of definition of the latter, for instance the IAS 38, the International Accounting Standards treats them as non-monetary *and* without physical substance. Examples are computer software, patents and copyrights. However, as we shall see in section 2.3, there is no yet a universally accepted definition of what concepts like 'intangible'; 'non-financials' and 'ESG' information actually mean. They are defined *in relation with* the established area of financial disclosure. Financial-non-financial and tangible-intangible are too often considered as given and therefore taken for granted realities, while they have emerged as the result of an ongoing process of social and historical construction. Broadly speaking, one key difference between the two poles is that tangible assets can be more easily compared, responding to one of the key necessities of financial analysts.

In defining the field of research, the originality of the study has been to try not to isolate CSA regulation from more traditional financial accounting standards, seen both as responding to crucial questions of corporate governance regulation. What is the purpose of the modern joint-stock corporation? How is it 'governed' and who controls it? To whom are TNCs accountable? On the basis of which aspects of their performance, large corporations should be accountable? Different answers to such questions would lead to changes in the content of Accounting Law and accounting standards and guidelines to include new aspects concerning non-financial performances and intangible assets. In particular, conceptualising changes in the content of CSA regulation, the research has been focused on the crucial *divide* financial/non-financial as *defining* the accounting field and its historically specific relation of structural homology with the economic field (see section 2.3). In Bourdieu's terms, this division constitutes the *nomos* of this field of practice.

The third challenge has been to highlight the power relations and conflicts among the various groups of actors that operate on the field, avoiding the kind of 'flat' and de-politicised analysis that often characterises CSR studies and stakeholder theories. Working on this perspective, the data collected in the fieldwork have been analysed on the basis some well-established conceptualisations elaborated by the literature on changes in corporate governance regulation (CGR)[27]. Drawing on a relatively recent strand of actor-centred institutionalist studies (see Aguilera

[27] There are a number of dichotomies in the CG literature that can be useful for our analysis, starting from the 'classic' distinction between owners control versus managerial control (see Berle and Means 1932; Burnham 1941). How the emergence of non-financial forms of accountability is reflected within the fiduciary relation between owners (principals) and directors (agents)? A further useful conceptualisation concerns the distinction between insiders' (block-holders) versus outsiders' (share-holders) control: how is the governance of corporate externalities related with their different approach towards company's employees, suppliers, customers or finance providers? A third conceptualisation concerns the classic struggle that takes place between capital and labour. How mandatory social and environmental disclosure would affect this relation?

and Jackson 2003; Gourevitch and Shinn 2005) might provide further insights to address power-relations and conflicts among the six groups of actors mentioned above. In particular, Gourevitch and Shinn (2005) highlight the full range of coalitions that can feasibly emerge among capital, labour and managers. They propose a dynamic analysis of changes in the regulation corporate governance based on a coalitional approach, outlining in particular three possible cleavages and coalitions between the three groups of actors. As the result they identify several coalitions that have historically emerged, shaping the current variety of models of corporate governance. The '*class coalition'* arises when interests of capital and management oppose the interests of labour. The '*corporatist coalition'* pits labour and management against owners. Finally, the 'accountability' or '*transparency coalition'* concerns the common interests of shareholders and labour vis-à-vis management.

As we shall see, this coalitional approach has proved rather effective to anchor the emergence of CSA regulation within the long-standing debate about CGR and to analyse the accounting field as a field of struggles (see section 2.5). Specifically, the study hypothesises that the first emergence of 'social accounting' regulation, during the 1960s and 1970s, has been driven by a 'corporatist coalition', while the current cycle of regulation is driven by a 'transparency coalition' which is challenging mangers' unrestrained power. However, the study further built on and expanded Gourevitch and Shinn (2005) theorisation, adapting it to the social and historical evolution of CSA and adjusting the model to a broader definition of corporate governance, which includes also civil society (NGOs), public authorities and professionals (particularly accountants; lawyers and financial analysts).

B. Conceptualising changes in the mode of CSA regulation. How and through which modes of regulation do these changes take place?

The second grid (below), adapted from Graz (2006), describes the two dimensions on which global processes of standards recognition can be understood. In order to answer to the above research question, the study could make use of a number of conceptual options that have been developed in regulatory and governance studies, starting from the dichotomies private/public or national/supra-national regulation. However, as for most other dichotomies, in the cases of national versus supra-national or public versus private regulation, empirical developments tend to fall between these poles (see Overbeek *et al*. 2007).

Changes in the mode of accounting regulation arise once a certain level of agreement has been reached as regards the definition and content of standards, a crucial step which sees financial

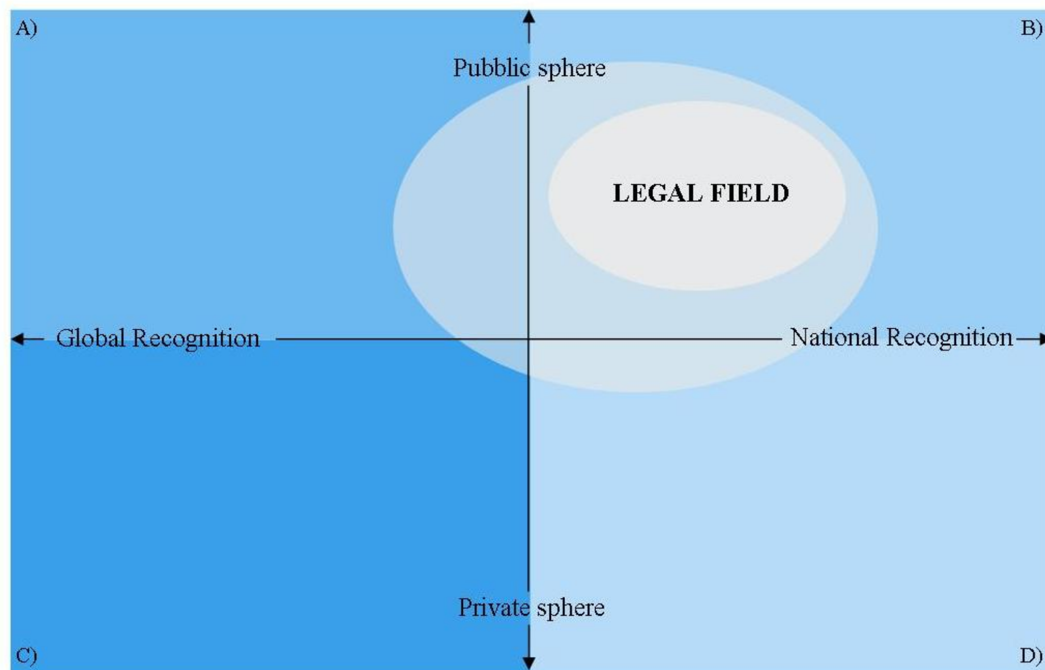
accounting in a much more advanced stage as compared to non-financial reporting. This second question concerns, in particular, the role of the law and the legal field in relation with the field of accounting. In fact, standardisation processes might differ according to the way standards' conformity is (legally) recognised and executed. Therefore, considering changes in the mode of accounting standardisation we need to distinguish between *standardisation per se* (the definition of the content) and *recognition* of existing standards. The former is driven by the attempt to homogenise specifications across different jurisdictions while the latter allows for the acceptance of a plurality of standards or means of assessing conformity with them. As regards worldwide processes of standards recognition, Graz (2006:126) affirms that they can be understood on two dimensions: the organisational procedures involved in standards recognition and the territorial competence on which the assessment of conformity is predicated.

As regards *territorial competence,* Nicolaidis and Egan note that "domestic regulators accept unprecedented transfers of regulatory sovereignty by recognising non-domestic standards as valid under their jurisdiction, whether they have taken part in their development (standardization) or not (recognition)." (2001: 455) This first continuum regards the distinction between *exogenous* and *endogenous* principles of standards recognition (see Fig 1.2). The 'global recognition' extreme corresponds to a scenario of 'one market, one standard, one verification, globally accepted'. Theoretically this situation could be realised if an exogenous standard for disclosing such information would be accepted worldwide on a purely exogenous basis. Since the 1970s a similar aim has been pursued, as regards financial accounting, by a powerful private standard-setting body, the IASC (international Accounting Standards Council) (see Chapter 3). On the other extreme, 'national recognition' corresponds to a scenario in which none of the various ways of assessing conformity to a certain standard were recognised on an international basis. In this case, firms would have to prepare different annual reports for each of the national jurisdictions in which they trade, in order to operate in that market.

Dominant managerial and law-and-economics approaches to accounting regulation and corporate governance (CG) tend to take this 'transfer of regulatory sovereignty' for granted, as a merely technical and neutral aspect. However, critical accounting and CG studies have pointed out that the political and democratic implications of this regulatory shift have been widely neglected (see Dewing and Russell 2007). In general, this relevant transfer of sovereignty challenges the omnipresence of the state that characterised especially – but not only – European idea(s) of law as well as the conventional understanding of academic social sciences: political sciences; sociology; (macro-)economics and general history. Furthermore, this shift underpinned the normative implications of contemporary CSR perceived as <u>non</u>-law, meaning the existence of extra-legal

social constrains to corporate behaviour that had been often overshadowed by the prominence of national states. In fact, the latter "appeared to combine both a responsibility for externalities and other collective and public goals, and possession of the means to impose certain interpretations of these goals." (Mclean and Crouch 2011: 5)

Figure 1.2 The field of research: conceptualising changes in the mode of accounting regulation



The other dimension of changes in the mode of accounting regulation concerns *organisational procedures for recognition of conformity* to an agreed standard, which can be located on a continuum with the public and private spheres at each extreme.

In practice, on the contrary of financial accounting, this dimension of CSA frameworks has not seen much concrete developments yet. However, this is a crucial area of struggles in any standardisation process and periodically the hoary issue of verification arises in the CSA regulatory debate. In theory, this continuum might run across a wide range of organisational options. At the 'private sphere' extreme, one might find declarations of conformity accepted as such (like the CE mark which can be found on packaging). At the opposite extreme there are auditing and inspection services that perform 'third-party' certifications, which might be themselves assessed by a public accreditation body. The latter are public agencies or bodies that extend formal recognition that a body or person is competent to carry out specific tasks of verification. In between the two poles, all

sorts of quality insurance arrangements; declarations of conformity; assessment schemes and mechanisms of private certification exist.

C. What explains changes in both the form and content of CSA regulation?

Overall, the crucial aspect when we address changes in the content and mode of CSA regulation is 'trust' in what Bourdieu (1997) called the well founded *illusio* of the economic field to autonomously operate for the public good.

As Max Weber as well as other major authors, like Shumpeter and Sombart, already noted, accounting practices have been a crucial tool for the universalisation of (economic) rationality and calculability, which eventually led to the expansion of modern capitalist regimes and, during the last three decades of what has been defined as 'world-capitalism'[28]. Building on this initial hint, the study develops the argument that the accounting field has progressively developed a historically specific relation with the economic field: there is structural *homology* between the two. That means, in Bourdieu's terms, that there has been an identical structuration of two social spaces over time producing specific effects that he notably called '*imposture légitime*', legitimate imposture. This idea is supported by some critical accounting studies, which have showed that accounting is not simply a decision-making aid that 'reflects' changes in the economic field. It plays a much more dialectic and 'constructive' role. It actively contributed to create economic realities, exerting what Bourdieu defines a symbolic power over the definition of what economic capital and value means (see section 2.3). That makes accounting a valuable resource to certain social actors wishing to promote a particular version of reality. On the basis of this literature, I will test whether the cyclical development of social and environmental reporting regulation can be explained in parallel with the broader 'history' of the relational struggles in the economic field for the control of corporate resources. In order to corroborate this hypothesis I will operate a preliminary scientific process of 'double historicisation' (cf. Bourdieu 1996; Bourdieu and Wacquant 1992) of both the research object – the regulation of CSA in Europe – and the academic construction of this object – integrating the parallel academic fields of corporate governance regulation (financial disclosure) and corporate social accountability (non-financial disclosure).

Hence, what is the specific relation between the fields of accounting and the economic field? What explains changes in CSA regulation, both in the mode and the content, over time?

[28] On the relation between 'world capitalism' regulation and corporate social responsibility (CSR) see, in particular, Shamir (2011). The author stresses that the 'world-capitalism paradigm' offers strong tools for theorizing the mechanisms of change that characterise the current CSR regulation and mediate between political agency and institutionalized regulatory outcomes.

The study hypothesises that changes in the European debate on CSA regulation should be contextualised as part of the underlying tension in the political-economic configuration of advanced-capitalist societies during the post-war period. More precisely, I will refer to the tension between what Wolfgang Streeck calls "popular ideas of social justice and economic insistence on market justice" (2011: 24). The author identifies four phases in this endemic conflict between capitalist markets and democratic politics, which characterised the post-war social formation that we call 'democratic capitalism'[29]. This tension, he argues, arises from the fact that "under democratic capitalism, governments are theoretically required to honour both principles simultaneously, although substantively the two almost never align." (2011: 7) However, I have re-interpreted this tension using the 'analytical lens' developed by Pierre Bourdieu, starting from the ideas of capital(s); habitus; symbolic power; symbolic violence and the tension between different social fields (the economic field; the field of the state; the accounting field and the legal field). Adopting this perspective it appears clear that the rise of financial-only accounting standards have been instrumental in the autonomisation and financialisation of the economic field.

During the 1960s and 1970s period of economic Keynesianism and corporatist employment relations, the economic field was largely under political control. In Europe, the very concept of 'corporate governance' was seen as a sub-system of the state's 'governance of the economy', a triangular partnership of co-ordinated industrial relations between employers-employees with governments playing a key role as the 'social bargain' facilitators. This model proved extremely successful in rising standards of living and warranted three decades of economic expansion: it was based on the Fordist principle that higher employees' wages would benefit also the employers, because workers would be able to buy and consume more, making owners richer. However, this model of economic accumulation also had two major limitations. First of all, it is very resource-intense: social peace is guaranteed by the attractive illusion of indefinite economic growth but actual resources are limited and unevenly distributed. Secondly, as Streeck (2011) points out, the collective rationale of democratic resources' entitlement ultimately conflicts with the laws of economic rationality and efficiency based on marginal productivity.

'Democratic capitalism' first entered a major crisis in the second half of the 1970s, when it appeared clear that wages' automatic increase was creating very high levels of inflation. The reaction of Anglo-Saxon liberal market economies (LMEs) and more co-ordinated Continental

[29] He defines the latter as a political economy ruled by two conflicting principles, or regimes, of resources allocation: one operates according to marginal productivity ('the free play of market forces') and the other based on social need or entitlement ('as certified by the collective choices of democratic politics').

European economies (CMEs) to this first major crisis has been very different[30]. At the beginning and until the early 1980s, the collective bargain mechanism of Continental Europe seemed better equipped to face the crisis and keep inflation down. It is in this context that ideas of *social accounting* emerged, as one of the features of a new model of corporate governance based on ideas of 'industrial democracy'. This possibility was considered also in the UK and the US, often presented as a way to 'modernise' Anglo-Saxon Company Law. Social accounting was widely discussed in Parliaments and the French Parliament even passed a law, in 1977, making social reporting mandatory for all companies with more than 500 employees. The introduction of social and particularly employees-related aspects was seen as a 'transformative' device which would have valued other forms of capital and given much more power to trade unions. It was also a form of accounting that explicitly recognised the diminished role of shareholders, reduced to passive, bondholders and *rentiers*.

However, except from France, in most of Western European jurisdictions the 'momentum' was lost. Trade unions were more interested in collective bargain than participating to corporate accountability and governance bodies. Therefore ideas of social accounting were abandoned and a system of financial-only accounting, based on global standards elaborated by professional accountants, became the 'common language' of a globalising financial capitalism. In the UK and US, 'law-and-economics' approaches to company law prevailed, which identified the problem in 'strong managers and weak owners', excluding employees from the control of companies' resources. Companies' autonomy was promoted together with the deregulation of the financial sector; the principle of shareholder primacy; and an aggressive anti-unions campaign. Dispersed investors re-organised themselves as investment funds and large institutional investors, strengthening the principle of shareholder primacy fostered by growing reliance on *private* pensions. The 'neo-liberal' cure seemed to work and in the 1990s the US and UK started to grow much faster than Continental European economies, which had also accumulated a relevant public debt (see Jessop 1992 and 2007; Ireland and Pillay 2010).

By the mid-1990s, the EU model of 'industrial relations' based on the 'social bargain' entered into a second deep crisis and also in Continental Europe was gradually imported what Colin Crouch calls 'Privatised Keynesianism' (2011). The latter can be defined as a phase of post-war democratic capitalism, in which the state decided to give up its political responsibility to guarantee full employment and made the labour market more flexible and employers free to abandon the 'collective bargain', in exchange for 'corporate social responsibility' (CSR). The dismantlement of

[30] On the difference between CMEs and LMEs, widely used in the so-called VoC (Variety of Capitalism) literature, see Hall and Soskice (2001).

the public welfare was compensated by unprecedented access to credit by individuals and consumers, so to sustain full employment and more consumption. During this period, voluntary global frameworks for corporate social and environmental (sustainability) reporting first emerged in Europe, in parallel with the process of autonomisation and internationalisation of the economy and a symmetric process of international harmonisation and privatization financial accounting standards. Initially, voluntary sustainability accounting served to strengthen trust in the autonomous capacity of financial capitalism to operate for the public good. In fact, around 2000, some unsetting cracklings had first revealed that Privatised Keynesianism was not meant to last: the Asian financial crisis, anti-capitalist protests and the intense consumption of Planet resources showed that this was a potentially destructive and unsustainable path. Finally, the 2008 financial crisis reduced the empirical and theoretical foundations of Privatised Keynesianism to ruins and made ever more apparent the need for a new system of accounting that goes beyond traditional financial disclosure.

The 2008 financial crisis made suddenly apparent to everyone the elements of 'illusio' and 'symbolic violence' that were buried in the relations of domination that characterise Privatised Keynesianism. The crisis arrived to undermine and question even the very autonomy of the economic field towards other social fields, particularly the political and legal fields, which (re)gained the symbolic power to intervene in the governance of the economy. Crucially for our study, in the aftermath of the 2008 financial disaster, public support for more legal control (accountability) over business and financial practices became widespread. This drove the explosion of CSA regulation. However, the latter has not been driven only by 'legitimising' aims: there is a real challenge emerging in the European economic field between states and financial markets and CSA is entering into this territory of extreme symbolic violence. On the one hand, part of the investor community, TUs and 'civil society' social actor are strongly demanding for more non-financial information. Drawing on Gourevitch and Shinn (2005), I will argue that it has been this 'transparency coalition' the main driver of the current explosion of CSA regulation in Europe. This coalition is challenging the power of European managers and block-holders, who have consistently and successfully demanded CSA to be voluntary.

Once again, the economy and the accounting field seem to evolve symmetrically creating specific and significant effect on society and the environmental where people live: the current debate about 'sustainability accounting' and 'shared value creation' are likely to structure the emerging discussion about 'long-term' and 'sustainable' models of capitalism. However, this structuring effect is neither acknowledged nor publicly discussed. It tends to be taken for granted as a 'matter of fact' (*legitimate imposture*). In the current situation, many of the questions that characterised the social accounting debate in the 1970s have re-emerged more urgent and complex

than ever. What is the purpose of large corporations? What sort of 'value' companies generate? Is it only 'economic' value? Is it only shareholder value? How large companies impact the social environment in which they operate? Should companies become more accountable and transparent also as regards their impact in terms of e.g. human rights policies; carbon emissions or anti-corruption policies? Where should they disclose such information? Should accounting be radically transformed to include ESG data? How financial and non-financial disclosure could be better integrated? To whom companies and their managers should be held accountable? What is the role of private standard-setting bodies? What is the purpose of accounting standards? What is the role of public authorities and law-makers? While some of these questions go back to the corporate governance debates of the 1930s and the 1970s, there is a key difference. Back then, regulatory initiatives were politically and legislative-driven. Nowadays, CSR policies and CSA regulatory initiatives are, usually, corporate and market-driven. As Mclean and Crouch (2011: 1-2) pointed out, there is little debate about this. The ubiquity of CSR practices and corporate acknowledgments of their responsibilities towards local communities and the environment may seem to render further discussions superfluous. Quite on the contrary, they only represent the beginning of the debate on the political implications of major firms shaping regulatory frameworks and taking responsibilities beyond their role as market actors. It is the triumph of a pervasive economic vision of reality that poses fundamental questions about its limits/limitations; the autonomy and excessive power of economic actors; the force of legal and extra-legal regulatory means. In a world in which virtually anything is financially relevant, what is left to 'non-financial' issues? The difficulties that regulators face in defining what is 'non-financial' seem to certify this absolute dominion of the economy. At the same time, it might also represent a unique opportunity for putting it into question; to discuss about what *is* non-financial; what still talks a different language and cannot be translated into economic value(s).

The economy is stretching way beyond traditional market conceptualisations. This situation calls for an extremely problematic re-politicisation of corporate governance, seen as the 'architecture of accountability' (Parkinson 2006). On the one hand, there is *the force of democratic corporate accountability*, which is based on the legal and political control of the state over economic activities and the 'right to know' about the impact of large corporations on people's everyday lives. On the other hand, there is *the economic logic of corporate accounting*, which interprets confidence crises as "deficits of knowledge of the laws governing the economy as a wealth-creation machine, or from disregard of such laws in selfish pursuit of political power." (Streeck 2011: 8) Accounting laws and the accounting field is currently torn by this, potentially

creative, tension and could become a crucial, though misrecognised, terrain on which a more 'sustainable' regime of capital accumulation can be constructed.

1.4 The structure of the study

After a review of the literature, the **next chapter** presents the methodology and the method adopted by the study. I have used a Bourdieusian reflexive socio-legal approach as over-arching research strategy to explain the cyclical emergence of CSA regulation (Bourdieu 1986; Madsen and Dezalay 2002; Madsen 2006; Madsen 2011) in conjunction with a number existing critical studies (in particular Gourevitch and Shinn 2005; Crouch 2006, 2009 and 2011; Streeck 2011). The study starting point has been the lack of a universally accepted definition of CSA. Chapter 2 argues that this practice has been socially and historically constructed using two negative definitions: as non-financial and non-law. As regards the research method, this is closely related with the methodology. The empirical research is based on data collected using three sources: the review of the literature; in depth elite interviews and document analysis, strengthened by a five months participant observation at the EU Commission.

Chapter 3 reviews over forty years of struggles for regulating non-financial reporting in Europe. It argues that this development has been cyclical rather than linear and that the turning points in the history of CSA regulation can be explained looking at the parallel development of the European regimes of corporate governance regulation (CGR) and economic capital accumulation. As regards the content of accounting regulation, 1970s' proposals for mandatory social reporting had been abandoned starting from the early 1980s until the late 1990s, in favour of detailed disclosure of financial-only and tangible information. During the early 2000s, a preliminary nucleus of an ill-defined and broad form of non-financial accounting has emerged, usually integrating social, environmental and economic issues, as 'sustainability reporting'. However, the latter was developed in isolated from financial accounting and often ignored by the accounting profession. Finally, after 2008 we are witnessing some serious attempts to integrate financial and non-financial accounting. As regards changes in the mode of accounting regulation, the period between the 1980s and the 2000s marked a dramatic structuration of the financial accounting regulatory regime that used to be rather under-developed until then. From being largely national and public, it has become global and privatised, in particular driven by the role of the accounting profession and the International Acccounting Standard Committee Foundation (IASC Foundation). However, little changes have concerned the area of sustainability reporting that came to be identified as 'non-law'.

Only starting from the 2000s, European regulators gradually paid closer attention to ESG information and many countries included non-financial aspects in accounting laws. The chapter introduces the argument that there is a historically specific relation of structural homology between the accounting field and the economic field. It looks beyond explanations based only on 'legitimacy' and it focuses on the tension between legitimacy and accumulation of capital in the economic field. Considering this symmetric development, it is possible to identify identical changes in the regulation of accounting and in the capitalist regime of accumulation. During the 1970s the corporatist regime mirrored debates about regulating social accounting. During the 1990s processes of economic financialisation saw the emergence of financial-only accounting standards. Nowadays, the search for a more sustainable model of capital accumulation is mirrored by a new attention to intangible forms of capital framed as ESG/sustainability accounting. This argument confirms the intuitions of some critical accountants that started to argue about the symbolic power of accounting. However it sets the puzzle of the relation between the *nomos* of the accounting field and the law, which is developed in the following two chapters considering the case study of the EU-level debate for regulating non-financial reporting.

Chapter 4 narrows down the analysis and empirically assesses the recursive process of creating a EU framework for the disclosure of non-financial. It puts forward the argument that within the European accounting field a 'transparency coalition' has driven between the two crises 2001-2011 the emergence of non-financial reporting regulation and at each financial crisis has become more structured and broader. In particular through a series of in-depth interviews with EU regulators and other key stakeholders investigates the development of CSA regulation from the Green Paper 2001 until the 2011 CSR Communication. In particular, it juxtaposes the development of CSR policies and CG regulation, arguing that there has been a gradual shift from a position that used to see CSA as non-law to one that embraces a smart mix of mandatory and voluntary tools. I will argue that there is an objective convergence of interests amongst part of institutional investors, NGOs and part of trade unions for enhancing corporate accountability which has the potential for developing into a new regime of economic governance – not just corporate governance – based on rapidly developing normative ideas of economic sustainability. This entails a complex shift in the *nomos* of the accounting field of practice. The distinction financial/non-financial in fact has become, at each economic crisis, more blurred. It is too narrow and excludes the large majority of the information that are 'material' to investors. On this basis, concrete possibilities to innovate the current regime would combine respect of human rights and the environment and profitability. However, it is necessary the active engagement of regulators that occupy a central role in the narrative.

Chapter 5 assesses changes during the same period (mid-1990s to 2011) of the previous chapter and also on the basis of the same data sources. However, it deepens the broad historical framework outlined in the previous chapter focusing on the various groups of actors' ability to shape the accounting regulatory field. It considers four key topics: the emergence of a 'transparency coalition' for mandatory non-financial reporting; the role and 'law-and-economics' habitus of regulators and policy-makers; the sharp opposition of managers against any introduction of non-financial disclosure in Accounting Law; finally, the crucial role of accountants, lawyers and financial analysts as the architects of the emerging regime of CSA regulation.

Chapter 6 summarises the main arguments outlined through the previous chapters as regards the explanation of changes both in the content and in the mode of CSA regulation. In particular, it focuses on better explaining the analysis of the historical and empirical findings (Chapters 3; 4 and 5) on the light of the Bourdieusian theoretical framework outlined in Chapter 2. Eventually, it briefly discusses some of the limitations of the present study and suggests new researches avenues.

2. What explains the emergence of sustainability accounting regulation?

In dreams begin responsibilities.

W.B.Yeats (1914) *Responsibility* in “Responsibilities and Other Poems”. [31]

2.1 Introduction. Why researching CSA regulation matters?

The first interesting aspect that emerged from the initial review of the literature has been the almost complete isolation and marginalisation that traditionally characterises ‘non-financial’ accounting in relation to financial reporting. They can be seen as ‘parallel universes’ and, indeed, they have been conventionally treated as such.

Journals have been created to discuss about the heterogeneous world of non-financial reporting (NFR) (e.g. Accounting, Auditing & Accountability Journal; Critical Perspectives on Accounting and Accounting; Organizations and Society), hosting debates that had very little echo in the mainstream accounting literature. Many studies revealed that CFOs are rarely aware of non-financial issues (see Deloitte 2011; Sullivan 2011), while the latter are often handled by a separated (CSR) unit or, at times, by the public relations office (Owen 2003). Similarly, the mainstream corporate governance (CG) literature has dedicated much attention to debates on accounting regulation (see, for instance, the list of ICGN publications). However, it has largely excluded issues related to sustainability accounting (e.g. accounting and human rights; carbon disclosure). Policy-makers and regulators actively contributed to this situation treating the two forms of accounting as belonging to separated boxes: NFR as a ‘voluntary’ issue concerning CSR policies; while financial accounting has been addressed as a matter of company law and CG regulation. Therefore, financial disclosure is heavily regulated. Companies have to report on the basis of detailed and binding international standards (the IFRS’ rulebook is 2 500 pages; the US GAAP’s covers 25 000 printed

[31] In the run-up to the publication of ISO 26000, the international standard giving guidance on social responsibility, a video was used to launch the new framework as the “norm for social responsibility”. The issue of social responsibility was presented through the eyes of children all over the Planet. The video is extremely telling as regards the ‘symbolic power’ of sustainability reporting; the new political and regulatory role of large business undertakings that underlie the global emergence of corporate accountability and, also, the relation between dreams and responsibilities. The video is publicly available at: http://www.youtube.com/watch?v=IJUm3JqF-Ro

pages). On the other hand, standards for non-financial reporting are still fragmented and under-developed. The closest thing to an internationally accepted standard is the voluntary framework developed by a private non-profit organization, the Global Reporting Initiative (GRI), founded in 1997. Furthermore, while companies are required to audit their annual report, such obligation does not exist for NFR. Several studies and experts concluded that, in terms of accuracy, quality and reliability, at present, only few sustainability reports would meet the existing standards for financial reports (see Owen 2008; Henriques 2010). There is still a major gap between financial and non-financial reporting in terms of quantity and quality (see Commission 2013).

Nonetheless, during the last decade, things are progressively changing, both in sustainability reporting practice and in its regulation. As already mentioned in the previous chapter, the number of companies publishing sustainability reports is constantly increasing (KPMG *et al*. 2013). Issues of social and environmental reporting started to regularly appear in most of the debates on the future of accounting practices (see Drever et al. 2007: 191). The narrow 'law-and-economics' shareholder-centred approach to CG has been weakened by corporate scandals (Enron, Parmalat) and financial crises. It is now widely recognised that CG best practices include respect for human rights and the environment (see King 2007). Finally, driven by the prominence of CSR and sustainability issues in the public debate, also public authorities and regulators started to include sustainability in CG and company law provisions[32]. Central in this debate has been the prospective of expanding accounting regulation to include non-financial aspects of corporate performances.

This study aims to shed light on this relevant shift and on the 'collision' between the two worlds of sustainability and financial accounting, with all the anticipation, ambiguities and experimentations that characterise this phase. In particular, this research focuses on the inclusion of non-financial aspects in the EU accounting regulation. This has been a long and patient process that started in the late 1990s and it is still ongoing and it is also part of a broader shift towards a more sustainable and inclusive model of economic growth. However, in order to understand why the two harms of accounting are laboriously coming closer, it is worth to start questioning why non-financial reporting regulation has been marginalised in the first place? Why it has developed so little and so late as compared to financial accounting? What does it say about current regulatory changes in CSA?

Two arguments have been often proposed. One is common in academic and quasi-academic managerial studies. They argue that we are now entering the 'era of corporate accountability' and

[32] As the EC affirmed in the 2011 CSR Communication, "A strategic approach to CSR is increasingly important to the competitiveness of enterprises. It can bring benefits in terms of risk management, cost savings, access to capital, customer relationships, human resource management, and innovation capacity." (Commission 2011)

there has been a linear and progressive development from corporate ‘irresponsibility’ towards an epoch of ‘sustainable capitalism’[33]. Corporate sustainability accounting is therefore seen as ‘*an idea whose time has come’*, the coming of age of sustainability reporting. However, there are various issues with this deterministic explanation of CSA emergence. First of all, it neglects the role of interests and conflicts in shaping the corporate field. Furthermore, as we shall see in the next chapter, from a more careful analysis, it emerged that during the 1970s and 2000s there has been a much more lively regulatory debate concerning corporate social accounting, as compared to the 1980s and 1990s. This conclusion suggests a cyclical rather than linear and progressive development of non-financial reporting.

The second argument that has been often adopted to explain this late regulatory development has been that, after all, NFR provides managers, investors and stakeholders with comparatively less relevant information than financial reports. This is something that variously came out during my interviews. Then, perhaps, there is a good reason if policy-makers and regulators prioritised financial aspects of corporate performance. However, this hypothesis has also been soon dismissed. In fact, there are, at least, three very strong rationales why regulating corporate sustainability reporting matters.

First of all, there is a rationale for mandatory extra-financial reporting related with questions of 'corporate social accountability' that have been discussed ever since the first emergence of the modern join-stock corporation[34] and that is becoming ever more relevant today (see Mitchell and Sikka 2005; Utting and Marques 2009; Ireland and Pillay 2010; Soederberg 2011). The traditional *raison d'être* for social and environmental accounting has always been the concern over the power and influence of corporations on many aspects of our lives[35] An influence that has grown during the last three decades to affect every aspect of our lives: water, gas, news, environment, schools and even unborn babies (see Mitchell and Sikka 2005). As Prof Rob Gray pointed out, “accountability is based on the principal of *rights to information* – rights which derive from a number of sources: legal, quasi-legal, moral and so on.” The need for introducing this obligation is therefore not strictly due to economic or technical reasons but to the fact that “power and responsibility need to be

[33] A prominent example of this rhetoric about the ineluctable arrival of sustainable capitalism can be found in the Manifesto of former US President Al Gore (see Gore and Blood 2011). As pointed out with the usual sarcasm by Prof. Rob Gray (2008), during the 2000s, corporate social and environmental accounting has moved “from ridicule to revolution; from hope to hubris”.

[34] The need for controlling corporate misbehaviour and excessive power has been underlined even by the father of modern political economy, Adam Smith in *The Wealth of Nations* (1776).

[35] Gray notes, “Enquiry into social accounting offers, *inter alia*, the promise (however idealized) of an international corporate, institutional and financial complex held substantially accountable to civil society for its activities. Such an accountability – if applied successfully – would expose much duplicity; it would make transparent the essential and unavoidable conflicts that a global, astonishingly successful (and probably essentially rapacious) capitalism generates.” (2010: 550)

matched in a fair society. This matching is ensured by the demos who, in turn, require information on which to make the appropriate judgements. The *accounts* of organisations are one of these sources of information and without these accounts, democracy is hollow, the demos is powerless and, depending on the circumstances, the power of the (non) accountable organisations significantly outstrips their responsibility." (Gray 2005: 7)[36] Seen from this perspective, sustainability disclosure might constitute a fundamental tool for empowering stakeholders (particularly NGOs and TUs) just as financial accounting empowered dispersed shareholders (Unerman *et al*. 2007). According to this argument the law should demand MNEs to provide detailed and independently verified information about their impact on the environment and society. In particular, human rights reporting and periodic review of working conditions in MNEs supply chains deserve special attention[37].

A second reason for the disclosure of extra-financial information emerged more clearly only during the late 1980s and the 1990s and it is related to the urgency of subverting the current unsustainable path towards ecological collapse. There is a vast literature that has demonstrated the risks connected with 'business as usual' and to which this study refers to for a thoughtful analysis of this issue (Jackson 2009; NEF 2009). There is sound scientific evidence that in a few decades the humanity has arrived to use the equivalent of 1.5 Planets Earth. Meaning, it takes one year and six months to our ecosystem to generate the resources and services we consume in one year[38]. We could define this as a 'global governance' driver for having mandatory CSA regulation. Considering this situation, there is a clear case for mandatory reporting about TNCs actual and prospective impacts (in economics often called 'extenalities' both positive and negative) on society and the environment[39]. As Bulkeley and Newell pointed out, given their size, capacity and power,

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[36] Emphasis added.

[37] The obvious reference in the debate about human rights is the *Guiding Principles on Business and Human Rights*, adopted in 2011 by UN Human Rights Council. It is worth to highlight Jennifer Zerk collaboration with CORE (Corporate Responsibility Coalition) to publish in 2011 *Simply Put. Towards an effective UK regime for environmental and social reporting by companies*. Also the ECCJ (European Coalition for Corporate Justice) has been working on this direction. Finally, the University of Edinburgh submitted an insightful *Study of the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating Outside the European Union* (Augenstein 2010).

[38] In a nutshell, the key argument is that the current economic regime, based on unlimited growth and consumption, consuming Planet's resources too rapidly. This concern is well documented by solid scientific evidence. For instance, the Ecological Footprint Network has elaborated the Ecological Footprint Indicator, comparing the humanity's ecological impact and the amount of productive land and sea available supplying key ecosystem services during the period 1961-2005. See Global Footprint Network (2008).

[39] The economic consequences of this reckless race to consumerism and growth are so dangerous that economist Joseph Stiglitz recently claimed that climate change is the most important economic issue that the US economy is currently facing. In 2005 the Millennium Ecosystem Assessment, gathering 1360 experts from 95 countries reached the conclusion that "human activity is putting such strain on the natural functions of Earth that the ability of the Planet's ecosystems to sustain future generations can no longer taken for granted." One ecosystem service, in particular, climate regulation, is going through a dramatic transformation. In fact, after remaining stable for over 1000 years at 280 parts per million, the level of

multinational corporations have often a more significant role to play in the global governance of sustainability than many States, suggesting a "very different geography of responsibility" (Bulkeley and Newell 2010: 2).

However, adopting an 'accounting rationale', one could say that companies have to make profits first and that non-financials are not, 'economically speaking', material information. Therefore, many scholars framed it as a problem of large business entities resisting to the external pressure from civil society, local communities, and workers. However, this is also a broadly incorrect way of framing the problem. One might be surprised discovering that, according to several studies, the value of 'non-financial' reporting, considered as the information that are not currently captured by current financial reporting, is up to five times higher than the one of financial information (see IIRC 2011; CSR Europe 2010). In fact, during the last 25 years the explanatory capacity of traditional tangible and financial accounting has constantly decreased[40]. Until the 1980s, the annual reports used to account for 80% of the market value of a company; in 1990, this percentage had already decreased to 55% and it has been calculated that currently it is below 20%. In other words, non-financial information accounts for 80% of the value of the S&P 500 Index (Ocean Tomo 2010; Accenture 2004). While only part of this value can be captured looking at ESG data, there is a growing consensus and some convincing empirical evidence that more sustainable companies tend to be better managed (see Bauer and Hann 2010; Kruse and Lundbergh 2010; Deutsche Bank 2012). As a consequence they also attract a better class of employees, are better able to manage risks, can count on stronger visibility and better reputation and better longer-term performances. Therefore, financial analysts are increasingly interested in mandatory disclosure of ESG information that could help to address critical gaps in existing accounting standards.

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concentration of carbon dioxide (CO2), are currently over 400, driven by a growing world population consuming more fossil fuel, eating more meat, using more land for agriculture or for urban expansion. Lord Nicolas Stern, the author of the famous 2006 Stern Review on the Economics of Climate Change[39], recently admitted that the situation is "far, far worse" than he predicted in 2006 and that he believes "we are on track for something like 4°C above the long term average[39]. The World Bank, in its report 2012, *Turn Down the Heat: Why a 4°C Warmer World Must be Avoided*, has confirmed that we are heading towards a 4°C warmer world "marked by extreme heat-waves, declining global food stocks, loss of ecosystems and biodiversity, and life-threatening sea level rise**."**

[40] In order to give an idea of the significance of this accounting gap, considering the value of the global stock markets at US$ 50 trillion (March 2010), it has been estimated that 80% represents a gap of US$ 40 trillion between the 'book value' of publicly listed companies and their so-called 'market value' (CSR Europe 2010). Therefore, this represents a long-term trend that characterises contemporary capitalism and which signals that the process of accumulation of capital is radically changing. There is a growing strand of literature arguing that, looking at the long-term performance of companies, a strong relation exists between competitive advantages and so-called ESG (environmental, social and governance) performance (see in particular Ioannou and Serafeim 2011).

In sum, there is a glaring paradox in the accounting field that requires further researches. It is binding for companies to prepare and audit expensive annual reports that are of very limited value, from a social and environmental point of view, and of a modest but steadily decreasing economic value. On the other hand, despite over four decades of heated debates, regulators have started only very recently to realise that the issue of accounting for non-financial information is potentially socially, environmentally and also economically relevant. Even more strikingly, there is very little literature that attempts to shed light on this situation, most of the studies tends to take the arbitrary distinction between mandatory financial and voluntary non-financial accounting for granted, as a matter of fact. There is a need for empirical studies that go beyond normative and functionalist approaches and question: what has been the role of law-makers – in particular of EU law and policy-makers – in this process? Which political and socio-economic actors are driving the current emergence of CSA regulation? What are their interests? How are these different actors organising and mobilising themselves? How and why do they succeed in creating regulatory changes?

This chapter outlines my explanation of the current emergence of CSA regulation. In particular, it outlines some of the cornerstones on which the study has been built: the underlying methodological approach; its application to the field of research; the research methods employed. The following section (2.2) will offer a critical review of the literature, focusing on the existing explanations of the transnational emergence of CSA regulation. I will argue that while different approaches shed light on different aspects of CSA regulation's emergence, none of them provides a convincing explanation. Section 2.3 introduces the Bourdieusian reflexive socio-legal approach that has been adopted by this study. The section outlines the epistemological assumptions of reflexive sociology together with some key theoretical concepts (e.g. habitus; capital; field; nomos). Section 2.4 will explain how I have deployed this reflexive approach – in conjunction with the literature – to explain the cyclical emergence of CSA regulation in Europe. Lastly, section 2.5 will present the argument in brief while section 2.6 discusses questions of research method.

2.2 A critique of the literature

As the consequences of the growing complexity and expansion of 'non-financial' reporting, also the literature has also become more widespread and fragmented. Therefore, providing a comprehensive review would go beyond the scope of this study. Significant contributions to the study of CSA regulation can be found in a variety of disciplines, particularly critical accounting; managerial studies; regulation studies; but also political science and sociology. Detailed reviews of

the literature already exist (Mathews 1997; Bebbington and Gray 2001; Spence et al. 2010; Gray 2010; Guthrie and Parker 2012). The aim of this section has been rather to critically review the existing approaches to my research question.

As I have already mentioned in the previous chapter, the overwhelming majority of the literature explains the emergence of private disclosure of social and environmental information drawing on a 'legitimacy theory' perspective (see Patten 1992; Gray *et al* 1995; Deegan 2002; O'Donovan 2002; Cormier and Gordon 2001; Cho and Patten 2007; Tilling and Tilt 2010). In a nutshell, their argument is that the current sustainability reporting explosion is a company response to pressures coming from a range of 'stakeholders' (media, governments, customers, NGOs, responsible investors). Therefore the rise of regulatory frameworks such as the UN GC or the GRI has been explained as a way that business adopted to legitimise its existence to society. Although criticised, this perspective has been extremely influential, drawing much attention to the motivations of individual companies (reputation, marketing, responsibility) and lacking of a sustained attention to CSA regulation *per se*. However, as it has been already claimed elsewhere, this reliance on legitimacy can be "positively misleading" since this theory is "underdeveloped" and "using it to make specific predictions is difficult" (see Owen 2008; Mobus 2005). Owen maintains that legitimacy provides desk-based researchers with a "plausible explanation" without any real effort to determine whether a reporting practice "may or may not promote transparency and accountability towards non-capital provider stakeholder groups." (2008: 248) In effect, a major problem with this approach is that already 'knowing' that companies issue social and environmental reports in order to generate legitimacy, there is no reason for further look at what explains the emergence of this practice.

The progressive development of a multi-level regulatory regime for CSA (see Chapter 3) requires further theoretical and empirical analyses aimed at strengthening this perspective in conjunction with broader theoretical approaches. Therefore, in order to explain the current shift from voluntary disclosure towards a 'smart mix' of voluntary and mandatory requirements, this study should move beyond legitimacy theory as such or, better, integrate it within a more comprehensive explanatory framework. As a preliminary step towards a better understanding of what is actually driving current changes in CSA regulation, I shall first consider this regulation in relation with broader explanations of changes in corporate governance regulation (CGR). In fact, as I have argued in section 1.2, a difference between this study and most of the existing literature is that it firmly anchors non-financial disclosure within the long-lasting debate on mechanisms of corporate governance and control. This approach is in line with a recent strand of critical studies of corporate governance, sustainability and corporate social responsibility regulation (see Sjåfjell

2009; Kruse and Lundbergh 2010; Vitols and Kluge 2011; Williams and Zumbansen 2011; Mares 2012; Kinderman 2012). This way of situating the study sets the key question of why the treatment of the two branches of accounting laws has been so different as the central puzzle of this research area. In particular, there is a bourgeoning but still rather fragmented literature on business regulation that frequently contains references to the transnational emergence of CSA regulation[41]. Exploring these broader strands of literature about changes in global business regulation, we can broadly identify four 'explanatory approaches', based on law-and-economics; political; neo-institutionalist; and regulatory studies. While I will argue that none of them provide an exhaustive explanation, they do illuminate different aspects of the current emergence of CSA regulation and, in different ways, provide arguments that already overcome rather intuitive explanations based on 'legitimacy theory'.

The majority of the contributions still comes from market-oriented **managerial and law-and-economics studies**. They are often rather under-theorised (Unerman *et al.* 2007) and have been criticized for being subsumed under the dominant business discourse (see Gray *et al.* 2009). Overall, they offer a rather 'modest' account of corporate responsibilities as aimed to voluntarily internalise negative environmental and social corporate externalities using market-oriented mechanisms (see Parkinson 2006). Furthermore, they stress the autonomous role of law and regulation, isolated from social and political aspects [42]. This approach narrowly defines the firm as a

[41] For instance, looking at recent contributions, the work of authors such as Ruth Aguilera and Cynthia Williams has been seminal in attempting to create an actor-centred neo-institutionalist approach, which integrate social and environmental aspects into varieties of corporate governance regulation (see Aguilera and Jackson 2003; Aguilera et al. 2006; Williams and Aguilera 2008; Rupp, Williams and Aguilera 2011). From a legal and socio-legal point of view, many scholars have contributed to approach again Law and 'voluntary' CSR. In particular, Doreen McBarnet (2007) and Elisa Morgera (2009) have attracted the attention to new forms of legal and extra-legal corporate accountability, including CSA. Charlotte Villier (2006 and 2008) and Beate Sjåfjell (2009) have contributed to create a link between company law and sustainability; while Peer Zumbansen, Simon Deakin and Larry Catà Backer have developed the idea of analysing corporate governance and CSR within a transnational regulatory space. Legal scholars such as Paddy Ireland (2001; Ireland and Pillay 2010) and Sol Picciotto (2012) have consistently attempted to countervail the 'standard' approach to company law and corporate governance regulation. A growing strand of environmental studies have been mapping the multi-level governance of corporate sustainability (Newell and Paterson 2010; Biermann and Pattberg 2008) There have been also fundamental contributions to re-radicalise and re-politicise corporate governance and business regulation from several critical political scholars (Overbeek et al. 2007; Horn 2011; Graz and Nolke 2008). Following in their footsteps, this study attempts to explain the emergence of CSA regulation as part of broader changes in business and global regulation. In order to better relation between legitimacy theory and these strands of literature, we can broadly identify three main explanatory approaches.

[42] Drawing on a series of comparative studies in law and finance realised by Rafael La Porta, Florencio Lopez-de-Silanes, Andrej Shleifer and Robert Vishny (often referred to as 'LLSV'), law-and-economics maintains that efficient governance systems are the product of properly developed financial and legal systems aimed to minimize agency costs (see La Porta *et al.* 1999 and Shleifer and Vishny 1997). Their theory of CGR is based on the idea that law matters: Common Law countries, such as the US, developed stronger mechanisms of shareholders' protection than Civil Law ones, such as Germany. Their main

'nexus of contracts' between principals (shareholders) and agents (managers) and corporate governance (CG) as "the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment." (Schleifer and Vishny, 1996:2)

It is accurate to stress that, drawing on Milton Friedman's firm position against CSR (1970), this 'standard' approach to corporate governance has overwhelmingly ignored issues of corporate social accountability and disclosure of non-financial information and, in any cases, isolated them from key questions of corporate governance and shareholder control. However, during the last decade they have started paying growing attention to non-finacial reporting, explaining/justifying the impressive rise of non-financial disclosure by claiming that there is an economic rationale for this kind of disclosure. Therefore, most of these managerial studies have attempted to demonstrate that sustainability reporting actually enhances economic efficiency and positively affect the company's bottom line (the so-called business case for CSR). Namely, they focus on the possible financial benefits that a company can have engaging in CSR practices, including reporting, in terms of better reputation; stronger brand value; higher customers' loyalty and employees' motivation. Management guru Michel Porter, from Harvard Business School, arrived to argue that incorporating societal issues into managerial strategies and operations is the next major transformation of capitalism in the post financial crisis era and identified measurement as a key driver for creating what he called 'shared value', rather than just traditional financial value (Porter and Kramer 2011). In this sense, the managerial approach shows a clear link with the 'legitimacy theory' explanation of CSA emergence.

A recent and more sophisticated argument within managerial studies is considering whether companies that take into account ESG aspects are better off in the long-term because they tend to be better managed[43] (e.g. Ioannou and Serafeim 2011; Bouer and Hann 2010; DB Research 2012). In effect, many 'law-and-finance' studies have provided some evidence that company's revenues are

conclusion has been that, in a globalised financial economy, Common Law countries are better equipped to attract investments and efficiently minimise agency costs (see in part. Jensen 2001). During the 1990s their approach became so influential in areas such as company law, contract law and property law that American legal scholars Henry Hansmann and Reinier Kraakman (Yale University and Harvard University) famously announced 'the end of history for company law', foreseeing the inevitable and desirable global convergence towards Anglo-Saxon capitalism (2001).

[43] In particular Ioannou and Serafeim (2011) examine the effect of mandatory sustainability reporting on several measures of socially responsible management practices. Using data for 58 countries, we show that after the adoption of mandatory sustainability reporting laws and regulations, the social responsibility of business leaders increases. We also document that both sustainable development and employee training become a higher priority for companies, and that corporate governance improves. Furthermore, we find that companies implement more ethical practices, reduce bribery and corruption, and that managerial credibility increases. These effects are larger for countries with stronger law enforcement and more widespread assurance of sustainability reports.

closely related to non-financial aspects related with ESG data[44]. Here the case for including non-financials in accounting standards is supported by the notion that we are witnessing an historical shift from an industrial age towards a post-industrial, knowledge-based economy. Therefore, they argue that also accounting standards need to keep pace with this transformation and include all (financial and non-financial) information that investors need to assess risks and opportunities of the company. As already mentioned in the introduction, several studies pointed out that the percentage of market value represented by physical and financial assets versus intangible factors is steadily decreasing (see Accenture 2004; Ocean Tomo 2010). This suggests that as business has become more complex accounting standards merely focusing on financial performance and ignoring factors related to employment relations; reputation; customers' loyalty; risk management; supply chains management cannot really explain value-creation processes. Since managers do not disclose such information on a voluntary basis, regulators' interventions is invoked to make this practice mandatory[45]. Nonetheless, it is crucial to stress that these findings would support only the case for introducing mandatory disclosure of *material* – financially relevant – ESG information. In fact, this approach do not question the assumption that managers should act only – on primarily – on the best interest of their shareholders. They rather stress that companies that effectively manage their non-financial risks and opportunities – including some social and environmental aspects – in the long term outperform their competitors.

Overall, managerial and law-and-economics approaches to CSR have been rather useful to highlight the existence of some strong economic arguments for the introduction of CSA standards, implicitly proving Milton Friedman (1970) and his followers (Jensen 2001) wrong in their claim that CSR would create markets' inefficiencies. Even after the global financial crisis, this market-oriented approach is still very popular among regulators and policy-makers, possibly because it proposes only marginal 'adjustments' to the existing economic paradigm (focusing on 'green' growth and 'shared' prosperity).[46] However, there are several problems related with this

[44] There is a strand of academic researches that seems to indicate a positive correlation between better extra-financial and financial performance. Bouer and Hann (2010), for instance, looked at 582 US companies over a period of 10 years. Over that time the companies with good environmental records were deemed more 'creditworthy', a contrast to companies with questionable environmental practices, who paid higher costs for financing. Deutsche Bank Research (2012) reviewed over 100 papers on this issued reaching the conclusion that "Environmental, Social and Governance" (ESG) factors are correlated with superior risk-adjusted returns at a securities level. They found that most studies are showing correlation between financial performance of companies and what it perceives as advantageous ESG strategies, at least over the medium (3-5 years) to long term (5-10 years).

[45] See for example, Financial Services Council and The Australian Council of Superannuation Investors (2011); Haigh and Shapiro (2011)

[46] This rationale has been adopted in many recent publications from a number of public national and international agencies, such as the UN PRI and the UNEP Finance Initiative or private bodies, such as EFFAS, the ICGN and IIRC to justify the introduction of mandatory CSA. See UNEP FI and UN PRI

explanatory framework. In particular, studies in economic sociology, pointed out that this approach is 'under-socialised' and it naturalises markets regimes that are actually socially and historically contingent (see Granovetter 1985; Aguilera and Jackson 2003; Emirbayer and Goodwin 1994; Fligstein 2001; Rajan and Zingales 2003). Furthermore, political scientists have convincingly argued that their approach tend to take regulation 'for granted' as an independent variable, an 'apolitical realm' that, as such, does not need any further explanation (Blair and Roe 1999; Overbeek et al. 2007). More specifically, it has been rightly pointed out that, in managerial studies, issues of corporate social accountability appear conceptually isolated from fundamental questions of corporate governance and control (Ireland 2000; Ireland and Pillay 2010; Soederberg 2010).

Many alternative corporate governance accounts, touching upon CSA regulation, have been developed to challenge this mainstream approach. In heavily stylised terms, there are three strands of explanatory arguments that stress respectively the role of politics; institutions and regulation.

The second approach stresses the primacy of politics and tends to explain changes in sustainability reporting as the result of the struggles amongst opposing social and political constituencies organised in **interest groups and power-relations**.

This heterogeneous body of literature tremendously contributed to my own understanding of power relations and of CSA as a 'field of struggles'. Within this perspective, the sharp rise in the number of sustainability reports has been generally explained as a strategy employed by and for proponents of 'neo-liberalism' in response to repeated crises of legitimation and market pressures (see Alice Mah 2004; Bebbington 2008). The contemporary spread of CSR policies, including CSA, is seen as an attempt to incorporate and depoliticise more radical demands for changes in the governance and regulation of large corporations, legitimising and hence, at the same time, reinforcing the *status quo* (Levy and Egan 2003; Shamir 2005; Levy and Kaplan 2008; Hanlon 2011) In neo-Gramscian terms, the CSR policy debate constitutes a moment of *trasformismo* (Gramsci 1971), in which contestation and opposition have been incorporated, and effectively depoliticised, through broad processes of stakeholder dialogue and the adoption of self-regulatory measures.

This strand of studies has the merit of re-radicalising and politicising CSR. It has questioned the current emergence of largely 'voluntary' and fragmented frameworks for corporate sustainability disclosure as juxtaposed to binding minority shareholders protection and international

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(2011): *Universal Ownership. Why environmental externalities matter to institutional investors*. "Large institutional investors are, in effect "Universal Owners", as they often have highly-diversified and long-term portfolios that are representative of global capital markets. […] Long-term economic wellbeing and the interests of beneficiaries are at stake. Institutional investors can, and should, act collectively to reduce financial risk from environmental impacts." (UNEP FI and UN PRI 2011: 4)

investment agreements. It tends to raise the attention to the fact that the emerging idea of 'sustainability' reporting is not only contested and ambiguous but also a 'captured' one. They argue that, despite the name, CSR reporting has little or even nothing to do with sustainability (see also Gray 2010a). Therefore, the alternative that is often proposed consists in imposing harder rules on TNCs, including detailed, mandatory and verified disclosure of their policies and information regarding their employees, human rights and climate policies and performances. Although ground-breaking and thought-provocative, this explanation still presents several limitations. First of all, likewise managerial and law-and-economics studies, it tends to take regulation for granted: law and regulation is seen as a dependent variable, as the mere result of politics and dominant interests. Secondly, while they rightly points to the flaws of the 'neoliberal' regime of financial de-regulation, it has been convincingly pointed out that they might to ask from law more than the law can actually deliver (McBarnet 2007)[47]. Lastly, one of the crucial limitations of this approach consists in the fact that many critical political studies rely on a 'materialist' or 'economicist' perspective that make them inappropriate for this study. As Peter Gourevitch (2007) admitted, 'politics matter' explanations of changes in CGR share with managerial and law-and-economics accounts the idea that groups of actors are organised in constituencies based on common interests. They deem that financial incentives and enforceable legal constrains are what holds most cooperative relations together. However, as Margaret Blair (2003: 14) contended: "Most business relationships involve, and indeed require, a substantial amount of voluntary cooperation and trust among participants in the enterprise."

A third approach, alternative to both the dominant managerial/law-and-economics and the interest groups explanations, stresses the role of **institutions, industrial relations and social norms**[48].

This broad strand of literature tends to see politics as a sub-system of social action within a broader social and institutional setting, stressing the relevance of social norms, values and

[47] As noted by Parkinson, while policy makers normally look at 'external' regulation as the means of controlling the social and environmental impacts of business, 'internal' corporate governance is important as well for two main reasons (see Parkinson 2006: 2). First, governance arrangements are likely to affect a company propensity to comply with regulation. In order to secure not only companies' *commitment* but even their *conformity* with legal provisions down the lines of command, the internal structures of control, hierarchies and corporate culture need to be taken in account[47]. The second reason concerns the well-known limitations of regulation as a means of prescribing socially desired outcomes, resulting from problems inherent in the use of general rules. In fact, legislators simply cannot keep up with everything corporations do or with the potential consequences of their actions. Simultaneously, corporations are very good in appearing to comply, finding loopholes and other measures to avoid compliance. Furthermore, as we already mentioned, TNCs increasingly operate beyond borders. Therefore, they can decide (or simply threaten) to relocate where the external regulation of their activities appears softer or even nonexistent.

regulatory networks. The key point is that, as compared to the other two accounts, this strand of literature tends to stress the notion that cultural and social processes significantly shape regulatory changes. Whereas political explanations are based on 'social conflicts', here the attention shifts to 'social structures', such as: the growing number of interactions between companies, governmental agencies, international bodies and NGOs or the collaboration and discussion amongst them which led to the creation of voluntary global regulatory initiatives such as the GRI or the Carbon Disclosure Project (see Kolk 2005; Larriaga-Gonzalez 2007: 152)[49]. Once again, legitimacy plays a fundamental role, yet, according to Larriaga-Gonzales, in a "richer" way than in other explanations. The author noted, "Legitimacy in the social and environmental accounting literature assumes a manipulative logic, based on self-interest, which could correspond to coercive structures. [...] Institutional theory, however, also permits different motives to be explored: primarily based on the logics of appropriateness and on the social construction of reality." (2007: 163)

The major contribution of this approach has been to broaden a corporate governance debate that otherwise appears extremely under-socialised and narrowly focused on economic rationality and interests. Furthermore, it has been extremely successful in contesting the inevitable global convergence towards an Anglo-Saxon, Common Law model of corporate regulation[50]. In particular, an influential book, *The Varieties of Capitalism*, edited by Hall and Soskice (2001), represented a turning point in this debate: the most ambitious and significant attempt to date to build in a rigorous way on the loose variety of neo-institutionalist analyses[51]. Drawing on the 'Varieties of Capitalism'

[49] At the origin of this explanation of regulatory changes are the notions of 'organisational fields' and 'mechanisms of institutionalisation' elaborated by authors such as DiMaggio and Powell (1983; 1991) and Scott (1995). An organisational field is formed by those organisations that collectively constitute a recognised area of institutional life (DiMaggio and Powell 1983) "that partake a common meaning system and whose participants interact more frequently and fatefully with one another that with actors outside the field" (Scott 1995: 56). From a regulatory perspective, this approach identifies different mechanisms of institutionalisation (or isomorphism) that Scott defined as regulative; normative and cognitive (1995). In general, this perspective tends to analyse the multi-level emergence of CSA regulation, as a process of institutional change rather than political conflicts. CSA is perceived as a social practice that business organisations undertaken over time within a certain institutional field. According to this perspective, the rise of CSA could be due to normative isophormism (the acquisition of shared social values) or mechanisms of imitation (cognitive structures), regardless of its legal implementation or financial impact.

[50] Authors such as Neil Fligstein (2001) and Rajan and Zingales (2003) convincingly demonstrated that both Common Law and Civil Law countries had been far from monolithic in their approach to corporate and financial regulation throughout the XIX and XX centuries.

[51] *The Varieties of Capitalism* soon became "the emblematic citation for all studies of diversity in capitalist economies" (Crouch, 2005: 29). Regarding governance systems, it organizes advanced industrial countries into two clusters of coherent types: liberal market economies (LMEs) and coordinated market economies (CMEs). The two ideal-types are conceived as the extremes of a continuous based on the relative extent of market coordination through investment in transferable assets (LMEs) versus strategic coordination through investments in specific assets (CMEs). LMEs, i.e. UK and US, is stylised as dispersed ownership focused on short term returns, strong shareholder legal rights, financial institutions based on equity markets, active market for corporate control, general education and flexible labour markets, strong inter-firms competition.

(VoC) approach, many authors started to see specific cultural and social aspects as related with the existence of national models of corporate governance, opening the door to a series of studies of varieties of CSR regimes[52]. Possibly, the most influential explanatory framework of this kind has been elaborated by Crane, Matten and Moon (2008). They compared and categorised the differences in companies' approach to CSR across the Atlantic, concluding that the US approach to CSR can be characterised as 'explicit' and the European one as 'implicit'[53] However, despite a growing consensus about the relevance of institutions and contextual aspects in business, there is no agreement on the number of distinct models of capitalism, neither on the dimensions and determinants used to characterize them. In fact, the key problem with both VoC and other institutionalist explanations, in general, is their incapacity of explaining change. It is possible to affirm that their greater merit has been also their crucial limitation: explanations are over-socialised and over-stylised (see Aguilera and Jackson 2003). Colin Crouch (himself considered part of this 'broad church' of neo-institutionalist scholars) noted about the VoC approach: "If our theories of action and structure are heavily deterministic, social science will always be taken by surprise by change and will have to regard it as something exogenous and mysterious." (2005: 16)

Lastly, a fourth major strand of literature, which differs from the ones I have mentioned above, has been developed in the burgeoning area of 'regulatory' studies and it tends to focus on **regulation at different levels of governance**.

This broad body of knowledge is relevant in the context of this study because it assigns a primary importance to transparency and 'governance-by-disclosure' as central feature of a new architecture of global governance (see e.g. Black 2008; Baldwin and Cave 2011). The main claim of this rapidly unfolding research-area is that private mechanisms of governance are increasingly

They are identified with neo-liberal policies, radical innovation and new sectors of the economy. CMEs, i.e. Germany and Continental Europe, rely on long-term industrial finance, cooperative industrial relations, rigid labour market and high levels of vocational training, cooperation in technology and standard setting across companies. They are linked to social democracy, incremental innovation and declining economic sectors. A key element is that there are strong complementarities within the two types, which determine their effective functioning. For example, LMEs short-term finance is associated with a strong external labour market and requires quick entry and exit from business activities.

[52] See, for instance, Aguilera *et al*. (2007); Gjolberg (2010) and Brammer (2012).

[53] "By *explicit* CSR we refer to corporate policies which assume and articulate responsibility for some societal interests. They normally consist of voluntary programs and strategies by corporations which combine social and business value and address issues perceived as being part of their social responsibility by the company. […] By *implicit CSR* we refer to the corporations' role within the wider *formal and informal institutions* for society's interests and concerns. Implicit CSR normally consists of values, norms and rules which result in (mandatory and customary) requirements for corporations to address stakeholder issues and which define proper obligations of corporate actors in collective rather than individual terms. Whilst representative business associations would often be directly involved in the definition and legitimization of these requirements, individual corporations would not normally articulate their own versions of such responsibilities." Matter and Moon (2008: 7-8).

required to take responsibilities for issues that were traditionally left to the public sphere, something that classic law-and-economics would deeply disagree upon. However, they also differ from the 'politics matter' approach as they tend to claim that the 'neo-liberal' turn of the last thirty years does not imply market deregulation and a dismantle of the state. On the contrary, they maintain that the state has largely kept its regulatory role and key functions of control but within a process of hybridisation and re-regulation of the global sphere. This conclusion has been the outcome of a long-standing debate on post-national law.

Possibly the most ambitious attempt to integrate this fragmented body of studies has recently emerged under the label of 'Regulatory Capitalism' (Levy-Faur 2005; Levy-Faur and Jordana 2005; Braithwaite 2008). Their central claim is that: "While at the ideological level neo-liberalism promotes deregulation, at the practical level it promotes, or at least is accompanied by, regulation. The results are often contradictory and unintended, and the new global order may well be most aptly characterized as 'Regulatory Capitalism'." (Levi-Faur 2005: 14) [54] According to the authors, the global diffusion of 'regulatory capitalism' is characterised above all by the emergence of a new division of labour between states and business actors. As a consequence, areas such as corporate governance, NGOs governance and CSR, which have been traditionally overlooked by political sciences, become essential in the study of public governance. Drawing on the 1990s debates on making 'better', 'reflexive', and 'smarter' regulation, the Regulatory Capitalism scholarship stresses the role of transparency as the central legal principles for steering, rather than obliging, corporations to behave in a more environmentally and socially responsible manner. It tends to

[54] According to Lazer (2005) Regulatory Capitalism can be theorised as a networked order where diffusion mechanisms account for spread in the scope and depth of regulation. For instance, legal inventions, such as the one of securities in the XVII Century; limited liabilities in Germany and antitrust regulation in the US had a fundamental role in shaping the emergence of contemporary mega-corporations (Braithwaite and Drahos 2000; Braithwaite 2008). According to Braithwaite's account, throughout the 20th Century, the risk connected with ever larger chemical and pharmaceutical industries; financial scandals and bubbles that shaken investors' trust; incidents that killed hundreds of people; etc., created more public demand for better business regulation. State regulation and private regulation on the other hand, created even larger pharmaceutical, chemical, financial corporations. John Braithwaite showed that at the basis of the shift from welfare capitalism to regulatory capitalism there is a long and stratified historical process, at every stage of this which both markets and the state became stronger, enlarged in scope and transition density (Braithwaite and Drahos 2000; Braithwaite 2008). The author argues that this process of 'corporatisation' of capitalism made easier for the national states to collect taxes and, through those revenues, made possible to fund the welfare state and the provision of a number of public services. In a reciprocal causation, state regulation has created large corporations, but large corporations also enabled the rise of regulatory states. For instance, legal inventions, such as the security in the XVII Century, limited liabilities in Germany and antitrust regulation in the US had a fundamental role in shaping the emergence of contemporary mega-corporations (Braithwaite and Drahos 2000; Braithwaite 2008). According to Braithwaite's account, throughout the 20th Century, the risk connected with ever larger chemical and pharmaceutical industries; financial scandals and bubbles that shaken investors' trust; incidents that killed hundreds of people; etc., created more public demand for better business regulation. State regulation and private regulation on the other hand, created even larger pharmaceutical, chemical, financial corporations.

explain the emergence of mandatory CSA not as an example of business 'self-regulation' but rather as one of the key features of this new regime of global and international regulation, based on a meta-regulatory approach. According to this perspective, the latter can be considered as a fundamental regulatory tool of a broader responsive strategy to turn 'markets in vice into markets in virtue'[55] (Braithwaite 2008; Parker 2002).

This growing body of literature has represented a useful development in attracting more attention to various elements of post-national corporate regulatory law. However, despite some encouraging developments (see for instance Dingwerth and Pattberg 2006), it is still under-theorised and fragmented. In particular it struggles to convincingly overcome a number of pre-defined dichotomies between 'private' and 'public'; 'agency' and 'structure'; 'national' and 'international', etc. Furthermore, with the weakening of dominant law-and-economics ideas, this approach based on a 'smart mix' of private and public, voluntary and mandatory rules has become increasingly mainstream in many regulatory areas. It is likely to become conventional wisdom, the 'new standard' in business regulation. In fact, many of the authors tend to perceive their position as government consultants, providing policy-makers with the best solutions and the latest 'regulatory tool'[56]. However, this proximity to political and economic power risks to create reluctance in challenging powerful positions and result in a lack of critical analyses and the broad acceptance the 'status quo'. As Zumbansen (2009) pointed out, there has been "a strange turn and usurpation" of originally progressive ideas of 'post-interventionist', 'post-regulatory' law, as expressed by concepts such as legal pluralism (de Sousa Santos 2002), 'responsive regulation' (Ayres and Braithwaite 1992) and 'reflexive' law (Teubner 1983), which first emerged in the 1970s and 1980s, "into a market-oriented functionalist agenda."

2.3 Linking 'conflicts' and 'structure'. Towards a reflexive socio-legal approach

The framework deployed by this research to explain the cyclical emergence of CSA regulation is drawing on a Bourdieusian reflexive socio-legal approach. More specifically, it has benefited from Prof. Mikael Rask Madsen's outline of a *reflexive sociology of the*

[55] Braithwaite noted that "if vice is perceived by large sections of the community, advocacy of virtue will be a reaction that in a market society will run to a market in virtue. […] Self-regulation can work well during the period of upswing into virtue; its failure during the descend into vice becomes an opportunity for responsive escalation to tough enforcement that sets new benchmarks for the next upswing. When this work, we get a higher and smarter ceiling through which the lead producers ascend, setting new expectations for the ethical laggards." (Braithwaite 2008: 61)

[56] See for example the elaboration of concepts such as 'risk-based regulation'; 'better regulation'; 'cost-benefit analysis' and 'impact assessment analysis' (see Baldwin and Cave 2011)

internationalization of law and attempted to further develop it (Bourdieu 1986; Madsen and Dezalay 2002; Madsen 2006; Madsen 2011). Rather than a Bourdieusian study of CSA regulation, reflexivity has been used in this research as an over-arching strategy in conjunction with studies of Corporate Governance Regulation (CGR); Corporate Sustainability and Corporate Social Responsibility (CSR) (Gourevitch and Shinn 2005; Crouch 2006, 2009 and 2011; Graz 2006; Graz and Nolke 2008; Streeck 2011; Paterson 2009; Koch 2011)[57].

The aim of this approach is to trespass the lines that characterise the current literature on CSA regulation. In fact, as I showed in the literature review, one of the consequences of the growing complexity and expansion of non-financials is that the literature struggles to deal with such an interdisciplinary and multi-layered subject. First of all, there is the basic difficulty of dealing with a newly emerging area of regulation, which can be situated at the crossroads of several disciplines, including: management; accounting; environmental studies; human rights; labour law; climate change; etc. Furthermore, there is the complexity of studying a 'fluid' transnational regulation, which is transforming *ad infinitum* making the boundaries of such subject institutionally, territorially and content-wise dynamic. Any comprehensive exploration of CSA has to be adjusted to the indeterminacy of the research object, producing cross-pollination between the many components of CSA without being hampered by pre-defined distinctions between 'social' and 'economic'; 'private' and 'public'; 'law' and 'politics'; 'national' and 'international'. A Bourdieusian reflexive 'polycentric approach' contains untapped intellectual resources to explore undergoing regulatory transformations not excluding any of the co-producers of these changes. It contributes, above all, to overcome the main challenge that characterises the current literature on the regulation of sustainability reporting, namely, *the definition of the object of study*.

Although Bourdieu never wrote about accounting, his sociological conceptualisations have been increasingly used in some of the research areas making up the current debate about CSA, without ever being applied directly to the issue of non-financial or sustainability reporting. Critical accountants appear increasingly interested in Bourdieu's conceptualisations (see Neu and Ocampo 2007; Everett 2004; Free and Macintosh 2009). Though, "the majority of the Bourdieusian studies do not mobilise his core concepts of field, capital and habitus holistically" (Malsh et al. 2011: 220). Interestingly, a recent review of Bourdieu's 'translation' into the accounting literature reveals that none of the articles reviewed concern social and environmental accounting and CSR matters (Malsh et al. 2011: 221). The methodology developed by Bourdieu is exercising a similarly growing allure on the study of international relations (as recently demonstrated Rebecca Adler-Nissen's *Bourdieu*

[57] This is consistent with Bourdieu's own idea that his contribution should not been perceived as a 'grand sociological theory' but adapted, modified and practically employed for empirical sociological enquires.

in International Relations (2012) but see also Katzenstein 1996; Buger and Villumsen 2007; Williams 2007; Merand and Pouliot 2008; Leander 2011) and European studies (Saurugger 2009; Georgakakis 2010; Kauppi 2012). Bourdieu's research framework has also attracted a remarkable attention in the area of organisational and managerial studies ever since the 1980s. Though, the latter has been 'mediated' by the immediate success and ubiquity of the idea of 'field', conceptualised as 'organisational field' by US neo-institutionalist scholars (see DiMaggio and Powell 1991: 64). Other central concepts, like 'habitus', have been less frequently employed. Therefore, it has been noted that "despite some promising steps in the right direction, organizational analysis has yet to exploit fully the theoretical and empirical possibilities" of a Bourdieu-based approach (see Emirbayer and Johnson 2007).

The opus of Bourdieu also inspired a further strand of studies that recently emerged in the context of international law, economics and politics (Salento 2003 and 2004; Bigo 2006; Dezalay and Madsen 2006; Madsen 2011; Dezalay and Madsen 2012). Drawing on this promising 'Law in Society' approach, I contend that the most significant contribution that a Bourdieusian approach can offer to this socio-legal study of CSA regulation does not consist in the selective translation of concepts such as field, habitus and capital but in their *use as a holistic set of 'thinking tools'* (tools which are already widely used in Sociology). However, their explanatory potential can only reveal itself understanding such tools in conjunction with Bourdieu's underlying epistemological assumption: the notion – and the practice – of *a reflexive sociology*. This 'predisposition' is missing in most recent applications of Bourdieu's concepts to the areas closely related to CSA, running the risk of producing inflexible and structuralist interpretations of institutional change and reproduction.

Therefore, the rest of this section will begin by introducing these epistemological assumptions together with some key analytical concepts (e.g. field, illusio, habitus, nomos, etc.) that will be used – in conjunction with the work of other scholars – to explain the cyclical multi-levels emergence of CSA regulation in Europe.

Epistemological assumptions: reflexivity and practice

First of all, Bourdieu's reflexivity differs from the ones developed by other contemporary scholars like Ulrich Beck and Antony Giddens (Beck, Guiddens and Lash 1994). The latter is an attempt to describe the condition of individuals in contemporary society, while the former is a preliminary condition for the production of scientific sociological knowledge. It also takes a critical stance against Luhmann's thinking in terms of system theory, which has originated ideas of 'reflexive law' that are increasingly influential in the current debate about transnational corporate

law and CSR[58]. For Bourdieu, a reflexive approach "signifies a scientific process of uncovering the agents' orientations, and the predispositions shaping their habits and practices." (Madsen and Dezalay 2002: 190) The key aim of this 'reflexive' strategy is to construct a scientifically more autonomous object of research which is not based on intuitive readings or readily available classifications. The origins of this approach, which Bourdieu has progressively elaborated through his life, lays in his dissatisfaction with his initial scientific position, based on the epistemological notion that all scientific knowledge is constructed. Already at the end of the 1960s, he started to look for a way to 'objectivise the research object', meaning to study a certain social practice in a way that incorporates objective structures and subjective phenomena in a dialectical relationship. This 'reflexive' understanding of sociological knowledge has great epistemological implications. According to Bourdieu, the social universe exists both as 'social structures' and 'mental structures' (Bourdieu 1984; 1996). The former are systems of distribution of resources (various forms of capitals e.g. material; symbolic; cultural; economic); while the latter are systems through which the actors classify practical activities into subjective categories e.g. feelings, thoughts, taste, judgements and decisions. According to the author, the social universe exists in this dual space. It is *in between* these two dimensions – objective systems of positions and subjective systems of dispositions – that social practices are to be found and scientifically studied.

Accordingly, a reflexive approach calls for a double reading that allows the researcher to complete a systematic empirical analysis of the social and historical conditions governing the possibility for specific practices (such as the social practice of company sustainability reporting) to come about. In more practical terms, Bourdieu suggests researchers to operate what he calls a 'double rupture'. A search for objectivisation, rather than objectivity, which entails: on the one hand, a critical examination of the dominant academic pre-constructions of the specific subject of study (a critical analysis of the way a certain subject area has been constructed); on the other hand, a break also with the researcher's own assumptions (a critical examination of his application of certain distinctions and ideas often due to his own background and academic affinity). This process of double examination continues through the whole research and should lead to become self-critically aware of often well hidden interests and pre-understanding, including one's own.

The need for a double rupture led to a more specific methodological tool that characterises reflexive sociology, namely the call for a 'double historicisation'. This is linked with the constant trans-historical concern of Bourdieu. He questions the parallel historical emergence of all thoughts

[58] A Luhmanian approach to changes in company law and corporate governance regulation, inspired by the scholarship of socio-legal scholar Günter Teubner, can be found in the excellent works of authors such as Peer Zumbansen on transnational corporate law; Larry Catà Backer on business and human rights; Andrew Johnson on EU corporate governance.

and practices building the 'tradition' in a certain subject area of research. The aim is not limited to relativise such tradition, putting it into a historical context; it also implies "giving back their necessity by tearing them out of the indeterminacy which stems from a false externalisation and relating them back to the social conditions of their genesis." (Bourdieu 1996: 298) This very tiring yet rewarding process of carefully questioning both the research object and the academic construction of the object has never been more urgent. As Colin Crouch maintains, "In our normatively fragmented societies values can only emerge from dispute and struggle." (2011: 180) Although we live in times of significant power struggles and radical transformations, it is patent that we cannot count on conceptual frameworks that are able to adequately capture and frame them. However, there is little public debate about current disputes and struggles. In the fields of economics, accounting and law, closely related to questions of CSA regulation, the conventional wisdom is still deeply rooted in the post-war conventional wisdom: this quarter of century of uninterrupted growth from the 1950s to the mid-1970s "still dominates our ideas and expectations of what modern capitalism is, or could and should be. This in spite of the fact that, in the light of the turbulence that followed, [it] should be recognised as truly exceptional." (Streeck 2011: 5)

Outlining a theory of social practices based on his empirical observations, Bourdieu had the merit of providing researchers with an analytical apparatus constructed around a series of inter-related and fairly open-ended concepts, enabling a complex assessment of the different dimensions of modern societies (Madsen and Dezalay 2002: 190). This construction can be roughly categorised as belonging to the 'differentiation theory', developed in particular by central figures of the sociological tradition like Emile Durkheim and Talcott Parsons. The underlying idea is that social changes from 'traditional' to 'modern' society constitute a process of progressive differentiation from 'less' to 'more' structured societies, which Bourdieu identifies with the emergence of various semi-autonomous ***fields*** of social practice[59] (e.g. the legal field; the economic field; the journalistic field; etc.). However, the author goes beyond this classic functionalist tradition. He characterises 'fields' not as contained or closed entities, rather as fairly open relational spaces of more specific and specialised areas of practices. Thus, fields are essentially networks of objective relations between 'players', which exist apart from the consciousness of the individuals but, at the same time, they only exist because of the players' genuine belief in the necessity of the field and in their interest in participating in this 'playing field'. This belief of the actors implies what Bourdieu calls

[59] Bourdieu defines a field as: "A network, or a configuration, of objective relations between positions. These positions are objectively defined, in their existence and in the determinations they impose upon their occupants, agents or institutions, by their present and potential situation (situs) in the structure of the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field, as well as by their objective relation to other positions (domination, subordination, homology, etc)." (Bourdieu and Wacquant 1992: 97)

illusio, an immediate adherence to the structures of the field which leads individuals to stop questioning them and their habitual position in the game (habitus).

This peculiar mix of dynamism and structuralism, what Bourdieu calls *structural constructivism*, is what makes his conceptualisations so attractive and analytically useful in a world marked by dramatic social changes and transformations. His approach is extremely flexible and can be adapted to explain "the most profoundly buried structures constituting the legal universe and the 'mechanisms' which tend to ensure its reproduction and transformation (Madsen 2006: 114; Bourdieu 1996: 7). This is a crucial difference not only with classical functionalist theories, but also with contemporary 'system theory' *à la* Luhmann, which are based on much less dynamic and inclusive structures of systems and sub-systems. Fields are instead transitory configurations that Bourdieu uses as analytical tools and that could be compared to magnets. Terdiman (1987: 806) notes, "Like a magnet, a social field exerts a force upon all those who come within its range. But those who experience these 'pulls' are generally not aware of their source. As is true with magnetism, the power of a social field is inherently mysterious. Bourdieu's analysis seeks to explain this invisible but forceful influence of the field upon patterns of behaviour [...]."

Along with the notion of 'field' and 'illusio', reflexive sociology is equipped with a number of other 'thinking tools', including in particular the concepts of 'habitus';' capital'; 'symbolic power'; 'nomos' and 'symbolic violence' that I will briefly introduce below.

Key elements of a reflexive sociology

If the rise of a field implies a degree of structural consistency and autonomy – meaning a set of objective and symbolic relations between agents and institutions around increasingly specific issues – how and why social structures change or reproduce themselves? This question has been the *fil rouge* of the whole scientific career of Pierre Bourdieu. Building on the scholarship of other major authors, such as Veblen, Shumpeter and above all Weber, he constantly questioned why mechanisms of social reproduction are so powerful? Why an individual accepts, seemingly freely, to obey to another individual, without the necessarily use of physic violence? What are the social functions that cultural practices are performing?

In order to answer these questions, Bourdieu undertook a series of empirical studies through which he elaborated a number of analytical tools that characterise his reflexive sociological approach. It is possible to start from the notion of ***habitus***, which he greatly developed from Marcel Mauss. This can be broadly defined as the internalised scheme guiding the agents' behaviour, a 'practical sense' which is constructed by the actor's particular and individual trajectory (Bourdieu

1977). In very simple terms, each semi-autonomous field of modern life – from science to education; from arts to the economy – engenders a specific historically stratified complex of social relations in which the actors conduct their everyday practice. Because of this practice they will develop a certain disposition for social action shaped by their position in this field (e.g. dominant/dominated or orthodox/heterodox). If this disposition is considered together with other dispositions the individual has developed through his life-long experience of various social fields it becomes a more settled understanding of the social order in general; a 'practical reason'; a way of classify the world, which becomes natural up to the point that it is taken completely for granted. It becomes a body movement and a tone of voice. It is what Bourdieu calls a 'sense of the game' that the individual is playing in the social space. Therefore, he soon stops questioning this set of dispositions and positions that characterise his experience of the different fields of practice. By doing so he will tend to acknowledge and reproduce the social forms and the common opinions that characterise the various fields as 'self-evident', even excluding the very possibility of existence of other means of material and symbolic production and alternative power relations. Bourdieu has revealed – through statistical analyses and extensive researches on several fields – the ways in which the internalisation of subjective structures take place. Crucially he has demonstrated their affinity with the reproduction of the objective structures of the social world, for instance in his famous study of the cultural heritage in France, *Distinction: A Social Critique of the Judgement of Taste* (1984).

However, it is critical to wipe out a paradoxical and superficial interpretation of Bourdieu's oeuvre as dominated by the fatality of social reproduction. Instead, I would claim that his greatest contribution is in a constant tension towards a better understanding of the factors of change and transformation (Boyer 2003).

First of all, the habitus is not merely the product of the social world. It also produces incessantly the social world in a dialectical process. In sum, it is both a *structured structure* and a *structuring structure*. As Madsen and Dezalay note, "The notion of habitus is a significant step away from individualism towards a greater understanding of how the human mind is socially structured." (2002: 193) Furthermore, fields are not working as coherent systems systematically pursuing a precise social objective. Despite the level of relative autonomy and structural consistency of each field, they change both because of external and internal opening that question and re-define social hierarchies and power. Competition within the field will always result in transformations of the field itself and changes in bordering fields tend to have a continuous potential influence on the field. From an empirical point of view, it is critical to discover "which forces define the various fields, those trying to redefine them, and thereby also the boundaries of the

field." (Madsen and Dezalay 2002: 193) Fields are open fluid spaces of regulated struggles, of competition, of only partial yet permanent revolution, centred on the valuation of the capitals possessed by the actors.

Notably, this struggle is, above all, about what Bourdieu calls the ***nomos*** of the field. This Greek word means 'operate a division' and in Bourdieu's oeuvre it signifies the 'law' of the field, the principle of vision and of division which is fitting a certain field of practice and that is always potentially at stake but rarely actually challenged. This is a crucial di-vision that marks both the internal logic of the field (the relative internal coherence) and its nature as a semi-auto*nomous* space of practice[60]. A di-vision that emerges when "the 'sense of the game' is structured over time reflecting different social configurations and, thereby, historically different sets of "rules of the game" or nomos which form a common illusio of the agents of the field." (Madsen 2011: 265) The nomos is usually taken-for-granted and works as a mechanism that enables the translation of the external world into the specific code and issues of the field. On the other hand, the nomos is the result of the particular 'symbolic economy' that the actors have contributed to shape over time in terms of valorisation of a specific capital or a combination of capitals (economic, political, legal, social, etc.). As we shall see, the study maintains that the nomos of the accounting field has been shaped, through different historical stages, valorising material, economic forms of capital over other forms of immaterial capital.

The notion of ***capital***[61], together with the ones of field and habitus is central in Bourdieu's analytical framework. It allows to empirically studying the dynamic relation between fields and *habitus*. It presents some important differences and similarities with its use in Marx[62]. The main difference is that it is not centred on the economic capital like in Marx, but on the idea that capital awards power in a certain field and are hence relative and corresponding to a particular configuration of the field. He pioneered a more complex and extended idea of capital as 'social relation' constituting a certain historical and space determined social configuration. In this sense, the capital is a 'social energy' which does not exists and do not produce effects other than within the field where it is produced and re-produced, because its efficacy and value are attached to the

[60] For instance, the nomos of the field of art is the principle of vision and division of this field, by which it has been established the difference between 'art' and 'non-art'; between 'real artists', worth of been published or publicly exposed, and the others, which see negate access to publications and recognition of their 'art'.

[61] Bourdieu defines capital as awarding power in the field "over the materialized or embodied instruments of production and reproduction whose distribution constitutes the very structure of the field, and over the regularities and the rules which define the ordinary functioning of the field, and thereby over the profits engendered in it." Bourdieu and Wacquant (1992: 101)

[62] On the contrary of what some authors affirm, Bourdieu has never been a Marxist – although he knew very well Marx's work – he has been more influenced by authors like Pascal, Weber, Durkheim and Wittgenstein than Marx (see Champagne and Christin 2004).

laws (*nomos*) specific of a certain field (see Bourdieu 1984: 127). It means that not all the given resources – either embodied (habitus) or objectivised (economic or some cultural forms of capital) – attached to an actor are active everywhere at the same time. It is the field that determines which assets have "currency" as they are pertinent to the existing configuration of the field: for instance, a talented musician does not (necessarily) make a good husband or a capable businessman[63]. Practically, the objective position of an actor in a field is defined by the amount of tangible or intangible assets (capitals) that command access to the specific profits that are at stake in that field. Therefore, the competition within the field is usually on the accumulation of the forms of capital that are relevant for that specific field, more rarely it is about the definition of the field itself (nomos) and therefore of what has currency in that field (capital). The similarity with Marx exists in that Bourdieu intended this new notion of capital as the basis for a new theory of social classes[64], affirming that in our societies classes have not disappeared and that the social position of individuals has to be determined looking not just at the volume of economic capital he disposes but also at other immaterial and intangible assets he can dispose of.

In particular, Bourdieu claimed that three forms of capital can be accumulated in our societies: economic capital; cultural capital and social/symbolic capital. The first has its origin in economic studies, although Bourdieu made a more sociological use of it. The cultural capital was not completely new either – greatly elaborated from managerial notions of 'human capital' elaborated by authors such as Kenneth J. Arrow and, in particular, Garry S. Becker. The latter, known also as ***symbolic power*** and it is possibly the most Bourdieusian of the three. It constitutes another crucial reflexive 'thinking tool' elaborated with the aim of better exploring the subjective – structuring – level of the field in conjunction with the analysis of its structures. Since the individual is socialised and can understand and make sense of the world only through symbolic (mental) structures, the 'symbolic power' should be seen as a very special form of capital[65]. Conceptually,

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[63] For example, the qualities that are mostly valuable in the accounting field (knowledge of the accounting standards; level of education; an eye for details; consistency and time management) are potentially useless in the religious field or in the field of football. It is equally true that within the same field the capitals that are important in a certain geographical or historical context may be very different (e.g. the legal field in XII Century Florence and in NY in 1985).

[64] As Champagne and Christin (2004: 128) note, this idea has been particularly perceptive because Bourdieu elaborated it in a period in which most sociologists were analysing the end of social classes and of class conflicts. This relational conceptualisation of capital has also been extremely original as it breaks with the dominant 'realist' and 'substantialist' approach to social classes defined as concrete totalities

[65] This concept has been progressively elaborated by Bourdieu in different phases.This is typical of Bourdieu's way of elaborating his sociological concepts. They were rarely defined *a priori* and more often were the result of the need and urgency of having a research tool rather than the need of filling a theoretical gap. In this case which the elaboration of the idea of symbolic (capital; violence; struggles; forms) has to do with his early ethnographic studies centred around extremely fragile concepts of 'honorability'; 'prestige'; 'credit'; 'honour' and 'reputation'.

this is the power of transforming the world: “[B]y transforming the words for naming it, by producing new categories of perceptions and judgement, and by dictating a new vision of social divisions and distributions.” (Terdiman in Bourdieu 1987:839) This concept adds to the idea of a social space in which dominant positions in the fields are always in a precarious situation, as they depend not only on the availability of economic capital but also on the availability of immaterial forms of capital that can also be accumulated or dilapidated or even get across to someone else. As we shall see in the next chapters, this very ‘old idea’ – based on notions of ‘credit’, ‘reputation’ or ‘honorability’ – of intangible or intellectual capital has been increasingly re-discovered in terms of ‘non-financial’ and ‘intangible’ forms of capital. Bourdieu already observed that this ‘immaterial’ capital is not purely symbolic, in the sense that it tends to be converted into ‘material’ capital. In his idea of a ‘general economy of practices’ he highlighted the existence of a circulation of material and immaterial goods in which cultural and symbolic capitals have the power of multiplying economic leverage.

The idea of symbolic power is closely related to a last research tool, the notion of ***symbolic violence***. This can be defined as the power to construct and impose mental structures, categories of perception and thought, which become institutionalised in social and symbolic structures. As such they present themselves as matter of fact, as naturally given. As we shall see, Bourdieu understands law and the legal field – in the shadow of the state – as a sphere of extreme symbolic dominance, which literally grants the ‘right’ to exercise symbolic violence, in addition to the exercise of more legitimate forms of power (see Madsen and Dezalay 2002: 194-5).

This study will attempt to use some of the tools elaborated by Bourdieu – in conjunction with the literature – to explain the emergence of sustainability reporting as a new transnational field of law. In methodological terms, this process of trans-nationalisation of law can be defined as “a shift from studying the allegedly international legal field to studying the internationalisation of law in terms of the rise of increasingly more semi-autonomous legal fields at the crossroads of the national and international.” (Madsen 2006: 114) The first step towards a reflexive understanding of CSA regulation is its definition as a field of research.

2.4 Exploring the transnational regulation of sustainability reporting as a field of research

As we have seen so far, the puzzle of regulating corporate sustainability accounting in Europe is closely related to broader questions about the sustainability of our economic model, the force of the law; the power and accountability of large corporations and the strength of European

democracies. The aim of this research is to study CSA as a social practice in a relational space, the ‘accounting field’, which produces symbolic power.

The starting point of this research has been the very definition of CSA – or, better said, its lack of a definition – in relation to the growing relevance that this area is gaining, at different levels of regulation and through varying modes of governance. In fact, despite its spread among academics, business leaders, NGOs and regulators, one of the most intriguing and revealing feature of CSA is its lack of a precise and generally accepted definition (Bassen and Kovacs 2008). According to the summary of discussion of the EU ‘Workshops on disclosure of ESG information’, this practice “takes different forms and can be directed at diverse audiences. It covers, among other things: formal CSR or sustainability reports, chapters integrated in annual accounts, digital disclosure, advertising, information on packaging, internal communication to employees, subject specific publications, and responses to rating agencies or buyers questionnaires.” (Commission 2009: 1) However, for the scope of this study, I would restrict the field of research to the regulation of formal reporting of extra-financial information prepared by large corporations operating within the EU area. That would include both non-financial statements integrated in the annual report and external, ‘stand-alone’ reports. The rationale for this choice has been to reduce the extreme variety of possible issues that should have been otherwise considered and construct a more coherent field of research. Furthermore, large corporations' reporting activity has been, by far, the practice that has attracted more regulatory attention and public debates. As Gray noted, there is a 'combative' element in this kind of reporting practice, related with fundamental questions of corporate power and accountability, which differs from disclosure by public authorities or NGOs (Gray 2010a). It is, also, the most common and well established form of sustainability accounting, a fact which made possible to assess its development over time (see Chapter 3).

Despite its recent development, CSA is still a magmatic and fluid practice as compared to the well-established area of financial accounting. The content of such reports might concern matters as diverse as carbon emission; labour rights; biodiversity; water usage; health and safety; human rights; diversity; bribery and corruption. Furthermore, it also cuts across issues related to accounting for intangibles assets, such as reputation and brand value; HR and training. Therefore, as Rob Gray maintains, “to try and talk about ‘social accounting’ as a singularity is to invite confusion.” (Gray *et al*. 2009: 546) Extra-financial aspects of corporate performance are often specific to each particular company’s operations. Therefore, reporting varies from company to company, resulting in inconsistencies across them. Even more fundamentally, it is the nature of non-financial information that makes their measurement difficult (see Lev 2001, Bassen and Kovacs 2008: 184; Cooper 2010).

Instead of simply choosing one of the many existing definitions of CSA[66] and justify my choice or even trying to offer a new definition, I would try first to analyse CSA as *a practice in search of a definition*. The analysis of the language that is conventionally used by the actors operating in this area to define this practice is extremely interesting for the scope of this study and it has provided the first hints to develop my hypotheses. The objective of this approach is to break up the 'official story' about the rise of CSA into many overlapping and, often, opposing texts, versions and sources. Using a 'reflexive' methodology to the study of CSA would show that "these conflicting narratives ultimately reflect its many stakes, as well as they highlight the central conflicts of its historical progression." (Madsen 2006: 38) As different groups of actors have conflicting normative ideas about which information are relevant to the measurement of corporate performance, it is the collective process of shaping the very meaning of this social practice that becomes the central element of study. The key contribution of this research becomes to juxtapose and critically assess the main responses to the question: "what regulating CSA means?"

The conclusion that I have reached has been that the 'construction' – we could even say the 'invention' – of this form of accounting has historically come about through a twofold 'negative' definition. Notably, CSA has been often referred to as '<u>non</u>-financial' reporting. Crucially for our study, this has been the definition officially adopted by many regulators, including EU policy-makers (e.g. 2011 CSR Communication; 2011 EU Single Market Act; 2012 Corporate Governance Action Plan). Secondly, this practice has been constructed as '<u>non</u>-law', as taking place 'over and above the law' (COM 2002). Both aspects are extremely interesting from a socio-legal point of view and they will represent the cornerstones of this study.

On the distinction between 'financial' and 'non-financial'. The nomos of the accounting field

I should first consider the implications of CSA regulation being defined as 'non-financial'. At first, this negative definition appears as the most neutral and flexible one, chosen purposely by regulators to avoid any decision about the specific content of such reports. It allows new topics and instances to be added in, taking into account the fact that this is a practice 'in definition'. However, it is more than that: it sets out an implicit distinction between 'financial' and 'non-financial' aspects in the assessment of companies' performance. Such divide is conventionally taken for granted by accountants, managers and investors (*habitus*). However, I argue that it plays a key role as a

[66] For instance Gazdar (2007: 2) defines 'non-financials' as "resources of significant value, that are rarely quantifiable but that both account for the gap between book and market capitalisation as also contribute greatly to corporate reputation."

structuring principle for the accounting field as a whole and that its effects go way beyond accounting.

Looking at accounting using the reflexive analytical equipment outlined in the previous section, I would maintain that the notion of *nomos* provides a powerful analytical tool that sheds light on the distinction between ‘financial’ and ‘non-financial’ accounting. This distinction constitutes the *nomos* of the accounting field: the internal logic of the field, its ‘law’ and, eventually, its fundamental principle of internal coherence, of vision and di-vision for those individuals active on the field. The study maintains that the serious difficulty that regulators find today in settling questions of meaning and boundaries of CSA is, to a large extent, due to the relation between the accounting field and the economy. In fact, this arbitrary division is constructive of a 'vision of the world’ as split in two, financial aspects versus ‘the others’, structuring the economic field. The main practical implication of this distinction can be easily explained: it is a way for the economic field to filter information economically (financially) valuable from ‘the rest’. As we shall see in the next chapter, during three decades the rest has been traditionally 'left out' all together, made 'invisible' (*illusio*) in a broad, indistinct area: human rights and human capital; environmental and employee-related matters; etc. Often, in economics, this area has been referred to with another key word: ‘externalities’[67] – which is particularly telling as it resembles the idea of extra-, both external and extraneous, that *de facto* characterises the 'invisible half' of the accounting world.

Drawing on Colin Crouch’s definition of CSR[68], a working definition that might better clarify what I mean with corporate sustainability accounting (CSA)[69] is that this is a form of

[67] Colin Crouch defines ‘externalities’ as “results of market transactions that are not themselves embodied in such transactions.” (2006: 1534)

[68] Colin Crouch claims that CSR “can best be mainstreamed within the wider social science literature if it is defined as firms voluntarily assuming responsibility for their externalities [...].” (2006: 1534) Crouch is one of the first non-economists that suggests linking CSR with externalities and his definition differs from that of others that see CSR more in terms of large companies becoming accountable not only to shareholders but to all the multiple stakeholders impacted by their behaviour (Fraser 2005). However, as Crouch points out, “the concept of ‘stakeholder’ is suspect, unless it refers to the possessors of legally or substantively guaranteed rights within a corporation, rights that can neither be reduced to market transactions nor removed at will by a firm (i.e. rights to codetermination enjoyed by employees and embedded in either legislation or guaranteed by collective agreements). In fact, he argues that if a right derives directly from a market contract (as with customers), the concept of stakeholder is redundant, if it depends on a firm voluntarily deciding to offer it, it does not comprise a stake, as it can be withdrawn. Finally, if the term is used in an exhortatory sense[68], “exhortatory concepts do not have a place in scientific analysis.” (Crouch 2006: 1535)

[69] ‘Sustainability reporting’ is the way the Global Reporting Initiative (GRI), the most widely used framework for non-financial reporting worldwide and in Europe, calls this reporting practice. Although, the link between ‘CSR’ reporting and ‘sustainability’ has been also criticised (see Gray 2009). It has been argued that company-level CSR/ triple-bottom-line reporting activities have little or nothing to do with sustainability issues. The word ‘accounting’ is here used to stress that this practice belong to the broader field of corporate accounting (regulation). At time, the study also uses the expression ‘social and environmental’ reporting,

reporting by which firms take into account the externalities produced by their market behaviour (cf. Crouch 2006). They might do so 'voluntarily' or as the result of external formal or informal rules significantly constraining their behaviour[70]. However, things are rapidly changing. In today's global capitalism, business' externalities have become increasingly relevant also from an economic point of view and they cannot be ignored any longer. As already revealed by a famous report published by Deloitte in collaboration with The Economist Intelligence Unit, *In the dark: what boards and executives don't know about the health of their business* (2004), in recent years it has become increasingly apparent that financial statements do not provide an adequate picture of the soundness of a company. At every series of corporate crises, scandals and financial turmoil, the arbitrary division financial-non-financial has become increasingly criticised and blurred. Traditional accounting standards are now widely seen as inadequate, even by a growing section of the profession, constituting the object of continuous negotiations and professional delegitimation.

It is this 'dark' area that today has been re-discovered and re-invented under the broad label of 'sustainability reporting', as different political and socio-economic forces are struggling for shaping and promoting their interests through its emergence. As I have argued above, there are three main rationales supporting the case for mandatory non-financial reporting: social accountability; global sustainability and economic accounting (section 2.1). No wonder, the practice of sustainability accounting is conventionally defined as disclosure of Environmental, Social and Governance (ESG) information. They broadly respond to the different rationality and instances of the main socio-economic groups of actors that are interested in shaping CSA regulation: NGOs, trade unions and investors. The task that standard-setting bodies and law-makers are facing is to balance these instances and reconcile the different positions. The challenge is to design a regulatory framework for companies' disclosure that would take into account both social and environmental

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particularly because the concept of integrating 'social'; 'environmental' and other non-financials (in particular 'intellectual capital' into 'sustainability reporting' has emerged only recently. As we shall see in the next chapter, during forty years of non-financial reporting, it has emerged only during the last decade. This study uses 'non-financial'; 'sustainability' and 'social and environmental' broadly as synonyms..In this perspective, the apparently trivial act of giving a name to this accounting practice has rather transformative meaning. That is one of the main reasons why I decided to use the notion of CSA. While adopting the expression 'non-financial reporting' (NFR) could have been seen as more adherent to the way (EU) regulators call this practice, it would also meant to passively accept or even re-enforce this harmful (di)vision of the accounting field. Although it could be criticised, by using the term 'sustainability accounting' this research aims to overcome this arbitrary distinction.

[70] As we shall see, in the contemporary CSR debates this divide voluntary or not has created much confusion. According to the reflexive sociological approach adopted by this research, whether CSR should be voluntary or not is considered itself a matter of struggles to define what CSR is. Furthermore, this struggle is far from over, as recent developments towards mandatory non-financial disclosure suggest. Lastly, Crouch wrote this definition in 2006, possibly having in mind the EU definition of CSR as 'over and above the law'. This very definition has been eventually modified, in 2011, further justifying a general re-thinking about the position that CSR should be classified as 'voluntary'.

protection as well as long-term economic growth (Porter and Kramer 2006; Eccles and Saltzman 2011; Fasterling 2011).

As I have already mentioned, in order to go beyond the conventional explanations of the emergence of sustainability reporting regulation, the research object should be addressed as a historical and social construction. Therefore, the research strategy adopted by this study implies a 'double historicisation', meaning a historicisation of the object of the study, the regulation of CSA in Europe, which has been mainly developed in the next chapter; but also a historicisation of the 'tradition', the academic construction of the object, which should be already sketched out here and continued through the whole study. From this starting point, it is possible to empirically research the disappearance of social accounting from the early 1980s until the late 1990s and its re-emergence, following the course in which this subject area has been constructed.

Looking at the accounting 'tradition', this has been constructed on the notion of economic calculus as a rational technique for efficient decision making. Major sociologists and economists like Weber, Shumpeter and Sombart had already stressed the close relation between calculability; accounting and the emergence of capitalist societies and modern rationality (see Carruthers and Espelands 1991). According to Weber, "The most general presupposition for the existence of this present-day capitalism is that of rational capital accounting as the norm for all large industrial undertakings which are concerned with provision for everyday wants" (Weber [1927] 1981: 276). Also Shumpeter argued that: "Capitalism develops rationality and adds a new edge to it in two interconnected ways. First it exalts the monetary unit – not itself a creation of capitalism – into a unit of account. That is to say, capitalist practice turns the unit of money into a tool of rational cost-profit calculations, of which the towering monument is double-entry book-keeping (...). We will notice that, primarily a product of the evolution of economic rationality, the cost-profit calculus in turn reacts upon that rationality; by crystallizing and defining numerically, it powerfully propels the logic of enterprise" (Schumpeter 1950: 123). Sombart claimed about double-booking that, "The very concept of capital is derived from this way of looking at things; one can say that capital, as a category, did not exist before double-entry bookkeeping. Capital can be defined as that amount of wealth which is used in making profits and which enters into the accounts" (Sombart 1953: 38). In building on this tradition, however, most of the studies overwhelmingly stress the technical uses of accounting as a system of purposive rationality, overlooking the idea that accounting has been a 'creative' force beyond the emergence of economic capital and modern capitalism. As Prof. Stefano Zambon pointed out, "this restrictive view ignores the increasingly important role of accounting as a symbolic device and thus closes off the opportunity to examine the many social arenas in which the calculative practices of accounting have emerged as significant." (2002: 26) Only a cluster of

prominent critical accountants have started to contend that “accounting is much more constructive than reflective of social values; more active than passive in social ordering.” (Fleischman 2004: 18) Looking behind the mask of a universal ‘rationality’ and ‘calculability’, prominent authors such as Burchell (1980); Hopwood (1983); Hines (1988); Miller (1994) have convincingly demonstrated that rather than there being an ‘economic realm’ which is independent of, and pre-existing accounting, the relationship is reversed or, at least, much more dialectic[71].

Drawing on the reflexive ‘thinking tools’ elaborated by Bourdieu, I should attempt to further expand their analysis of the symbolic power of accounting. In particular, the study maintains that the accounting field has a historically specific relation with the economic field: there is a structural homology between the two fields that will be further considered in the next chapter. That means, in Bourdieu’s terms, that there has been an identical structuration of two social spaces over time producing specific effects that he notably called ‘*imposture légitime’*, legitimate imposture. As Weber already noted, the accounting practice has been the single most general presupposition for modern capitalist economies. However, I would add to this the claim that, exploring the accounting field, we are entering a space of ‘symbolic violence’, where professional accountants have progressively claimed a monopoly over the socially recognised capacity to render activities, individuals and objects, in possession of the specific attributes that are potentially relevant for the economic field, capable of evaluation, comparison and hence *transformation into economic capital*.

Crucially, the accounting profession has been granted this symbolic power by the state, which successfully claimed the monopoly of legitimate physical and symbolic violence on a determined territory and its population. Nonetheless, this is a major symbolic power that accountant exert, as we shall see, in an increasingly autonomous manner. Similarly to lawyers, physicians and other professions, the perception of independence and autonomy of the accounting profession is important to obtain the social recognition that is at the basis of their role but it is also an illusion,

[71] For instance, Hines (1988) sees accounting as part of society’s battery of reality creating and sustaining institutions. She maintains that this practice construct reality, making a valuable resource for those social actors wishing to promote a certain version of reality. Therefore she maintains that it is crucial to study the role played by various constituencies in shaping and mobilizing changes in accounting standards. Miller and Power (1995: 36) noted that, “accounting does not function as a mirror that reflects an underlying economic reality, one that law has only to acknowledge and regulate. Rather, the calculative technologies of accounting provide financial norms around which complex processes of negotiation of domains and outcomes can take place.” As Zambon (2002) points out: “This symbolic power of accounting was first revealed in Burchell et al. (1980) which highlighted the problematic nature of the relationship between accounting and decision-making – a relationship which so far remains uncontested in the wider body of mainstream accounting research.” Miller (1994) elaborates on the idea that there are three facets of accounting that contributed to its symbolic power. First, its ‘transformatory capacity’: the ability to translate the qualities into quantities that ‘seek no further referent’; Secondly, its ability to resonate with the language, vocabularies and concerns of other bodies of knowledge; the third facet concerns accounting as a constitutive device, that concerns the relation between accounting and the economic space.

whose first victims are accountants themselves. In fact the total independence of accountants from economic and political power is also a social construction, which constantly registers, sustains and legitimises a state of power relations. It converts into ‘economic value’ what has value for the groups of actors that dominate the economy.

For example, as the power of trade unions, in the 1970s UK, increased, accountants started to consider the possibility of changing their indicators in a way that reflected this shift. Similarly, the rise of global institutional investors, in the 1980s and 1990s, led to a symmetric change in accounting standards that had specific effects back into the economic field. In fact, the practice of recognising specific attributes that are economically valuable is, theoretically, not an end in itself, this interpretation of reality is designed to have practical effects in the economic field. Therefore, for instance, the standardisation of financial-only accounting has been certainly the effect of a shift in corporate power relations in favour of financial actors, however it also legitimised this power and locked the victory of shareholders contributing to making shareholder value maximisation the guiding principle of managers’ activities. The recognition of accounting standards in the economic field and its symbolic power over the economic field mutually re-enforce each others. This ‘legitimate imposture’ creates trust in the logic of economic rationality and in the universal value of economic capital and, at the same time, makes appear accounting as if it was a priori in the ‘natural’ laws of the economy [72]. Therefore, while accounting actually imposes a social order which is, above all, a mental order, this imposition is not generally perceived as such. On the contrary, this arbitrary order is seen as a ‘matter of fact’.

Accounting has been one of the most fundamental tools for the establishment of what Bourdieu called the ‘well founded illusio’ of neo-classical economics (1997). The author stresses that anything that the economic orthodoxy tend to present as a *pur donné*, a ‘taken-for-granted’ reality – such as the notions of ‘economic rationality’, ‘markets’, ‘demand’ and ‘offer’ – is, in fact, the product of a social construction that can be attributed only to historical ‘reasons’[73]. Without

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[72] The arbitrary and constructive nature of accounting has been famously illustrated by the episode of German car-maker Daimler-Benz that in 1993 became the first German company to be listed at the NYSE and it was therefore required to adjust its book from German accounting rules to US GAAP accounting standards. The firm had published two sets of annual accounts accounting earnings on the basis of the two standards. However, one set under German accounting rules showed profits of 615 million DM, which permitted payments of some bonuses, dividends and taxes. On the other hand, the accounting earnings under US GAAP for the same year showed a loss of 1.8 million DM and within a year of its US GAAP adoption, Daimler Benz announced 20% labour force reduction in its German operations, the firm’s first employee layoffs since World War II.

[73] According to Bourdieu (1997), if one goes at the bottom of the work of historical reconstruction of the philological and ontological origins of this economic orthodoxy, behind the abstractions of concepts that are impossible to define such as ‘markets’, the demand and offer can only be defined in relation with a historically contingent state of the offer. A state that is determined by specific social conditions and legal

going into the details of the arguments that Bourdieu puts forwards about the economic field there are two elements that I want to underline here. The first is that contemporary ideas the economic rationality and interests of the actors is nothing else than a specific form of *illusio* (in the Bourdieusian sense of the word) that is not universal per se, although it has reached a universal status following the process of economic globalisation. However, like for any other field, this *illusio* only works as the result of the investments and trust of individuals that believe in the 'economic game'. According to Bourdieu, there is not such a thing as the *homo oeconomicus*. He claims that this "anthropologic monster" is a scholastic construction of the economic practice that should be replaced with a more scientific notion of *habitus oeconomicus*. This economic rationality is an extremely efficient principle for social action, based on calculation and, in particular, of calculation of time, a particularly scarce resource. Therefore, the capacity of accounting of providing a trustful measure of economic actions is, above all, settling crucial questions about what has value in the economic field.

Drawing on this perspective, the conventional wisdom that pictures accounting as merely reflecting economic conditions appears fundamentally flawed and should be largely reversed. Also the distinction between financial and non-financial, rather than a 'matter of fact', has to be located in a precise historical and social context that marked an identical transformation of the economic field and the accounting field, starting from the end of the 1970s. As Sombart had already claimed, accounting practices defined capital and capitalism. The most striking consequence of the success of this venture has been that economic rationality is widely perceived as 'universal' and even 'natural'. This makes the pursue of the accumulation of material capital the dominant, if not exclusive, rationale that guides today's social actions, overlooking at the existence of many other forms of immaterial values (reputation, consideration, culture) that are "invisible" in our materialistic perception of the world. It is only considering this symbolic power of accounting and its role in defining what has value that the current debate about integrating non-financial aspects of corporate performance appears in its potential relevance. Bourdieu, taking into account various forms of capitals, has been able to indicate the *antidote* to the narrow materialist perspective that characterises neo-classic economics, which implicitly considers alternative forms of social rationalities as suboptimal solutions. This materialistic illusio has been paradoxically reinforced by the fact that counter-hegemonic struggles came to be organised, in the Marxist tradition, most frequently, within this materialist and economicist framework (see Burawoy 2012). As Burawoy noted, Bourdieu understood that "a classification or representational struggle has to precede class

norms that allows that demand to be satisfied. This is why he contends that the notion of 'economic fields' is more appropriated to study the so-called 'markets'

struggles, that is class struggles have to be constituted symbolically before they can engage in struggles." (2012: 31)

Adopting this perspective, the current debate about CSA regulation appears as one re-*defining* corporate responsibilities and liabilities. In fact, corporate accountability and disclosure is never an end in itself, rather it is a means to an end (see Power 1997; Newell 2008). Therefore, it is crucial to assess what is the actual aim of transparency mechanisms and *cui bono* (who benefits) from changes in its regulation. CSA is therefore about power and conflicts amongst groups of social actors, in particular, it concerns the division of rights and responsibilities among states, corporations, managers, investors, civil society, etc. (see Pellizzoni 2004; Newell 2008; Mason 2005). As Colin Crouch (2011:1-2) rightly pointed, the growing recognition, by the giant corporations, that they have social and environmental responsibilities that go beyond their market role(s) "is just the beginning of the story"."The fact that corporate responsibility is increasingly being seen as a potential form of economic governance, not just of corporate governance, renders it explicitly political. However, there is still insufficient discussion and debate on "the political implications of major firms shaping regulatory frameworks and taking on social responsibilities that go beyond their market activities." (Crouch 2011: 1). Therefore, besides the internal rationale for accounting for non-financials and intangible assets, there is also an external rationale that demands the accounting field to respond to external pressures for taking into account corporate externalities. These other aspects are closely related to the second 'negative' definition of CSA as '<u>non</u>-law'.

Law, accounting and symbolic violence. Changing regulation in a transnational space

A central theme of this study is the relation between the *nomos* of the accounting field, its fundamental principle of internal coherence, and formal accounting law. The study implies that they rely on two different principles of resources allocation. Accounting principles operate according to marginal productivity and on the laws governing the economy as a wealth-creation machine. On the other hand, accounting law (should) respond to collective choices of democratic politics. In reality, as we shall see in the next chapter, accounting law has been consistently aligned to the nomos of the accounting field, re-enforcing the divide between financial and non-financial and addressing the latter as a 'non-law'. Therefore, here the central divide I identified is between law and 'non-law', which is one of the most debated questions in 'Law and Society' studies[74]. The reference to 'non-

[74] As Lawrence Friedman (1986: 780) provocatively noted "law is far too important to be left to lawyers." The vital interaction between law and non-law is at the hearth of socio-legal researches ever since Durkheim; Ehrlich and Gurvitch. For an excellent example of the contemporary socio-legal thought on non-law, one of the key references is the work of Jean Carbonnier (2001).

law' is referred to traditionally 'voluntary' non-financial disclosure, presented as a matter of going "over and above the law", as compared to highly regulated financial accounting (see Chapter 3).

This debate is rooted in one of the most heated controversy in legal history and legal philosophy, the one on the 'essence' of the corporation. On the one hand, 'corporatist 'nominalism' traditionally asserts that the corporation is merely a contractual association of shareholders, in opposition to 'corporate realism' that claims the legal personality is nothing more than an external expression of the real 'organisational' personality of the firm in society[75]. The 1980s' agency theory turn in company law has led to the temporary prevalence of a nominalist perspective. According to what is still the dominant view in corporate governance studies (see Soederberg 2010), corporations are mere "nexus of contracts" between managers and shareholders, therefore their primary, if not sole, responsibility is to create profits respecting the law. More precisely, they have to create value for their stockholders, being the latter narrowly defined on the basis of the financial performance of listed companies. Accordingly, accounting standards have been developed, during the last three decades, as a tool that provides shareholders with the key financial information they need in order to be able to discharge their legal role as the 'owners of the company'. That would largely exclude non-financial information from accounting laws, because they were considered not 'material' information. Therefore, setting the puzzle of how to reconcile the principle of 'shareholders primacy' with growing pressures for legally binding forms of reporting that take into account the externalities (non-financials) produced by companies' market behaviour has become a key issue in company law and CSR studies. In other words, the question is how to reconcile the *nomos* of the field with growing evidence of the regulatory failure of accounting laws, which are not taking into account crucial information about both positive and negative corporate externalities.

However, this is still a superficial analysis of the problem of integrating non-financials into accounting regulation. The way I have been looking at this tension could be better understood briefly elaborating on Bourdieu's approach to the study of the legal fields. A comprehensive account of Bourdieu's approach to the 'legal field' has been already provided by other authors (Madsen and Dezalay 2002; Madsen 2006; Dezalay and Madsen 2012; see, also, Salento 2003 and 2004). The only work that Bourdieu entirely dedicated to this subject, *The Force of Law* (1987), however, does not account for his full contribution to Sociology of Law. In fact, his approach must be seen within his reflexive sociological framework (Dezalay and Madsen 2012). Namely, Bourdieu places law, its institutions and agents, in a broader context, in the larger scheme of law's interrelationships with other social spheres and in particular with the state. Like the field of accounting with respect to the

[75] There is a huge body of literature on this controversy that goes back to the end of the XIX Century (see von Savigny 1884). For a comprehensive review of this early debate about various theories of corporate personality see Hallis (1930). For a critical overview of the contemporary debate see Iwai (1999).

economic field – the legal field has developed a historically specific relation of structural homology with the state or, more precisely, with '*the field of power*'[76]. The latter is a sort of sociological 'translation' of the state: the site where the 'dominating principles and forces in a given society can be found and scientifically revealed. However, as demonstrated by one of his major works, *The State Nobility: Elite Schools in the Field of Power* (1999), he does not locate the state where we tend to look for it. As Madsen and Dezalay (2002: 194) summarised: rather than a theory of the state, Bourdieu's aim has been to produce an explanatory sociological framework concerned with the particular power deriving from the practices in the field of power: the symbolic power. Therefore, clearly using Weber as starting point, he defines the state as a political entity that successfully claims the *monopoly* of legitimate physical and *symbolic violence*. Then, the state could be understood as the "central bank of symbolic power", which "endorses all acts of *nomination* whereby social divisions and dignities are assigned and proclaimed, that is, promulgated as universally valid within the purview of a given territory and population." (Wacquant in Bourdieu 1996: xvii-xviii). In practice, Bourdieu perceived the state not simply as a 'ruling class' or a set of institutions but an arena of struggles that produces nomenclatures, professions, modes of education and paths of power in general, exercising 'symbolic violence'. According to Bourdieu, this 'field of power' exercises the monopoly over granting the 'right' of constructing and imposing dominant mental structures, categories of perception and thought, which then become institutionalised as both symbolic and social structures, finally presenting themselves as 'a matter of fact', as 'natural'.

On the basis of this abstract conceptualisation of the state/field of power, it is possible to track down the genesis of accounting laws as the by-product of both the legal field and the accounting field. As Bourdieu (1987) suggests in *The Force of the Law*, the law[77] is a social construction, engineered by certain professional groups, the legal agents – jurists, lawyers and law professors – that through the centuries have gradually built a strategic position for themselves, in the management and evolution of modern national states' structures. Similarly, I should claim that other professions – particularly accountants; auditors and accounting professors – have constructed an area of social practice, the accounting field, which developed a crucial position in the management and development of modern market economies. As the legal doctrine and, in particular, the legal language has a special power of turning social reality into legal reality,

[76] "The field of power is a field of forces structurally determined by the state of the relation of power among forms of power, or different forms of capital. It is also, and inseparably, a field of power struggles among the holders of different forms of power, a gaming space in which those agents and institutions possessing enough specificcapital (economic or cultural capital in particular) to be able to occupy the dominant positions within their respective field confront each other using strategies aimed at preserving or transforming these relations of power." Wacquant in Bourdieu (1996: 264-265) *The State Nobility*.

[77] Not unlikely technology and medicine, which have also been constructed on the shadow of the state.

according to Miller, as a technology, accounting has the "tranformatory capacity" of converting "qualitative attributes into quantitative measures." (Miller 1994 in Zambon 2002) However, what is crucial to briefly introduce here is the relation between CSA regulation and these two 'fields of power': law and accountancy.

Starting from the above working definition of CSA as a form of reporting by which firms take into account the externalities produced by their market behaviour, Crouch (2006) crucially clarifies that, while externalities identification is not a normative exercise, normative judgement enters when one distinguishes between 'positive' and 'negative' externalities. Crucially, this distinction cannot be made *a priori*, it depends from a historical process of construction of 'social distinctions' based on different normative perspectives (economic; political; legal; religious). For instance, Crouch refers to the example of a western transnational corporation (TNC) that decide to establish one of its plants in a traditional Islamic society might deeply affect local relations and costumes. Women working for them and their wider circles might decide to stop wearing head scarves. This externality – this *impact* of the firm's activities not captured by its market transactions – is positive or negative? For many commentators it could be seen as positive in the sense that it constitutes a moment of women's autonomy and liberation. However, many locals might consider it negatively, as a moral degradation. A crucial advantage of this working definition of CSA is that it drives the attention to the fact that, "Very little exists to require transnational enterprises to come to terms with the externalities of their activities [...]. The organisational hierarchy of the firm is often the only source of their governance, not only internally but also externally." (Crouch 2006: 1533)

The emergence of CSA law therefore marks a major shift in both accounting and law. From being located in between an accounting field that excludes non-financial aspects and a legal field that has considered them, for many years, as "over and above the law", CSA is becoming an integral part of these two fields of power and of their struggles. Therefore, I would suggest that we should look at the construction of CSA regulation as a rift confronting the advocates of *legally binding standards for corporate social accountability* – aimed to bring standard-setting bodies into the universal legal domain – and the promoters of *technical extra-financial accounting standards* – aimed at creating universally recognised, market-based standards for CSA. There is a long tradition of 'territorial disputes' between accountants and lawyers about which professional has ultimate control (see Freedman and Power 1992). Accountants tend to see the law as a technical device that can be changed and to look at the 'substance' (materiality) of the information to be disclose. They have therefore often perceived lawyers and law-makers as too formalist, potentially provoking illogical results. On the other hand, one could reply that lawyers' conception of reality, based on legal rights and relationships, do not ignore substance, it simply differs from *economic* substance.

While this is a caricature of the issues at stake, undoubtedly the future of CSA regulation will be fundamentally depend on whether it will be constructed through the accounting language of economic rationality or using the legal language of corporate accountability, human rights and legal liabilities (see McBarnet *et al*. 2007).

I will argue that, in more contextualised terms, this major dispute can be analysed as part of what Wolfgang Streeck recently defined as the underlying tension between the two conflicting principles, or regimes of resources allocation, that constructed the political-economic configuration of European (and Western) advanced-capitalist societies ever since the end of the Second World War: 'democratic politics' and 'market efficiency'. The case for CSA regulation is particularly interesting as it requires both principles to remarkably stretch themselves: economic rationality in the terrain of 'non-financials' and legal rationality in the territories of 'non-law'.

2.5 The argument in brief. Law, accounting and regimes of capital accumulation

At this stage, I can present some of the key elements of the argument outlined by this study to explain the emergence of a multi-level regulatory regime of CSA in Europe. I will argue that the conventional wisdom, which sees sustainability reporting regulation just as a 'legitimising device' that strengthen existing mechanisms of control over corporate resources' accumulation, illuminates only one part of the picture. It crucially overlooks the role of the accounting field as a structuring structure, a site of struggles for the production of the dominant vision of what economic capital is and what has economic value. Seen from this perspective, rather than just a PR corporate strategy, the emergence of mandatory CSA becomes a very different matter that begs a more structural explanation able to link changes in the area of accounting with changes in the broader economic field.

This research develops an argument suggesting that the current emergence of mandatory 'accounting for sustainability' constitutes the latest response to the crises of the social formation that Streeck (2011) calls 'democratic capitalism'. Using this approach, the study presents CSA regulation as one of the cornerstones of the emergence of a new regime of economic governance that is supposed to obviate to the exhaustion of the 'corporatist compromise', which emerged in Europe at the end of the WWII between capital and labour, and to the collapse of financial-led capitalism, following the 2008 global economic crisis. Going back to the first crisis of 'democratic capitalism' in the 1970s, the next chapter briefly recalls the cyclical steps of the 'construction' of non-financial accounting regulation until now. This preliminary process of 'double historicisation' reveals the precise historical context in which currently dominant ideas of financial versus non-

financial reporting were shaped. It also shows that an identical process of transformations marked the economic field and the accounting field, revealing the structural homology between the two fields. Finally, it highlights the current shifts along the continuous financial-non-financial and law-non-law, which characterise the present debate on CSA regulation.

As Streeck accurately described, the ‘democratic capitalism’ regime began to collapse starting from the 1970s, before and more intensely in the UK and the US and, from the mid-1990s, also in Continental Europe. There is an extensive literature and a heated debate on the reasons behind this shift from Keynesianism to what Colin Crouch called ‘Privatised Keynesianism’ (2011)[78]. However, most of the studies coincide in stressing two elements that characterised this shift and that we can find also in the accounting field: economic financialisation and business self- and co-regulation (Braithwaite and Drahos 2000). In fact, as we shall see in the next chapter, the progressive financialisation of the economic field – particularly noticeable starting from the end of the 1970s – coincided with the sudden abandonment of the regulatory debate about ‘social accounting’ and the extraordinary development of financial accounting standards. Secondly, the globalisation and autonomisation of the economic field – particularly embodied by the emergence of giant transnational corporations – coincided with the ‘privatisation’ and internationalisation of accounting standards. During the 1980s and 1990s, global corporations became increasingly powerful and autonomous from the regulatory control of national states, supported by transnational financial markets, creating what Sol Picciotto calls ‘global corporate capitalism’ (2011).

In the corporate governance literature this shift coincided with a partial global convergence towards the ‘money concept of control’ and the erosion of the ‘productive concept of control’ that had dominated industrial relations on both sides of the Atlantic during the post-war period (see Jessop 2007). In this context, a growing portion of companies’ resources was devoted to shareholders and top managers – Soederberg (2010) calls this model of governance the ‘corporate-financial nexus’ – and subtracted from long-term investments, employees’ training and innovation. Managers were incentivised to create value for shareholders-only through bonuses and remuneration packages which aligned their behaviour. Shares price rather than production rate became the measure for corporate success and short-term profit maximisation the legitimate objective of top managers’ decisions. Significantly, social (non-financial) aspects of corporate performance lost currency, as the result of the separation between aspects of corporate governance and corporate social accountability. This distinction led to the emergence of a new *nomos* of the

[78] See, a part from Crouch’s (2011) analysis of Privatised Keynesianism, also the regulation school literature on post-Fordism and the emergence of financial capitalism (Jessop 1992 and 2007; Aglietta and Reberioux 2005). In the context of recent socio-legal analyses of post-Fordism, there is also the work of Angelo Salento (2003 and 2013).

accounting field, based on the di-vision between financial/non-financial, but also changed the *nomos* of the economic field, which symmetrically stressed the maximisation of financial value. As famously claimed by Milton Friedman (1970), “the business of business is business”. A *nomos* which excludes ‘societal’ aspects from the economy.

In order to fully understand the current re-emergence of mandatory disclosure of non-financial information it is necessary to understand why ‘financial-led’ capitalism eventually failed to provide a solution to the Achilles’ heel of ‘democratic capitalism’. This is, according to Streeck (2011), due to the fact that this social formation has been based on the instable compromise between two conflicting principles of resources allocation – popular ideas of market justice, based on marginal productivity, and of social justice, based on democratic collective choices.

Without considering here the details of his argument, what is crucial to highlight for the scope of this research is that this regime in order to work needs high levels of economic growth and resources consumption. In highly stylised terms, during the 1970s it appeared already clear that the ‘democratic capitalism’ regime was unsustainable. However, the general attention was more urgently attracted by questions of economic declining growth and high levels of inflation, driven up by trade unions members’ demands, rather than social or ecological sustainability. In order to sustain growth and avoid social conflicts over resources’ distribution, public authorities decided to expand public debt, therefore increasingly drawing on future resources in addition to those already on hands. By the early 1990s, however, this system was no-longer sustainable because public debt had become very high. Therefore, the US and UK, but also many European countries, drew heavily on the deregulation of the financial sector that had already started during the 1980s. In order to achieve growth and full employment, the regulator established the conditions for citizens and firms to indebt themselves under a credit regime of unprecedented generosity that was supposed to create ‘indefinite growth’. Doing so, governments shifted ‘social responsibilities’ for job creation on ‘the market’, determining a new ‘division of labour’ that would leave business free to autonomously govern itself, supporting a narrower view of corporate governance. They offered back to business a ‘favourable regulatory environment’ seen as the pre-condition for economic growth. This practically meant not only policies boosting consumers’ confidence but also measures making labour markets more flexible. In exchange, they demanded business to become more ‘responsible’. In other words, if corporations want to be operate ‘freely’, they need a ‘social licence’ (see Kinderman 2012), that is, they should be willing to create ‘shared value’: profits respecting (voluntary) social and environmental standards. This shift took place before in the US and arrived in the EU only at the end of the 1990s. As we shall see, this turning point marked the re-emergence of non-financial reporting regulatory debates, though in a completely transformed institutional

environment as compared to the first regulatory cycle, in the 1970s. Left-wing governments, led by Clinton, Prodi, Schroeder and Blair, effectively broke with the corporatist tradition of 'social bargains', which had been at the origin of 'democratic capitalism', and promoted a 'third way' between markets and states. As Crouch (2011: 118) pointed out, they took an "enormous moral hazard" recognising "financial irresponsibility as a collective good".

The 2008 financial crisis left this 'voluntary' approach to corporate social accountability in ruins, but it posed ever more strongly the question of the tension between markets and democracy. As I already mentioned in section 1.3, in order to study more in details the current changes and struggles in the field of CSA regulation, I have adapted the coalitional approach developed by Gourevitch and Shinn (2005). In their book, *Political Power & Corporate Control*, the authors have developed an inclusive framework of the possible varieties of corporate governance regimes and their evolution over time. Their work is based on an actor-centred approach which attempts to close the gap between agency and structure as well as among the different economic; political and sociological theoretical perspectives. This study argues that their conceptualisations can be useful to enhance our comprehension of the struggles that are taking place within the field of accounting as struggles for corporate resources control.

Gourevitch and Shinn (2005) approach draws on both law-and-economics explanations based on legal families – in particular the supply of high or low protection of minority shareholders – as well as neo-institutionalist accounts, in particular on the VoC distinctions between more or less coordinated market economies. The result is a comprehensive map of the variety of corporate governance regimes that can possibly emerge. Drawing on the seminal work of Scharpf (1997) as re-elaborated by Aguilera and Jackson (2003), the authors have been able to design a robust descriptive framework based, in particular, on a coalitional approach to institutional changes. It highlights the full range of conflicts and coalitions that can feasibly emerge among capital, labour and management. Overall, their conclusion reached by Gourevitch and Shinn (2005) is that three possible cleavages can arise between capital, labour and management: class coalitions; cross-class coalitions and accountability coalitions.

Starting from the familiar **class coalition**, this arises when interests of shareholders and management oppose the interests of labour. This divide is based on the class struggle derived from political economy and from Marx, it reproduces the classic antagonism left versus right. It implies that when right-wing parties are strong, we should get policies that support shareholder diffusion, income inequality and weak workers' protection. Conversely, when left-wing parties are strong we get policies that support block-holding and the ancillary policies that protect income equality and labour. This approach reflects one of the key debates in corporate governance: do incomplete

contracts apply only to the shareholders-managers relationship or to the human capital contribution that labour can make to the firm? In the latter case, CGR should also include questions of employees control over managers typical of co-ordinated market economies (CMEs), like German 'stakeholder' variety of capitalism.

Another way of interpreting the corporate governance cleavage is to look at **sectoral conflicts** that lead to cross class alliances and coalitions that pits labour and management (insiders) against shareholders (outsiders). Practically, employees tend to join managers to lobby for tariff protection and subsidies for certain sectors of business. According to the authors, this sectoral cleavage leads either to a corporatist compromise or to oligarchy. In the former case managers and workers have common cause in promoting the stability and size of the firm as well as their insiders' claim on the profit stream. As a result, regulation and policies tend to favour a constructive relation among managers, workers and inside owners. The minority shareholders are left out, sheltering companies from hostile takeovers and instability and corporate owners – some out of choice, others out of necessity, had to accommodate the bargaining influence of organised labour. This corporatist compromise typically emerged as a response to intense social conflicts; hyperinflation and the Great Depression of the interwar years in many countries like the US, the UK and the Scandinavian area, or in others, for instance in Japan, shortly after the WWII. The key aim had been to build a system of 'democratic capitalism' that could reconcile the class conflict between capital and labour on the basis of which both full employment and private property rights were guaranteed in the framework of constitutional democracy. While this 'social bargain' outcome is the most familiar in the literature on European corporate governance, Gourevitch and Shinn (2005) maintain that there is also its reverse: the emergence of oligarchic regimes of corporate governance in which owners arrive not just to exclude minority shareholders but to 'win it all' at the expenses of all others actors, including managers and labour. In that case owners can set the rules of the game with very limited or no constrains, as it happen historically in the US during the 'robber baron' period (after the end of the Civil War) or in Russia following the fall of the Soviet Empire.

Finally, the authors identify a third coalitional pair, this time based around the classic corporate governance concern about managerial **agency and accountability**, which had been first identified by Berle and Means back in the 1930s. It is the tension between managers (agents) and shareholders (principals), which dominates the 'standard' approach to CGR of law-and-economics and managerial studies, that is central in this cleavage. While most of the scholars have outlined their explanatory models having in mind the UK and US examples, in which the conservative parties have crashed organised labour and favoured shareholders' diffuse control, this case is different. In many other countries, minority shareholders may need help if they intend to overcome

managerial action and corporatist blocks of power. In that case we may see the emergence of a strategic alliance based on the common interests of shareholders and labour vis-à-vis management. As the authors admit: "The class and sector alignment are quite familiar to students of political economy [...]. Less familiar is the third coalitional alignment: the link of labour to minority shareholders against managers and insider capital." (Gourevitch 2007: 35) However, "an alliance between managers and block-holders, sustained by a closed network of interlocking directors, can take many actions that negatively affect job security. This risk can push workers away from the corporatist compromise and towards a transparency coalition." (2005: 211)

The authors took the idea of a 'transparency coalition' from a variety of contributions of other neo-institutionalist scholars (Streeck 2001; Aguilera and Jackson 2003; Hopner 2003; Cioffi and Hopner 2006), which had reflected, in particular, on some paradoxical developments within some European co-ordinated market economies. In particular, Hopner's (2003) ground-breaking studies of changes in the German model, first driven the attention on the puzzling situation where trade unions and the SPD favoured corporate governance liberalisation reforms. During the same years, something very similar was happening also in Italy (Deeg 2005)[79]. Aguilera and Jackson (2003: 461) clarify that: "Here, managerial accountability to different stakeholders is not a zero-sum relationship." In countries like Germany, for instance, where organised labour is actively committed in monitoring management and institutionalised in the supervisory board, share-holders and employees' interests are not necessarily divergent. They may form coalitions to engage with badly performing managers and to demand higher corporate transparency. However, as for the other cleavages, Gourevitch and Shinn predict also an alternative outcome: where the interests of capital and labour for many reasons start to diverge too sharply, such coalitions may break down and give management increasing autonomy to pursue its own agenda, and thereby damage corporate accountability. In that case the authors see the emergence of a corporate governance regime that they call 'managerialism'. Managers' dominance would result in weak minority shareholder protection as well as low block-holding. "Managers' ideal world is a balance between the two: enough minority shareholder protection [...] to dilute the blockholders, but not enough to permit a hostile takeover." (Gourevitch and Shinn 2005: 66)

I will argue that looking at cyclical changes in the regulation of CSA using Gourevitch and Shinn's framework can be very illuminating. Rather than focusing on legitimacy as the key driver of sustainability reporting, seen as a mechanical adjustment of firms to external pressures, it would allow to start looking at changes in the regulation of corporate accountability as the result of a

[79] In Italy the ruling centre-left coalitions made major company law reforms to strengthen minority shareholders' rights; open the Italian stock market to outsiders and break the sheltering power of Mediobanca (Deeg 2005).

social and historical construction continuously re-structured through the struggles among a plurality of social, political and economic actors. As the authors maintain, “There are many forms of capital and many forms of labour, each forming sub-groups within the whole. Sometimes these groups cooperate with their class neighbours, but other times they may clash with them, reaching across class lines to find common ground on other principles of cleavage. This provides the elements for more complex political explanation of policy outcomes in fields as varied as trade, welfare, labour, and competition.” (2005: 150) This coalitional systematisation allows to look at the 1970s’ rise and fall of national debates on ‘social accounting’ legislation that will be analysed in the next chapters as part of the historical development of a ‘corporatist compromise’, which used to characterise European industrial relations during the 1970s. I will also argue that the re-emergence of non-financial reporting, starting from the late 1990s, has been driven by a ‘transparency coalition’ including NGOs, part of the European trade unions and led by large institutional investors.

2.6 Questions of research methods

Questions of empirical research methods are, in the case of this study, necessarily informed by its reflexive socio-legal methodological approach and its epistemological assumptions (see section 2.3). However, rather than being an aprioristic decision, the choice of opting for this conceptualisation has gradually emerged. In particular, it has emerged on the basis of the pilot interviews; the regulatory and literature review (see Annex I and section 2.2); and after discarding other possible explanatory frameworks. This preliminary work, completed by the end of the first year of PhD (2009/2010), showed a cyclical emergence of corporate sustainability reporting as part of corporate governance regulatory changes. Therefore, the adoption of a reflexive methodology reflected my attempt to build an integrated and holistic approach to the field of research, adequate to investigate this rapidly evolving transnational regulation.

The fieldwork and preliminary élite interviews with EU regulators and investors played a fundamental role in helping me to identify, relatively early, both the shortcomings of existing explanations and the coexistence of different ‘texts’ that constructed the official stories of CSA regulation. The consideration that different theoretical options and academic fields supported different regulatory developments led me to intuitively realise the need for a ‘double rupture’. This need has been soon systematised drawing on Bourdieu’s sociological thought, which I had already studied during my training as a Sociologist but that I had to further deepen during the last three years. Therefore, the decision of adopting this approach in conjunction with existing studies emerged from the growing recognition that the ‘analytical tools’ developed by Bourdieu could shed

light on my research questions and were progressively demonstrating their explanatory value in relation with the data that I was collecting. In particular, I have recognised their capacity to integrate macro and micro socio-legal analyses, structures and conflicts, objective structures and subjective phenomena already discussed above (see Dezalay and Madsen 2012; Madsen 2012).

In order to develop a suitable answer to the main research question, I have designed a research project that developed step by step, gradually building my knowledge of the field. During the research process, I had to face a number of methodological challenges, starting from the choice of the right point of observation that could reveal the way different actors have been shaping this field. Furthermore, I had to gain access to these institutions and actors I wanted to study. Lastly, there has been the issue of finding the right way to empirically study the relation between agency and structure that explains changes both in the content and in the mode of CSA regulation.

Being the CSA regulatory field still relatively underdeveloped (at least it was at the moment when this research started), adopting snowball sampling and interviews research strategies, I have been able to identify rather early the main groups of players and sketch a preliminary map of the key individuals and institutions involved. However, this preliminary assessment also showed me the relevant challenges related with studying a legal field that is fragmented and rapidly evolving. In order to design a tailored research method, I had to better define the scope and the object of the case study (Chapters 4 and 5). In fact, while the broad subject area – sustainability reporting regulation – and the research questions have been identified since the very beginning and they have never changed, crucial decisions concerning the focus and methods of the empirical enquire have been reached only around April 2010, on the basis of a series of considerations, including my own limitations in terms of research skills, time, economic and intellectual resources. The choice has been to design a research project that combined a macro-analysis of changes in the European regulatory arena with a more detailed and narrow qualitative research. The preference for the EU arena is due to the fact that this is conventionally recognised as the pioneer in regulating sustainability reporting. Furthermore, although other regions are rapidly catching up, this is still widely considered the area of the world where disclosure is more advanced, both in terms of quality and quantity of CSA.

As regards the case study, the final choice has emerged pragmatically, excluding other options, considered as less effective, unattainable or unrealistic. First of all, I have seriously considered the possibility of adopting a comparative approach, based on 'multiple case studies' (e.g. GRI; CDP; UN Global Compact). However, this option has been discarded because any comparative study, in a regulatory field that is still in its infancy and is therefore rapidly changing and fragmented, would have been too selective to address my research question. Eventually, at the

beginning of 2010, I have learned that the EC was hosting a number of workshops on ESG disclosure, actively involving six key groups of actors interested in the perspective of developing an EU legislative proposal. Therefore, I decided to follow this initiative, focusing on a qualitative analysis of the EU-level regulatory process, considered as a privileged point of observation from which it is possible empirically capture the multi-levels and polycentric character of this emerging regulatory field. By that time, it was far from sure whether the EU would actually proceed to develop a legislative proposal. Nonetheless, I thought that the qualitative research of EU-level regulatory developments and of the desk analysis of broader historical and regulatory changes would be mutually re-enforcing. In effect, they helped me to shed light on the role of the main players in shaping this regulatory field.

The study demonstrated the value of this choice of strategically positioning the 'camera' at the EU-level, at the crossroads of many regulatory developments and struggles: between law and non-law; national law-making and global norm-making processes; financial and non-financial reporting regulation. In fact, I have progressively learned that the EU has been working on the elaboration of a regulatory framework ever since the late 1990s and that in 2008/2009 it had showed a renewed interest in this field. As many Member States had adopted legal provision that goes beyond EU Accounting Law, a further harmonisation at the EU-level was a possibility. Furthermore, access to EU policy documents and stakeholder groups is comparatively easier than in other context and it is guaranteed by EU 'access to documents' regulation. In particular, the desk researches periodisation covered by the study goes from the 1970s until 2011, as regards the broad analysis based on the 'double historicisation' method. As I mentioned above, this is a research strategy aimed at revealing how both the research object – the regulation of CSA in Europe – and the academic construction of this object have come about. In my case, this reflexive method helped me to reveal the arbitrary distinction between financial/non-financial and law/non-law, through which the accounting field was structured and which is at the basis of this analysis (Chapter 3). Narrowing down the empirical research to consider recent changes in the EU-level regulation of CSA, actually focuses on a more limited period of time, particularly on the decade 2001-2011 (see Chapter 4 and 5).

As regards the main groups of actors interested in shaping CSA accounting regulation, I have chosen to rely on the very categorisation that the European Commission has elaborated throughout a decade-long process of CSR consultations with stakeholders[80]. Therefore, I have identified six broad groups of actors that have been present and active in the European process of

[80]See in particular the experiences of the EMSF-CSR (2002-2004) and the series of workshops on non-financial disclosure hosted by DG ENTR between the end of 2009 and the beginning of 2010.

CSA regulation[81]. (1) the preparers of corporate sustainability reports, typically financial and non-financial large *corporations*, generally represented by and organised into business associations, such as BusinessEurope at the EU-level. Afterwards, there are the users of such information: the main groups of actors that are interested in shaping CSA regulation according to their preferences. Here the focus has been on four main groups: (2) organised labour and *trade unions* (TUs); (3) large institutional *investors*; (4) civil society and *non-governmental organisations* (NGOs); (5) *public authorities*, particularly governments (Member States in the case of the EU) and the EU institutions[82] (the European Parliament; the European Council and the Commission). Lastly, we identified a sixth group of actors made of (6) *professional experts* (accountants; financial analysts; lawyers). Overall, this conceptualisation appears consistent with the existing literature on CSR and corporate governance (CG) (see Aguilera and Jackson 2003). This categorisation broadly coincides with the literature. In fact, it refers to the 'trinity' – capital, management, labour – that is central in most CG analyses. Moreover, it recognises the growing role of transnational experts in shaping global business regulation. Furthermore, it acknowledges the rise of an active, transnational, civil society (including NGOs; consumers and media). Lastly, the category of 'public authorities' broadly represents the positions of the state (in the broad sense), articulated at different levels of regulation (international, European, national, regional). While the list of actors could have been come complete, the rationale for choosing these groups of actors is related to the attempt of building a reflexive sociological approach (see section 2.2). Therefore, rather than creating new categorisations, the challenge has been to critically use the ones that are already widely in use.

More specifically, the research strategy adopted uses three main sources of data:

1. the *existing literature* on the regulation of corporate social responsibility (CSR) and corporate governance regulation (CGR) and secondary data sets have been used to provide a macro analysis (financialisation; corporatization; reporting) that provides the background to the empirical

[81] It is worth to stress that, within each group, we can identify a 'plurality' of voices, interests and positions. Groups are more or less organised and structured through various modes of political (government and law), social (association, network, communities) and economic (market, organisations) governance (see Crouch 2006) that allow them to operate not just at the European but at multiple levels. For instance, while TUs and large European companies are typically joined through associational national and international mechanisms of governance; investors and NGOs tend to be more freely organised through loose social and regulatory networks that allow them to operate across borders, on a transnational scale. While a detailed account of the specificities and heterogeneity of those different 'constellations' has been already developed elsewhere and cannot be discussed here (see Cafaggi 2005), it has been constantly taken into consideration through the research.

[82] The role of the EU deserves some further comments. In the context of this study, its role is both crucial and ambivalent: it ultimately acts both as actor (public authority) and structure (regulatory arena). However, the object of this Doctoral Thesis is not primarily related with European studies. The EU is rather used as a political laboratory, from which it is possible to effectively assess broader changes in the regulation of non-financial disclosure at different levels of regulation and through varying modes of governance.

research. In some case, the literature has been used to integrate my understanding of the position of the actors analysing my findings on the light of the broader literature and more specific studies dealing with this subject area (see section 4.2).

2. the analysis of the *key documents* produced at the EU-level by EU regulators and by the six key groups of actors: companies, public authorities, trade unions, NGOs, professionals (i.e. accountants; financial analysts), investors. The analysis covers in particular the period 1995-2011and it is aimed to provide a dense understanding of the role the different actors played in shaping this emerging regulatory field, at different levels of regulation and through varying modes of governance (See Annex II). This analysis tremendously contributed to my understanding of the relations between actors and the strategies of the different groups, together with the interviews.

3. *26 in-depth qualitative interviews* have been completed with key informants from the six groups of actors involved (see Annex III). The length of the interviews has been usually around 40 minutes, although, in a number of cases, the interview has been longer than one hour. In only one case (interview # 25 with Prof. Michel Capron), the questions/answers have been exchanged by email. The interviewees have been identified through snowball sampling, looking at the relevant documents and asking, after each interview, to identify who were the individuals that, according to their knowledge, I should seek to interview, for each of the six groups of actors. Two EU officials, who played a key role in the development of EU regulatory policies, have been interviewed twice – in 2010 and in 2012. The second interview turned out very useful to assess actual changes in the understanding and recognition of CSA regulation by public authorities. Some of the interviewees have been purposely chosen because of their 'multiple identities' (e.g. accountant/regulator; academic/activist; financial analyst/member of the EU ad-hoc Expert Group). The vast majority of the interviewees have been actively and directly participated to the development of EU CSA policies.

The analysis has been strengthened by a participant observation of five months at DG MARKT, from March to July 2012, as part of the EU traineeship programmes. During this period, I have been writing the Impact Assessment and drafting the legal proposal for the EU initiative as well as participated to many meetings on disclosure of non-financial information by companies (Commission 2013)[83]. The empirical value of this experience is limited by a) the fact that trainees are not allowed to reveal information that are not publicly available and b) the fact that, by the time the writing of this Thesis was completed, the legislative proposal on which I have been working has

[83] All the relevant documents on the proposal can be downloaded from the website of the EU Commission. See: http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm.

not been made public yet[84]. However, on 16 April 2013, the European Commission has adopted it and it is currently under discussion at the European Parliament. This first-hand experience has certainly contributed to my understanding of the ‘politics’ of CSA regulation and of the positions of the different actors on the field. However, it has not radically changed my broad conceptualisation and explanatory framework. My position as a PhD researcher on this subject-area has been communicated to the EC hierarchies since the very beginning and towards the end of my stage I have asked for the permission of making a stream of interviews. The colleagues and hierarchies were very helpful and collaborative.

As regards the interviews with EU officials, I thought to keep all of them anonymous. Although there is nothing really contentious in their statements, revealing the identities could be still an issue, particularly for those civil servants that are still working on issues of CSR and CSA regulation. Furthermore, in several cases the interviews have been extraordinarily frank and open. Perhaps because of my temporary position ‘inside’ the EC, I received very sincere answers to some difficult questions about law; accounting and economic power. This allowed me to obtain insightful comments as part of some in-depth interviews that, in some cases, lasted almost two hours and from which it was clear the trust and confidence of the interviewees. In order to be sure that this trust and confidence will be kept intact, I opted for keeping their identity anonymous, a possibility that I had already offered at the beginning of every interview. Overall, this is NOT, or only marginally, a study based on a participant observation. Particularly because the analysis goes from the 1990s until 2011, largely excluding the events and regulatory actions in which I have been involved. This ensures that some of the most problematic ethical issues often associated with participant observations had been neutralised in the first place.

In sum, the research adopted a qualitative research method that triangulated in-depth interviews with desk researches – literature review and document analysis – designed to underpin and validate the empirical findings that slowly emerged from the fieldwork. The general objective has been to contrast the positions of the actors within the field in a critical analysis that benefitted from the use of different sources of data. The methodological reflexive background on which the data have been analysed has been extremely useful. This approach concretely allowed me to assess the various resources, alliances, networks, competences and capitals that have been ‘invested’ by the various actors in the field of CSA regulation. In this sense, Bourdieu’s work provides untapped resources and analytical tools to dredge up the many assumptions and ‘*non-dit*’ that emerged from the interviews.

[84] The legislative proposal has been finally made public on 16th April 2013, when the writing of this Thesis was largely completed. Therefore, its content has been briefly presented in Annex I.

The research methods used are clearly too limited to offer a complete analysis of the emergence of this multi-level EU regime of CSA regulation. More interviews and more researches could have further improved the analysis. However, by the time I decided to stop with the interviews I had reached a level of saturation in which the data were largely repeated by different interviewees.

3. Exploring the field. Forty years of struggles for regulating non-financial reporting

Before the law sits a gatekeeper. To this gatekeeper comes a man from the country who asks to gain entry into the law. But the gatekeeper says that he cannot grant him entry at the moment. The man thinks about it and then asks if he will be allowed to come in sometime later on. "It is possible," says the gatekeeper, "but not now."

Franz Kafka, Before the Law, 1915

3.1 Introduction

Through a literature review and documents' analysis, this chapter presents changes both in the content and in the mode of corporate sustainability accounting (CSA) regulation, drawing and elaborating on Graz's (2006) topology of international standardization presented in Chapter 1. It identifies four phases in this development: 1. Before the 1980s. 2. Between the 1980s and the late 1990s. 3. From the late 1990s to 2008. 4. After 2008. The object of this chapter is to provide the reader with a long-term overview of the emergence of CSA regulation as an historical and social construction and identify the key turns in its history. In order to do so, it considers both the research object – the regulation of CSA in Europe – and the academic construction of this object – integrating the parallel fields of financial disclosure (CGR) and non-financial disclosure (corporate social accountability). This approach is drawing on the '*double historicisation*' reflexive sociological research strategy presented in Chapter 2. This reflexive approach allowed me to reveal the relation between changes in accounting regulation and in the economic field (CGR), therefore contextualising the cyclical emergence of non-financial reporting regulation.

During over four decades, the idea of mandating large companies to regularly issue timely, accurate and reliable information about their social and environmental impact has been discerned, criticised, ignored, silenced, weighted and announced as imminent by academics, regulators and policy-makers. On the contrary of most of the literature, which tends to give currency to a linear and progressive narrative of the emergence of corporate social and environmental disclosure (see

for instance two recent books, Esty and Wiston 2009; Visser and Hollender 2011), this overview relies on a more cyclical account (broadly inspired by Ireland and Pillay 2010 account of CSR development). Furthermore, the existing literature tends to arbitrarily isolate non-financial from financial accounting standards and issues of corporate social responsibility (CSR) from questions of corporate governance and control, while the following account attempts to assess the two areas of study as complementary institutional developments (Kinderman 2012). This chapter suggests that looking at them together is possible to better understand the drivers for changes in European sustainability accounting regulation in relation with changes in the regimes of economic capital accumulation.

As regards the content of accounting regulation, it is possible to highlight the following turning points: the 1970s proposals for mandatory social reporting have been abandoned from the early 1980s until the late 1990s, in favour of detailed disclosure of financial-only and tangible information. At the same time, financial accounting rules that were rather under-developed and peripheral in company law became increasingly structured and detailed. During the 1990s, financial transparency and disclosure standards became the central tool for global business regulation (see Braithwaite and Drahos 2000). At the same time, as concerns changes in the mode of CSA regulation, we are witnessing a striking shift from a largely national and legislative-driven accounting regime to a global convergence towards transnational and privatised accounting standards, driven by the accounting profession. Non-financial reporting regulation only re-emerged during the early 2000s, as a first nucleus of rather ill-defined but broadening global regulatory frameworks for environmental and social reporting, seen as separated from financial accounting, gradually evolved into a multi-level regime for reporting Social, Environmental and Governance (ESG) information. Finally, after 2008, there has been a first attempt to integrate the two ‘parallel universes’ of financial and non-financial accounting that could represent the first step towards a new regime not just of accounting but of economic governance.

Looking at parallel changes in the regimes of capital accumulation, it is clear that they proceed symmetrically with changes in the accounting field. There is an established body of studies (Jessop 1992; Aglietta and Reberioux 2005; Overbeek et al 2007) that has showed how the end of the 1970s and the beginning of the 1980s marked the crisis of the dominant regime of Western capital accumulation, the so called Fordism, that during the post-war period had been astonishingly successful in creating economic expansion and establishing material consumption as a norm and a lifestyle (see Koch 2011). The crisis of Fordism was overcome by the expansion of an economy of debt that allowed people to borrow more money and therefore to consume more. In order to achieve this objective, before in the US and UK and only during the 1990s in Continental Europe,

governments proceeded towards a global integration and deregulation of financial markets, which was based on common accounting rules that had to be only providing financially material information relevant to finance-driven capitalism. However, as Streeck (2011) points out, this regime of Privatised Keynesianism (Crouch 2011) did not solved the fundamental contradiction that characterised the Fordist era: the physical and social limits of economic growth. In a way it made the situation worst. In fact, establishing a regime of capital accumulation based on private (and public) debt, it started borrowing resources from the unborn generations. As Streeck (2011) notes: governments allowed to "draw on future resources in addition to those already at hands".

Here is the crucial link between 'finance-driven' capitalism and the rise of 'sustainability' accounting regulation. The underlying rationale for mandatory sustainability reporting, which is often masked, is intimately related with the sustainability of this economy based on debt. However, looking at the academic and regulatory debate on CSA, this issue only barely emerged since the 2008 financial crisis and it has been often neglected or silenced even after the onset of the crisis. The study argues that there is a strong link that needs further analyses between the construction of an autonomous accounting field, based on the distinction between financial/non-financial, and the autonomy of a regime of economic accumulation, based on debt and financial accumulation; the crisis of financial institutions that have become "too big to fail" and the current emergence of new regime of accounting for sustainable companies. However, as we shall see in this chapter and in the following one, nothing is determined a priori in this development – it is not simply 'an idea whose time has come'. Changes in the regulation of CSA are the result of social conflicts between several groups of actors engaged in reshaping concepts of economic capital and value; struggling to continuously redefine fundamental issues such as: who controls modern corporations? how it is governed and for what purpose?

Unfortunately, legal responses have been, so far, rather modest or fragmented, failing to 'make sense' of a world that is rapidly changing. Like in Kafka's (1915) short novel, 'Before the Law', many seasons have passed since early ideas of measuring and reporting corporations' impact on society first emerged. Those who have sought the introduction of such rules for business by law have not been 'received' for over two decades. Meanwhile, corporate social reporting, which used to be seen, at first, as an intermediate, procedural objective, towards corporate democracy has become an end in itself. Only after the onset of the global financial crisis, the conventional legal approach, which tends to separate financial/non-financial, slowly started to fade away. Since 2008, the CSA regulatory debate has become more radical, going back to fundamental questions about the role of shareholders and the nature and purpose of the modern corporation that had been already discussed during the 1930s and 1970s. However, the responses to such questions appear more

complex than ever, they require a new approach to corporate sustainability accounting as a field of transnational law.

3.2 The origin of the debate

It is appropriate to begin with questioning when we should trace the origin of the current debate on the power and accountability of corporations.

As pointed out by Sir Adrian Cadbury (2006: 15) "the governance of business did not effectively begin to attract the attention of politicians, economists, or the wider public until after the First World War." While the threats posed by the corporate form were recognized much earlier (see Adam Smith), in those formative years corporate misconducts and scandals were not attributed to lapses in governance. Rather than focusing on companies' directors responsibilities, there were a generally robust view that it was up to investors to judge the quality and honesty of their investment. The key change came with the introduction of the concept of 'limited liability' in 1862. In order to increase national productivity and the use of private investments to create national wealth, this innovation enabled members of a company to limit their liability to their stake in the business and not to be exposed to claims beyond their stake in case of bankruptcy. As a consequence, companies' directors accepted certain responsibilities in the conduct of their companies but, on the other hand, gained a greater, unchallenged power and were left relatively free to govern corporations. This freedom was first challenged by the introduction in Europe of the supervisory board in 1870 by German chancellor Otto von Bismarck. This structure was designed to strengthen shareholders' control – in particular banks' – over the companies in which they invested and represent the first political move to limit corporate power. Nevertheless, at the time the influence and power of corporations and therefore their public exposure was still relatively small. Things radically changed when stock markets in the US and in Britain expanded to the degree that corporate fortunes started to affect broader constituencies. Ideas about the social responsibilities of corporations can be traced back to this epoch, around the 1920s and 1930s. As pointed out by Ireland and Pillay (2010) the ideas about the 'socially responsible corporation', which emerged in the 1930s and rose to prominence in the post-war era, cannot be considered as mere precursors of contemporary CSR and were markedly more radical than contemporary ones. While in the previous decades companies' shareholders were involved in the management or in its monitoring, by the late 1920s they, for the most part, "assumed the role of purely passive, *rentier* owners of titles of revenues, uninvolved in, and external to, the process of production." (Ireland and Pillay 2010: 80) This situation created an evident problem of "corporate accountability". As maintained by

sociologist Thorstein Veblen (1904, 1919, 1923), among many other authors, shareholders had been reduced to the status of 'anonymous pensioners', 'absentee owners' possessing 'prescriptive rights to get something for nothing'. According to this school of thought, corporate shareholders were increasingly likened to bondholders, arguing that the differences between debt and property; credit and capital; stocks and bonds were becoming increasingly blurred. The appearance of Adolf Berle and Gardiner Means famous book, *The Modern Corporation and Private Property* (1932), seemed empirically confirm this claim. It stated that shareholders of many US corporations had become widely dispersed and most of them took little interest in the company's day-to-day management. As a consequence they had lost control of the corporations in which they held shares. Berle and Means thesis highlighted the separation of management (directors acting as agents) and control (shareholders acting as principals) and constitutes the basis for modern theories of corporate control and corporate governance. What is relevant for the scope of this research is that during the 1930s there was a harsh debate on the separateness of corporations from their shareholders, mirrored by the famous public debate between Dodd and Berle on the purpose of corporations. Adolf Berle had been advocating for a strengthening of the fiduciary duties of directors in the attempt to align them to the interests of all shareholders and solve the accountability gap (Berle 1926, 1931). Dodd contested this position claiming that the idea of separate corporate personality needed to be taken more seriously and therefore contesting the identification of corporations with their shareholders. Society, he argued, was going through important changes in the public opinion on business that should be considered not merely as a private enterprise but as a public institution with wider social obligations. He contrasted the idea of the company being an aggregate of stockholders with a view of corporations as truly separate entities that should operate, through their managerial agents, as 'good citizens' with a sense of social responsibility. When *The Modern Corporation* was published, in late 1932, Berle's own position was closer to the one of Dodd. He argued with Means that shareholders were now the owners of 'passive' rather than 'active' property and, having relinquished so many of the rights traditionally related with ownership, they could no longer properly, or accurately be called the corporations owners. The community was entitled "to demand that the modern corporation serve […] all society". Various groups should be "assign[ed] […] a portion of the income stream on the basis of public policy rather than private cupidity" (Berle and Means 1932: 355-6)

After the end of WWII, the legitimacy of the principle of 'shareholders primacy' had been further eroded and references to the existence of broader social responsibilities beyond and above shareholders' returns became commonplace. Ireland and Pillay (2010) refer to this period as the epoch of 'transformative' CSR. On both sides of the Atlantic, those were the heydays of Keynesian

economics; 'social democracy' and what in the previous chapter we referred to as 'democratic capitalism' (Streeck 2011). During this period, many commentators started to argue that shareholders rights needed to be diminished, corporations re-conceptualized and directors duties redefined as a new post-capitalist society – less obsessed with profit motives – had emerged (see Dahrendorf 1959 or Galbraith 1956). Edward Mason (1959: 2-6), for instance, influentially claimed that private property ownership, still valid in relation with individual possessory holdings, did not apply to corporations whose 'owners' had been converted into functionless *rentier*. He added that with shareholders having "only the vaguest idea where 'their property' is or of what it entails", the traditional justification for private enterprise and private property had "gone forever" (1959: 14-15). Similar conclusions were reached in the UK by prominent company lawyers L.C.B. Gower (1955), George Goyder (1961), K.W. Wedderburn (1965) and in the US by Chayes (1959, 1966) and Manning (1958). During this period, "it became widely believed not only that corporations *should* be run in the wider social interest but that they *were* in fact increasingly being run in this way." (Ireland and Pillay 2010: 83) Free from both strict shareholders' control and the rigors of market competition – as a consequence of growth in oligopoly and monopoly – managers were increasingly seen as balancing the interests of a wider range of actors. Significantly Berle and Means, in their 1967 edition of *The Modern Corporation*, were describing managers as "administrators of a community system", arguing that the American corporation "should not be seen as a business device but as a social institution." The emergence of ideas of CSR and 'managerialism' obviously encountered the criticism of the advocates of shareholders-centred capitalism. Famously, Milton Friedman (1962) called CSR, "a fundamentally subversive doctrine", representing a threat to capitalism itself and the anteroom for socialism. Burnham (1942) drawing the attention to the risks connected with managers using their power to pursue their own interest. Nevertheless, a widespread view was perceiving capitalism radically shifting away from "traditional ruthlessness and aggressive individualism" (see Crosland 1956 and 1962). From the mid-1950s, ideas of 'industrial democracy' led to corporate innovations such as German 'co-determination' and the institutionalization of the role of workers' representation all over Europe. Ireland and Pillay (2010: 84) summarize the 'transformative' nature of 1950s and 1960s ideas of corporate social responsibility maintaining that it "frequently entailed a radical re-conceptualization of the nature of the corporation and an explicit rejection of the principle of shareholder primacy: it was underlined by the belief that it was perfectly legitimate to subordinate the interests of shareholders to those of other groups, or of the society as a whole."

3.3 The history of a contested idea: the rise and fall of social accounting

1960s and 1970s. The historical compromise' and the rise of national debates about regulating social accounting

It is in the broader socio-economic context described in the previous section that first emerged in Europe a lively debate about the need for creating, along with the traditional rules for financial statements, a set of standards for mandatory corporate social accounting. Although first examples of corporate social and environmental reporting date back to the first decade of the 20th Century (Hogner 1982; Guthrie and Parker 1989), the regulatory debate only began in the late 1960s, at the zenith of Fordism, in a politico-economic and politico-ideological context dominated – particularly in Europe – by ideas of 'industrial democracy' and workers' participation.

In Europe organised labour and the 'working class' were exerting a growing influence on political and corporate leadership. This role appears clear considering the content of companies' reporting, which was particularly concerned with the kind of information relevant to employees and trade unions (TUs). This largely differs from the US case[85], where labour forces were traditionally less organised (see Marens 2012) and stock markets and institutional investors much more developed. From a quantitative point of view, the number of companies practicing social accounting was relatively conspicuous. In a series of reports, based on the analysis of annual reports from *Fortune 500* companies, Ernst and Ernst arrived to count that, at the end of the 1970s, 90% of the reports contained socially oriented information. Interestingly, only 1 percent of the *Fortune 500* companies (six companies) were publishing such information separately from the annual report. According to Dierkes and Ullmann (1979), in the Federal Republic of West Germany, 50% of the largest companies were reporting on their social performance, although only in 40 to 60 cases this practice is defined as methodologically 'at a quite advanced level'. According to Rey (1980), in France the percentage of large companies disclosing social information was even higher (see also

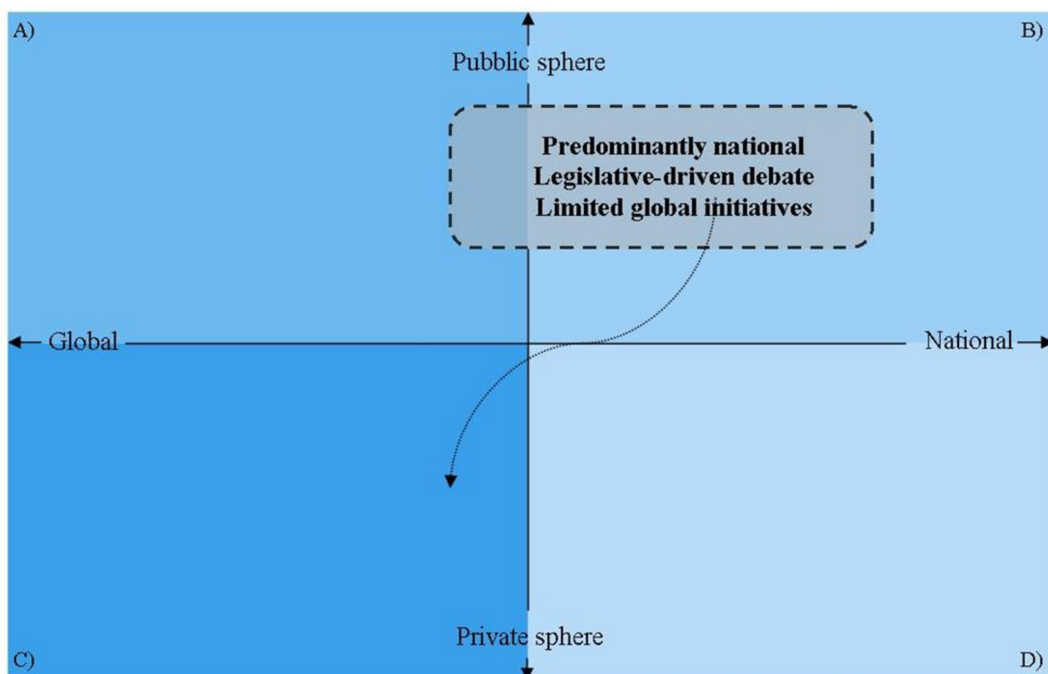
[85] In the US, the rise of non-financial disclosure was chiefly driven by ethical investors interested in information on whether a company was investing in South Africa or in tobacco stocks; on the number of female directors or environmental and industrial safety records (Simon et al. 1973; Bloomberg 1973: 1026) For instance, Dierkes notes that: "While the reports by business in the US usually focus on the external environment (consumer issues, physical environment, community relations), the European counterparts heavily emphasize the internal environment, company-employee relations." (1985: 364) As recently argued by Marens (2012), the way CSR evolved on the two sides of the Atlantic was greatly influenced by the different outcome of the 1920s debate on the regulation of corporate control and responsibilities. Without going into the details of his interesting argument, the author maintains that the American labour movement, on the contrary of the European one, was defeated by the new giant American corporation. As a result, while in Continental Europe regulators allowed a greater control of workers' organisations on the governance of large corporations (stakeholders model), US executives responded by *claiming* to manage according to principles of social responsibilities.

Chevalier 1976). He maintained that an estimated 200 to 300 companies were already involved in social reporting before 1977, when this practice became mandatory for all French firms above 300 employees.

Focusing on regulatory aspects, they were widely debated across different European jurisdictions; however, in most of the cases, they failed to produce actual legislative changes. Ullmann (1979), for instance, provides an excellent account of the legislative and political debate on social accounting that was taking place in West Germany. He maintains that: “Individual corporations as well as business organizations, have stressed the voluntary character of CSR, pointing out that legislation would bring experimentation to a standstill and thus stifle further progresses. [...] However in view of the legislative efforts in a number of neighbouring counties the probability of future legislation in Germany is slightly increasing. Indeed, should the companies involved in CSR conclude that future legislation is unavoidable their warnings against the regulation of CSR in the absence of demands for it would have an altogether different meaning, [...].” (1979: 131) In the UK, the Accounting Standards Steering Committee published, in 1975, the far-reaching *The Corporate Report*, aimed to “re-examine the scope and aims of published financial reports in the lights of modern needs and condition.” (ASSC 1975) This cutting-edge discussion paper constitutes an extraordinary document of the kind of debate that characterised this period, not only in Continental Europe but also in the UK, particularly because its focus was not on corporate social accounting but on accounting practices in general. It states, for instance, that: “The complexity of modern business enterprises and public utility services has brought a growing awareness of the mutual inter-dependence of all sections of the community and is reflected by a change in balance between the owners of businesses, employees and to a lesser extent customers and the public acting as members of organised groups.” (p. 36) It also maintains that “recognition of changes in public attitude” is leading to a “trend in recent proposed and actual legislation towards the imposition of disclosure requirements not directly linked to the needs of shareholders”, which are “likely to lead to a greater recognition in company law of the rights of employees.” (p. 39 - 40) The Report clearly states that profit maximisation for shareholders represents the past: “Because neither business nor the public regards the maximisation of owners’ profit as the only legitimate aim of business, distributable profits can no longer be regarded as the sole or premier indicator of performance.” (p. 38) The Report includes a detailed explanation of prospective changes in accounting requirements and identifies a number of issues that need further researches. It concludes that: “We recognise the trend in new and proposed legislations towards the recognition of the rights to information of a growing number of groups including employees and the public. We recognise there is need for additional indicators of performance in the corporate reports of all entities.” (p. 75)

Considering the mode of regulation (see Figure 3.1), the debate was largely legislative-driven, anchored in the sphere of public law and conducted at the national-level, although there was a strong attention to regulatory trends and developments in the US and in other European countries. Only in the late 1970s, we are witnessing the emergence of some international frameworks, concerned also with corporate social disclosure, in an early attempt to regulate the emergent transnationalisation of business[86]. In particular, the OECD issued for the first time its 'Guidelines for Multinational Enterprises' in 1976, as part of the Declaration on International Investment and Multinational Enterprises. The principles outlined in this universal instrument offer guidelines to multinational enterprises (MNEs), governments, and employers' and workers' organisations in such areas as employment, decent conditions of work and life, and impact of the industrial activities. Furthermore, in a clear attempt to translate the corporatist compromise to a global level, in 1977, the Governing Body of the International Labour Office (ILO) first adopted the Tri-partite Declaration of Principles concerning Multinational Enterprises and Social Policies[87].

Figure 3.1 *The European field of accounting (1970s): changes in the mode of regulation*



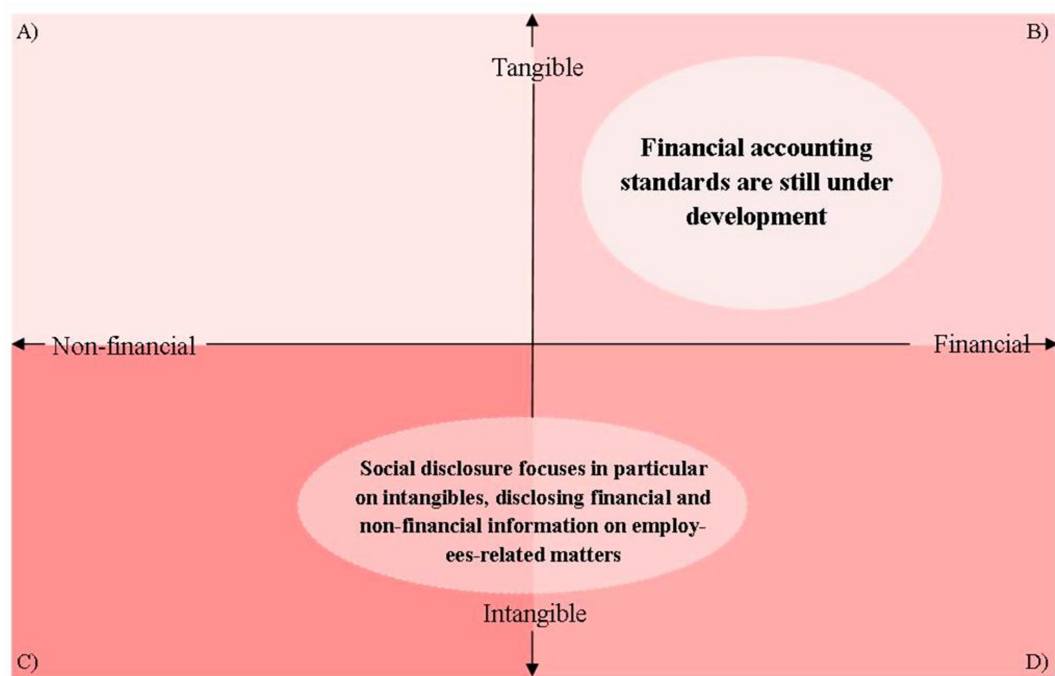
[86] For instance, in 1977, the creation of the Global Sullivan Principles of Corporate Social Responsibility – launched by Reverend Leo Sullivan to persuade large US companies to disinvest in South Africa – already prefigured the internationalisation of this field of regulation; the global rise of US-style CSR and the emerging power of large institutional investors.

[87] The ILO Tri-partite declaration's provisions have been afterward amended in November 2000 and March 2006 are reinforced by certain international labour Conventions and Recommendations which the social partners are urged to bear in mind and apply, to the greatest extent possible.

As regards the content of regulation (see Figure 3.2), accounting standards were still largely underdeveloped and experimental as compared to today. As Mathews pointed out, “financial accounting standards had not been developed to any extent at this time”, except for the US and UK’s jurisdictions (1997: 11). It is perhaps difficult to even imagine it today. However, less than three decades ago companies’ financial reports were extremely reduced, made of only a few pages and only communicating to shareholders the basic information, often only changing the bottom-line compared to the previous year (Eccles and Krzus 2010). Indubitably, that situation allowed regulators and companies for greater freedom to engage and experiment forms of non-financial accounting, including social accounting. From a summary review of this early debate on social accounting, emerges a widespread acknowledgement that “there is little merit in treating social and economic issues as though they were clearly separated from each other.” (Ackerman and Baur 1976: 12) During this period experimentations were typically associated with employees reporting and the elaboration of organizational performance indicators (see Gray and al. 1996; Mathews 1997; Gray 2002 and Owen 2008). As Matthews (1997: 484) points out, “environmental concerns were ‘invisible’ at that time”: a series of surveys conducted by Ernst and Ernst in the period 1972-1978 included only three environmental categories out of 27 (Ernst and Ernst 1978: 22-28). As Ullmann commented with regards to West Germany, “on the political level CSR seems to focus more and more on employees’ affairs, reflecting, thereby, the current economic situation and the relative power of the constituencies involved.” (1979: 132)[88]

[88] Social reporting was seen by corporate owners and management as a means to deal with the growing influence of organised labour and to legitimise managers’ position during a period of intensified conflicts. On the other hand, the goal of part of the labour unions’ became to orient the discussion of social reporting regulation towards the subject areas for which traditionally they have developed policies: “[...] the long-term aim of their strategy is to increase the control of labour unions on business affairs.” (Ullmann 1979, p. 130)

Figure 3.2 *The European field of accounting (1970s): changes in the content of regulation*



According to Mathews' (1997), during this period two approaches to social accounting emerged: those who were attempting to modify historical financial accounting and to find financial measures for new identities and those who attempted to develop new measures, including non-financial ones. A certain interest was attracted by the rise of forms of Human Resources Accounting (HRA) concerning financial and non-financial information about companies' human capital and intellectual capital (see Blau 1978; Caplan and Landekich 1974). The example *par excellence* of the social accounting regulation that characterised this period is, however, the introduction in France of the *bilan social* by the 77-769 Law 12 July 1977. Strongly supported by President Valéry Giscard d'Estaing, this legislation mandates large companies to prepare a social account annually and submit it to a committee of workers and mangers that have to discuss and approve it. The law was highly prescriptive and mandates companies to prepare a report on the basis of 134 quantitative and statistical measures and indicators, including chapters on employment, training, health and safety, labour relations, working conditions and living conditions (see Harribey 2009).

As a concluding remark, it is worth to note that the introduction of social accounting was widely perceived as a necessary modernisation of accounting practices, again 'an idea whose time had come'. In fact, during the 1970s, Anglo-Saxon (US and UK) companies were consistently outperformed by their German and Japanese competitors. Therefore the rationale for discharging a broader approach to corporate accounting was largely due to pressures for converging toward the

German model of co-determination, seen as better equipped to deal with the upcoming crisis of Taylorism. Recognition of 'changing public attitude' was given, for instance, in the 1973 CBI (Confederation of British Industry) report[89]; the Bullock Committee arrived to propose the adoption of a form of employee representation on companies' boards (Bullock 1977); close 53 of the 1973 UK Company Bill (which lapsed following a change in government) stated: "The matters to which the directors of a company are entitled to have regard in exercising their powers shall include the interests' of the company's employees generally as well as the interests of its members." In France the introduction of mandatory social accounting was the direct consequence of the work of the Sudreau Commission. This was established with the explicit aim of addressing the emergence of new instances due to the crisis of Taylorism that motivated a reform of Company Law. While the Commission decided to reject the idea of adopting a German co-determination model of corporate governance, it elaborated the notion of 'co-surveillance' by both shareholders and trade unions' representatives. Another remarkable example of the influence of the 'German model' is the EC Proposed Fifth Directive on Company Law (Commission 1972) published in October 1972 by the EEC Commission, which would have required all large European companies (above 500 employees) to adopt a German-style two-tier board structure and some form of employee participation in corporate decision-making. Eventually, it was abandoned because of strong opposition by the UK.

1980s and 1990s. Accounting standards, financialisation and modest CSR.

By the early 1980s, however, the debate radically changed and the first cycle of non-financial reporting regulation was interrupted for over two decades. Transformative ideas of changes in corporate law and workers' participation were abandoned and the primacy of shareholders' interests was reaffirmed.

In the new politico-economic and politico-ideological climate of the 1980s (see Jessop 2007; Dicken 2007) ideas of social accounting barely survived. As summarised by Colin Crouch, "Partly as a result of changes in technology, it was becoming feasible for major corporations to arrange their sourcing, production, distribution and management systems on a transnational scale in order to maximize economies of different commodity, labour and product markets. To realize the gains of such a scale of organization, firms required a deregulation of national financial regimes, so that they

[89] "We think that the government may consider, as part of their doctrine of wider disclosure, a general legislative encouragement for companies: to recognise duties and obligations (within the context of the objects for wich the company was established) arising from the company's relationship with creditors, suppliers, customers, employees and society at large; and in so doing to exercise their best judgement to strike a balance between the interests of the aforementioned groups and between the interests of those groups and the interests of the proprietors of the company." (CBI 1973)

could move money around the world in line with the production activities [see Table 1, below]. This was forthcoming in a series of changes during the 1980s, which quite quickly produced an almost global financial market. This, in turn, made possible the rise of a global financial sector." (2010: 32)

Table 1: National regulatory changes in relation to 1992-2008

	1992	**1996**	**2000**	**2004**	**2008**
Number of countries that introduced changes	43	66	70	103	55
Number of regulatory Changes	77	114	150	270	110
Number favourable to FDI	77	98	147	234	85
Less favourable	0	16	3	36	25

Source: UNCTAD (2009: 31)

Indeed, this shift has been labelled as the 'financialization' of the global economy (Aglietta and Riberioux 2005; Reinhart and Rogoff 2009) that has resulted in a dramatic growth in trading volume and the complexity of financial products (Turner *et al.* 2010). Crucially for our analysis this shift has magnified the economic power of institutional investors: pension funds, mutual funds and insurance companies. This deep transformation has emerged before and more bluntly in the US and the UK. While in the 1970s individuals held almost 80% of equity in the US, by the end of the 1990s their holdings had fallen below 45% and institutional investors' had risen to almost 50%. Similarly in the UK individual ownership dropped from over 50% in the early 1960s to about 15% in 1999. At the same time, institutional ownership rose from 30% to over 50% (see Hawley and Williams, 2000). Table 2 (below) illustrates the rapid financialisation of the world economy, showing the expansion of 'financial capitalism'.

Table 2: Development of the global nominal GDP and financial stocks: 1980-2006 ($trillion)

	1980	**1990**	**1995**	**2000**	**2006**
Nominal GDP	10	22	29	32	48
Financial Assets	12	43	66	94	167

Source: Farrell et al. (2008: 3)

Share prices rather than production became the guiding lights of top managers' activity with a fierce reassertion of the principle of shareholder primacy and of the shareholder-centred model of corporation (see Soederberg 2010). Mainstream CG literature started to treat the Anglo-Saxon shareholder-centred model as the 'standard', claiming that, in the context of growing global competition, this model had "no important competitors" left and predicting that we will witness the "end of history for corporate law" (Hansmann and Kraakman 2001: 50).

Following the emergence of what Susanne Soederberg called (2010) the transnational 'corporate-financial nexus', CSR rapidly dropped from the regulatory agendas. As synthesised by Ireland and Pillay, while the advocates of contemporary CSR struggle to modify corporate behaviour through voluntarism and self-regulation, a "ruthlessly shareholder-oriented, Anglo-Saxon model of the corporation which is antithetical to meaningful CSR is being entrenched around the world by legal and other means." (2010: 91) Solomon (2006: 25) noted that, "It is almost impossible to pursue ethical business unless it is demonstrated to be profitable, not only because of the attitudes of managers and shareholders but also because of our legal system and corporate governance structures." Kinderman (2012) recently showed that, since the late 1970s, in the UK CSR has become "a quid pro quo for lighter regulation", legitimising unleashed financial capitalism. Contemporary CSR, in effect, has been labelled as 'modest' (Parkinson 2006) and increasingly criticized for having little impact on the world's most pressing problems (Dowell-Jones and Kinley 2011; Visser and Hollender 2011).

The key point in relation with this study is that, as a consequence of the global convergence toward (absolute) shareholders primacy in corporate law and CGR, mandating social and environmental disclosure became unthinkable, because this information was not considered as 'material' by investors and financial analysts. This change was so sudden that a clear sense of dismay and frustration can be perceived in the work of those who had been at the forefront of the social accounting debate during the 1970s[90]. In 1985, for instance, Dierkes notes that: "The 1960s and 70s witnessed a re-examination of the relation between business and society, the emergence of a new awareness of the breath of the positive and negative impacts of business activities, and a concomitant reformulation of the concept of corporate interests and responsibilities. [...] Since the early eighties, the situation has changed. Although the companies which pioneered concepts of corporate social reporting are still continuing their effort, few are joining their ranks, except in countries where legal requirements for social reporting have been established." (1985: 334-335)

[90] As recently evoked by Rob Gray: "Whilst social accounting enjoyed considerable experimentation and currency in the 1970s it fell off the public agenda in the 1980s, so much so that there was considerable hostility to the concept during the 1980s and beyond." (2001: 9)

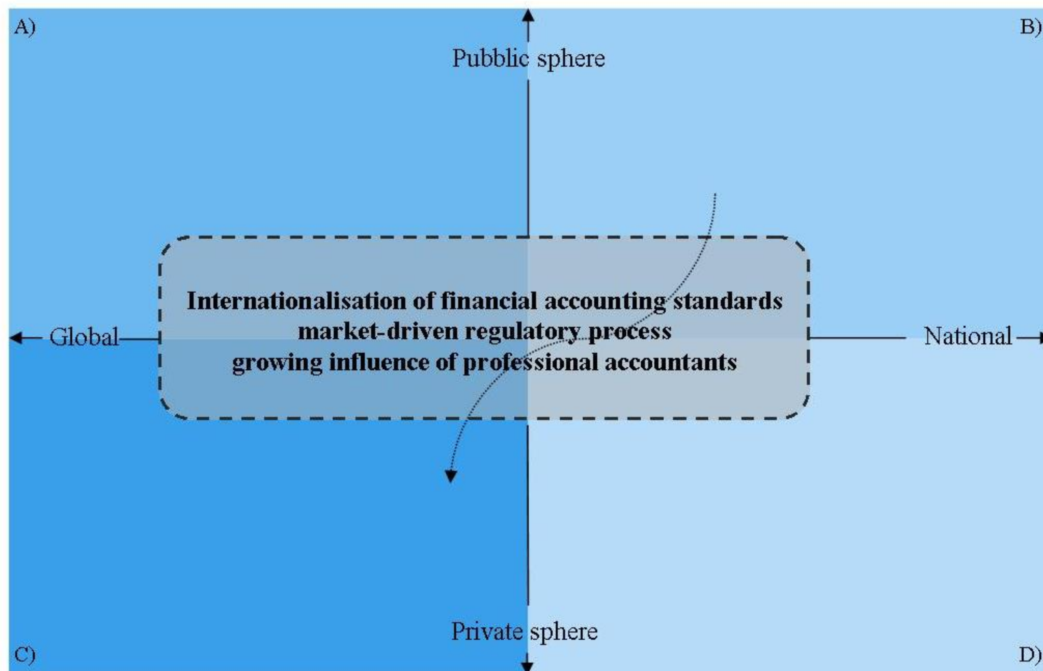
Debates on accounting standards and social reporting – likewise CG and CSR debates – became completely isolated from each other. This separation was legitimised, above all, by the force of the law. In fact, this period sees a remarkable structuration of (financial) accounting and reporting, through the adoption of accounting standards and legal provisions to reduce the degree of individual interpretation in financial reporting (Nobes and Parker 2000). As Whittington (2005) points out, the expansion and internationalisation of large corporations and capital markets since the 1970s led to a regulatory momentum for harmonising and standardising financial accounting, in order to meet the need for comparability between companies and to make the preparation of group accounts easier.

Therefore, during the period from the 1970s to the 2000s we are witnessing the development of international financial standards "as a product of the marketplace" (Whittington 2005: 128). This process was dominated by the International Accounting Standards Committee (IASC) now called IASB (International Accounting Standards Board). The Committee was founded in 1973 in London. It is a private transnational organisation of professional accounting bodies, considered already in the early 1980s as the "premier international body and the most productive issuer of international accounting standards". (Evans and Taylors 1982: 117) In Europe, this situation led the ECC to issue the Fourth (1978) and Seventh (1983) Directives, which significantly enhanced the financial accounting landscape and to seek some form of agreement with the SEC to achieve a certain level of harmonisation with the US. However, following the failure of bilateral and international accounting negotiations, the EU Commission started to look at the IASC as a promising alternative to legislative harmonisation. Finally, in 1995, the European Commission aligned with the harmonisation efforts of the IASC. As long as it was not incompatible with the European Directives, Member States could allow companies to report under the International Accounting Standards issued by the IASC.

However, little of this accounting structuration applied to social and environmental accounting, which was largely seen as independent from the conceptual framework that dominates such standards. It is crucial to note that that during this period and to a lesser extent even today, transparency and disclosure has emerged as the single most powerful and ever-expanding principle for regulating business-society relations (see Power 1997; Braithwaite and Drahos 2000; Braithwaite 2008). As Power (1997) already perceived with extreme clarity in the mid-1990s, since the 1980s there has been a global explosion of 'rituals of verification' derived, more or less directly, from financial accounting and auditing practices. The well-known thesis is that, as the Welfare State is increasingly displaced by the Regulatory State, new forms of auditing and outcome-based

performance measurement have become central in regulatory and political debates[91]. Considering this established regulatory trend towards transparency and disclosure, it is even more striking that this phase sees governments and policy-makers almost completely ignoring the area of corporate non-financial disclosure.

Figure 3.3 *The European field of accounting (1980s and 1990s): changes in the mode of regulation*



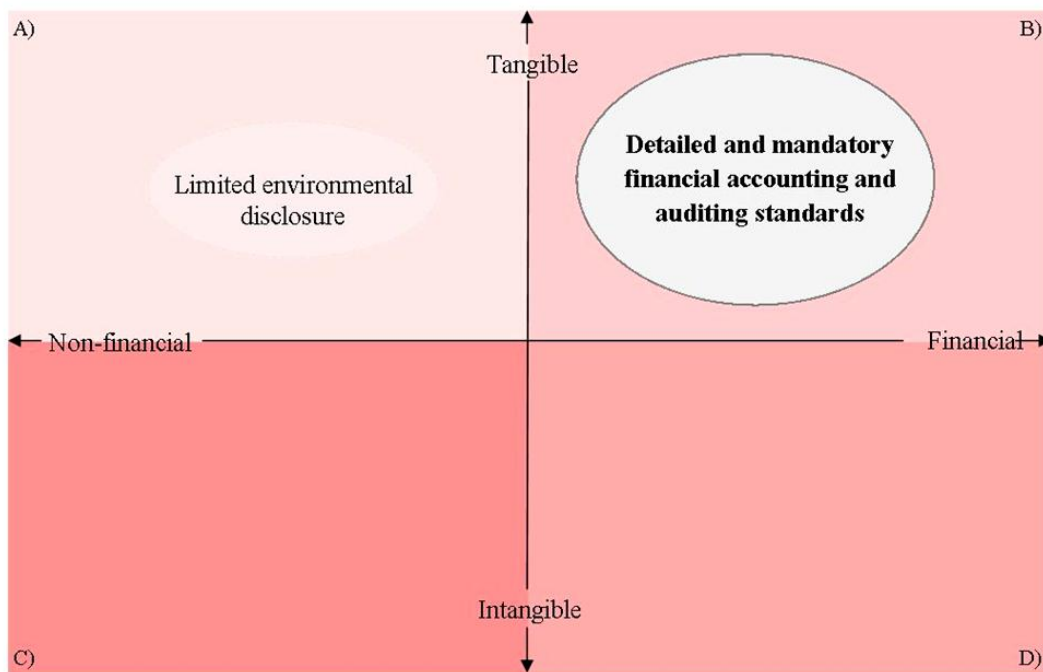
Particularly during the 1990s, the rise of legislation related to environmental protection provided a limited support to the case for regulating corporate environmental reporting. In particular, environmental reporting attracted some attention following major disasters such as the *Exxon Valdez* in 1989. Throughout the 1990s, no-profit environmental organisations such as CERES sown the seeds for the development of environmental reporting and provided the first examples of voluntary guiding principles for companies wishing to disclose such information[92]. However, this development has not led to accounting standards that specifically deal with environmental liabilities or their inclusion in the annual report. However, a key distinction here is

[91] See, for instance, Osborne and Gaebler (1992) “Reinventing Government”, which effectively translates private sector managerial ideas about quality into the context of public administration. On the Regulatory State see Majone (1997) and Levy-Faur (2011)

[92] The Coalition for Environmental Responsible Economies (CERES), created in 1988, has been one of the early pioneers of contemporary environmental reporting and had a central role in the development of a network of organisations devoted to the development of non-financial reporting (see www.ceres.org) In particular in 1989 CERES produced the Valdez Principles, a 10-point code of corporate environmental conduct that represent a milestone in the field of corporate environmental accountability.

between corporations reporting directly to the public or reporting to public authorities. In fact, while the former was not developed, the latter became a widespread practice, often linked to the licensing conditions that allow a business activity to take place[93]. The 1983 UEC's (Union Européenne des Experts Constables, Economiques and Financiers) recommendation for introducing structured social reporting (see UEC 1983) and the 1990s' introduction of mandatory social accounting in Belgium are isolated initiatives that failed to re-engine the interest for this form of accounting.

Figure 3.4 *The European field of accounting (1980s and 1990s): changes in the content of regulation*



The distinction between financial and CSR aspects was also crucially re-enforced by an academic and professional tradition, portraying accounting as restricted to strictly financial issues and the reduction of CSR and social accounting to a 'non-issue' in management studies. As Rob Gray clarifies, it is fair to say that "for the vast majority of teachers, students, researchers and practitioners in accounting management and organisational studies, social and environmental accounting is a matter of sublime irrelevance. They know little about it and care even less." (Gray 2006: 6) Penetrating and significant charges against conventional accounting can be found in many

[93] The practice of environmental reporting to public authorities was pioneered in the US by the introduction in 1986 of the Toxic Release Inventory (TRI).

critical accounting studies (see Tinker 1984; Cooper and Hopper 1990; Power and Laughlin 1992; Laughlin 1999)[94].

Isolated from the mainstream accounting and corporate governance debate; ignored in accounting text books and absent from regulatory debates, in a few years social and environmental accounting was reduced to a mere theoretical exercise devoid of any actual validation or acknowledgement[95]. The struggles for keeping alive a meaningful research programmes and a limited practice led to a transformation of the content of such reports, which increasingly moved away from social matters and towards environmental issues. As Buhr (2007: 61): “By the end of the 1970s social reporting was fading out and it took until the late 1980s and into the early 1990s for the next stage, environmental reporting, to emerge. Because of the hiatus of the early 1980s, environmental reporting hit the scene fresh and new, even though it was a recycled phenomenon arising from its earlier associations with social reporting.”

Overall, during this phase, the regulatory debate on social and environmental reporting seems ordained to vanish in the CSR area: a ‘grey zone’ external to both national legal intervention and emerging transnational corporate governance regulation (see Mares 2008). In effect, as mentioned above, contemporary ideas about corporate responsibilities radically differ from the previous phase. The main difference is that contemporary CSR is a mere adjust to the dominant shareholder-oriented model of corporation that re-emerged in the 1980s. As maintained by Ireland and Pillay: “Its objective is the much more modest one of trying to ensure that maximization of shareholder value is not purposed by corporations without their having some regard to the impact of their activities on the society at large.” (2010: 89) It is therefore a mere adjustment to the way corporations operate and do not purport to be transformative in its nature but only *ameliorative*. John Parkinson referred to the current situation as ‘modest’ because it has not the aim of aligning the public interest and the interest of shareholders. It relies on responses to the external preferences largely mediated through the market, not attempting to a more fundamental reshaping of corporate objectives.

[94] Inter alia, traditional accounting is criticised for: being too attached to rules and procedures; positivist and oppressive; serving vested interests; its identification with power; conservative and risks and innovation avoidance.

[95] The isolation of social and environmental accounting from mainstream accounting led to the creation, during the 1980s, of dedicated journals where a circle of scholars and practitioners interested in the subject could discuss and publish their works (e.g. Journal of Accounting and Public Policy in 1982; Accounting, Auditing and Accountability Journal in 1988; Critical Perspectives in Accounting in 1990). In fact, as recalled by Mathews, “leading accounting research journal were almost as inaccessible then as they are now” (1997: 484).

3.4 The emergence of a transnational regulatory regime of sustainability accounting

The end of the 1990s marked the beginning of a new cycle of regulatory initiatives in the field of non-financial reporting. While the first cycle of regulatory initiatives, in the 1970s, was predominantly legislative-driven and taking place at the national level, this second cycle is taking place at different levels of regulation and through varying modes of governance and it is predominantly market-driven. So far, this cycle has been composed of two episodes: the first one was already exhausted by the mid-2000s while the second episode started in 2008, after the onset of the global financial crisis, and by the time this work has been completed, its outcome is still contended and uncertain.

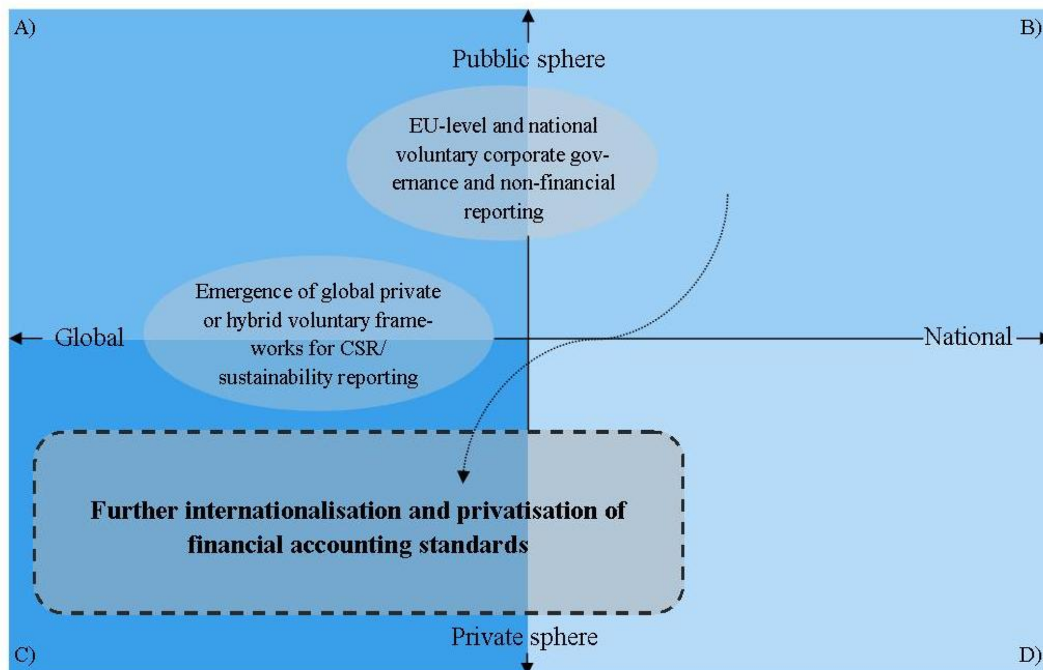
Voluntary CSR reporting and the internationalisation and privatisation of accounting standards

Considering changes in the mode of accounting regulation, the period between the end of the 1990s and the early 2000s is characterised by the rapid emergence, next to existing well-structured standards for financial reporting, of a first nucleus of largely voluntary regulatory frameworks for non-financial/sustainability reporting. This polycentric and multi-level regulatory regime defies traditional conceptualisations and has represented a puzzle for many scholars that attempted to categorise it starting from different theoretical perspectives, including international relations; regulatory studies; political sciences and organisational studies (see section 2.2).

One of the main features of this period is represented by the rise of private or hybrid *global* voluntary frameworks and guidelines for the disclosure of sustainability reporting. Organisations such as the Global Reporting Initiative (GRI); the International Standardisation Organisation (ISO); the UN Global Compact and the Carbon Disclosure Project (CDP) re-designed the landscape of corporate extra-legal and extra-financial reporting (see Annex I). The archetype of this approach has been the GRI – a no-profit global organisation created in 1997 in the US but based in Amsterdam. This applies a truly global voluntary, multi-stakeholders- and consensus-based approach to the elaboration of standards for sustainability reporting. The GRI has represented an astonishingly successful prototype for voluntary regulation of globalising business. Furthermore, it has almost completely reshaped sustainability reporting, inventing a new language and creating ties between preparers and all the different users of such reports. However, by the mid-2000, the groundbreaking role of the GRI and the UN GC appeared already exhausted. Their stakeholder-based, voluntary

approach increasingly demonstrated its limits: asymmetric power relations between social and economic stakeholders; conflicting interests and objectives; fragmentation of the regulatory landscape; failure to empower civil society and transform business organisations (see Dingwerth and Eichinger 2010).

Figure 3.5 *The European field of accounting (2000s): changes in the mode of regulation*



It is worth to stress that this regulatory approach, based on competing private or hybrid standards, was very common in the US. On the contrary, it was still largely extraneous to the European regulatory landscape[96]. As noted by Graz "standardisation in the US hinged upon hundreds of private sectoral bodies, with public agencies involved when societal concerns or defence contracts are at issue." (2006: 120) This difference perhaps explains the fact that a parallel regulatory debate emerged since 2000 also in many European countries and at the EU-level – but not in the US - on the possibility of introducing a legal requirement for reporting on corporate non-financial performance. Within this European regulatory debate, it is possible to recognise two broad regulatory strands: on the one hand, a largely voluntary approach, focusing on social and environmental information; and, on the other hand, 'corporate governance' policies and debates.

[96] Notably, despite having its headquarters in Europe (Amterdam) and being a truly global initiative, the GRI was formed in 1997 in the US by the Boston-based Tellus Institute and the Coalition for Environmentally Responsible Economies (CERES), with the support of the UNEP (United Nation Environmental Program).

As regards the former, a momentum for creating a legal framework for corporate social and environmental accountability emerged at the end of the 1990s. Around 2000, in fact, both Norway and France approved new accounting laws mandating companies to include detailed non-financial information in their management reports. The UK was contemporaneously discussing an ambitious Company Law reform, including the project of strengthening narrative reporting (Villiers 2006). The launch of the Lisbon Agenda, in 2000, seemed to confirm that non-financial disclosure was about to become an integral part of EU Company Law. However, the EU Commission soon scaled down its ambitions, facing hard and fast opposition from business organizations. Already in 2001, the Green Paper that had to translate the Lisbon commitment for CSR into policies ruled out any imposition of direct obligations on companies. It contained a very 'modest' definition of CSR as a concept whereby companies integrate social and environmental concerns on a voluntary basis (Commission 2001: 366). However, the idea to create an EU regulatory framework that would *encourage* corporate CSR, through transparency and disclosure, was still there. In October 2002, the Commission launched the EU Multi-Stakeholder Forum (EMSF) on CSR but the debate soon resulted in a deadlock on the issue of mandatory versus voluntary rules. The only, rather modest, result of this EU-level debate was the Directive 2003/51/EC that introduced into EU Law the requirement on companies to include "both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters."

In 2005 the new Barroso Commission explicitly suggested that non-financial disclosure should be regulated through voluntary guidelines, principles and standards that had been created by global regulatory networks, such as the UN Global Compact and the GRI. The outcome of the EU regulatory debate mirrored what was taking place elsewhere, implicitly confirming that the momentum for regulating this practice was gone. At the national level, in particular, the case of the UK has been symptomatic. In fact, after historic victory of the Labour Party in 1997, there were great expectations for fundamental company law reforms that would take into consideration social and environmental aspects. In effect, in 2000 the first drafts of the Modern Company Law Review appeared to extend company law to tackle social, ethical and environmental issues broadening directors' responsibilities. However, in 2006, after many years of exhausting debates, because of the opposition of the business sector, the government decided to introduce a more modest requirement, which met only the minimum European requirements (Villiers 2012). This fiasco to impose reporting through national legislation was mirrored by the unfortunate fate of the 'UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights". The Norms had been the result of a UN debate that lasted several decades in the

effort of creating global human rights standards for businesses, following closely the cyclical evolution of corporate accountability regulation[97]. By 2003, the final draft of the Norms encountered significant opposition from the business sector and the Commission on Human Rights ultimately decided, in 2004, that the framework had no legal standing (see Miretski and Bachmann 2011).

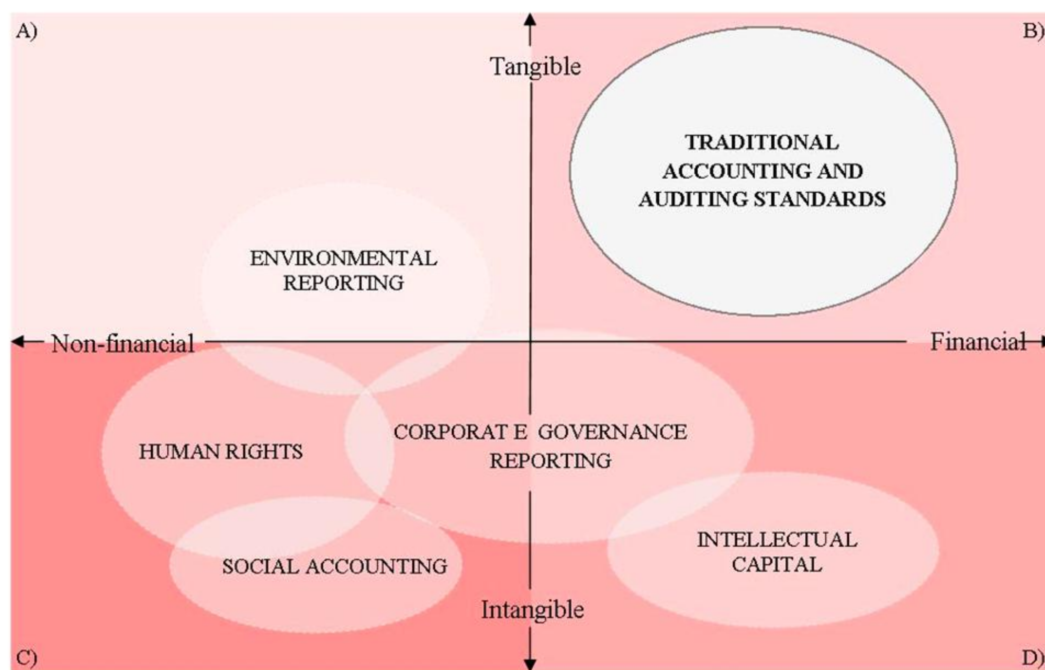
On the other hand, as part of a wave of reforms emphasizing minority shareholders' rights; board independence; accountability to shareholders; and transparency, institutional investors used the strong ideological consensus in favour of the (absolute) shareholder model to obtain the adoption of binding and comprehensive corporate governance (CG) reforms. A key role in this new framework was played by the widespread adoption of new guidelines and codes for CG reporting, inspired by the UK Cadbury Report. Finally, following the Directive 2006/46/EC, even Continental European countries, introduced this non-financial reporting practice. Justified by the necessity of avoiding new Enron or Parmalat cases, the codes affirmed the principle that shareholders are ultimately best-placed to effectively monitor CG arrangements made by directors, even in countries characterized by the stakeholder-model. As we shall see in the next two chapters, during this period, the accounting regulatory debate was monopolised by the completion of the process of harmonisation of European and international standards that had started in the 1990s. As argued in a series of recent critical corporate governance studies (Overbeek et al. 2007; Horn 2011), the reforms represented a rapture with the stakeholder tradition that characterised the German and Central European model of capitalism.

As regards changes in the content of CSA regulation, through the continuous, open elaboration and confrontation amongst different stakeholders within global networked-organisations, a relatively more coherent and defined nucleus of KPIs for reporting finally emerged. The backbone of 'sustainability reports' has been the 'triple bottom line' approach to sustainability popularised by John Elkington (1997), the founder of AccountAbility, which provided the basis for defining sustainability reporting as disclosure of ESG information. The guidelines and principles for reporting elaborated by the GRI, the UN GC and other similar regulatory initiatives, typically

[97] In the early 1970s, the United Nations Economic and Social Council requested that the Secretary General create a commission group to study the impact of transnational corporations (TNCs) on development processes and international relations. The UN created the Commission on Transnational Corporations in 1973, with the goal of formulating a corporate code of conduct for TNCs. The Commission's work continued into the early 1990s, however the group was ultimately unable to ratify an agreeable code, due to the disagreement between developed and developing countries and it was dissolved in 1994. In August 1998, the UN Sub-Commission on the Promotion and Protection of Human Rights established a Working Group on Transnational Corporations. The Working Group similarly attempted to create standards for corporations' human rights obligations. However in 2004 the Norms produced by the Working Group failed to be approved due to the opposition of large sections of business.

converged towards four key areas: social; environmental; human rights and, more recently, anti-bribery and corruption policies. However, this is still an open list and the content of CSA has proved magmatic and still evolving. Reporting and transparency became the ‘first port’ for defining the content of future regulation concerning areas as diverse as: sustainable investors; green public procurement; human rights due diligence; remuneration and the composition of the board of directors. On the one hand, the emergence of reliable, accurate and relevant frameworks for disclosure constituted a preliminary condition for any further step towards corporate social accountability. Therefore, it became a battlefield between different visions of the role of business in society. However, on the other hand, the excessive reliance on transparency and disclosure *per se* diverged the attention from the real objective, which was not to provide the market with the right information – as suggested by the dominant law-and-economics view of ‘transparency’ – but to empower stakeholders; improve corporate justice and sustainable and equitable economic growth.

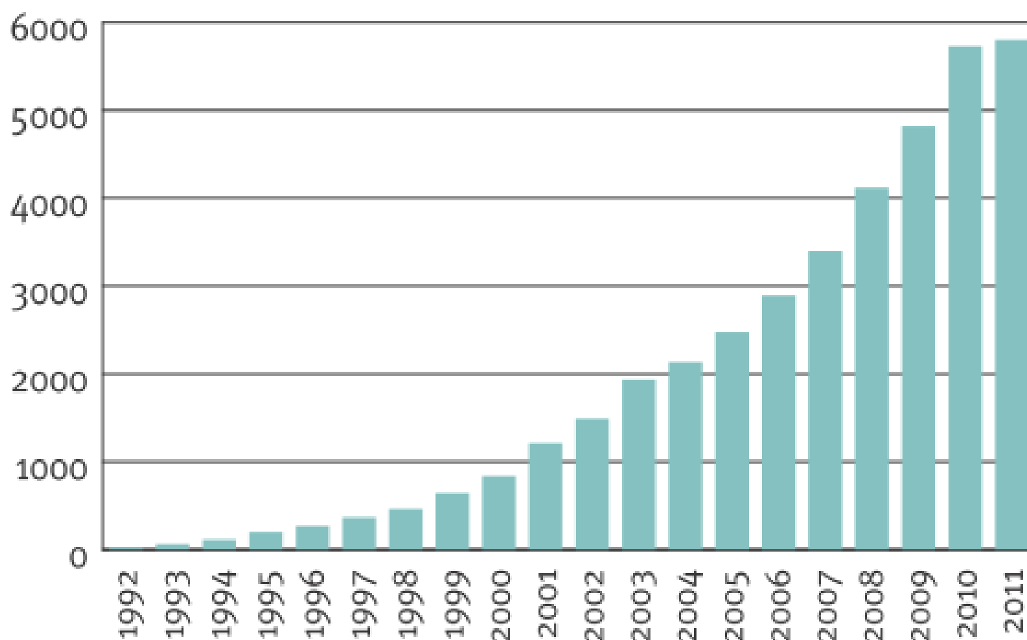
Figure 3.6 *The European field of accounting (2000s): changes in the content of regulation*



By the mid 2000s, the increase in stock markets prices and in giant corporations’ profits, implicitly, de-politicised and marketised the initial transformative intentions of the GRI and of other organisations, mirroring a loss of engagement of public authorities. ‘Voluntary’ CSR was pointing towards a form of ‘corporate *noblesse oblige’* (Crouch 2008) that were leaving to the management of the corporation the freedom to decide whether or not to engage in CSR practices and how.

Sustainability and CSR struggle to be integrated in the 'black box' of business undertakings and public authorities and law-makers decided to develop social and environmental policies in isolation from, or subordinated to, core decisions of economic efficiency. Nonetheless, 'sustainability' and responsible investments continue to grow, greatly contributing to changes in the sensitivity of business, political and social leaders on this issue. The dramatic increase in the number of reports issued, during this period, by large multinational corporations (see Figure 3.7) speaks volumes about the rapid establishment and structuration of this reporting practice. Data from KPMG Sustainability, which has regularly produced (every three years) a survey on non-financial reporting, confirm this sharp rise[98].

Figure 3.7: A snapshot of the rapid growth in sustainability reporting worldwide (*source:* corporateregister.com 2012)



In conclusion, during this phase (from the late 1990s until the mid-2000s) governments and public authorities largely opted for a voluntary approach, not imposing regulation to enterprises. They decided to rely on self-regulation, soft-law and the progressive establishment of initiatives

[98] Since 1973, KPMG has regularly produced (every three years) a survey on non-financial reporting which interestingly follows closely the evolution of this corporate practice. In 1999 it began to consider not only environmental but social and environmental and later on sustainability reporting. Furthermore, starting from 1999, surveys considered a broadening sample of companies and countries. In 2002, only 24% of the top 100 companies in 11 countries used to publish a sustainability report. Six years later they were already 53% and by 2011 the percentage rose to 64%. Considering the G250 companies, reporting has progressively become the norm (95%). The KPMG survey also shows that in some countries, in particular UK (100%) and Japan (99%), adherence to ESG reporting has become almost unanimous among their top large companies (KPMG 2011).

such as the Global Reporting Initiative (GRI) and the UN Global Compact. The conventional wisdom was that companies should be induced to disclose by the pressure of the public opinion and the 'business case' for sustainable and responsible behaviour, not by law.

This regulatory episode marked a terrific growth in the practice of voluntary corporate sustainability reporting, and the success of global regulatory networks, such as the Global Reporting Initiative (GRI), issuing guidelines and standards for environmental, social and governance (ESG) disclosure. In effect, this strategy led to a rapid institutionalization of disclosure that has become the *norm* among large corporations and to better system for undertaking substantial social, environmental and sustainability reporting. Moreover, ESG disclosure developed also into the third-sector and public sector. However, it is also worth to strongly underline that the success of this voluntary approach has been the 'other side' of the failure of imposing legal norms and obligations to TNCs as regards their social and environmental responsibility (Morgera 2009; McBarnet et al. 2007). The success of corporate social and environmental accounting paradoxically coincided with its failure. Instead of being 'combative' and challenging with regard to corporate power, the practice of ESG disclosure was fundamentally 'captured' by vested interests. Left to corporate self-regulation, CSA risked being of none or very limited interest for authorities, consumers, workers and the public opinion.

The current debate. Towards integrating financial and non-financial reporting?

After the onset of the 2008 financial crisis, the landscape of social and environmental disclosure regulation has experienced a further transformation, which is still underway. While it is still hard to predict the outcome of this transformation, there are some trends that can be already outlined.

First of all, as regards changes in the mode of non-financial reporting, we are witnessing an acceleration of the process of structuration and standardisation of CSA. In particular, there is a renewed pressure for a stronger activism of the state in its regulatory role, to ensure a minimum level of disclosure and risk prevention (see KPMG et al. 2010). While in the 1990s the debate focused on strictly voluntary business disclosure, it gradually shifted during the 2000s to stress the alternative between mandatory and voluntary approaches. Finally, since 2008, we are witnessing the overcoming of this deadlock. Since 2008, in fact, several EU countries proceeded towards varying approaches to the regulation of this practice (including the UK, Sweden, Spain, Denmark and France). More details on key developments in EU Member States are given in Annex I. However, this is just one aspect of a broader international trend away from purely voluntary disclosure.

Regulatory initiatives have been taken by stock exchanges, such as the SEC in the US and the Shenzen and Shangai Stock Exchange in China. The governments of China, India, Indonesia and South Africa, among others, have recently strengthened their regulation in this field. There is now a strong tendency towards the creation of a multi-layers regulatory regime structured as a combination of mandatory and voluntary approaches, for instance at a global level, the ISO 26000 guidance on social responsibility has been finally released in 2010. Since the fiasco of the UN Norms, in 2004, the new UN Special Representative, Prof John Ruggie, has been developing a new UN Framework for business and human rights that has been unanimously approved by the Human Rights Council after three years of extensive research and consultations. The UN Guiding Principles on 'Business and Human Rights' stress that appropriate levels of transparency and disclosure are key corporate-level mechanisms to provide a measure of accountability to groups or individuals who may be impacted and to other relevant stakeholders, including investors. The OECD Guidelines for Multinational Enterprises have been extended in 2011 to include the human rights aspects developed in the UN Guiding Principles. As we shall see in the next chapter, after 2008, at the EU level there have been a series of initiatives starting from a new Communication on CSR (Commission 2011) and a new proposed directive on non-financial reporting (Commission 2013). This wealth of codes, guidelines, standards and laws raises new questions about their emergence, the relation among the different levels of regulation and the role of the actors involved.

Secondly, as concerns changes in the content of regulation, there is a certain trend towards attempting to integrate the two parallel worlds of financial and non-financial reporting and issuing only *one report* (Eccles and Krzus 2010; IIRC 2011). For the first time since the early 1980s, the accounting profession attempted to establish a preliminary contact with the worlds of non-financial/sustainability, particularly as regards intangible assets that are traditionally absent from annual reports. This represents both a sign of maturity of CSA and the recognition of the limits of traditional financial reporting. Although this development is still in its infancy, it is strongly supported by influential organizations such as the Big Four (KPMG; Deloitte, Ernst & Young and PwC); the Global Reporting Initiative (GRI) and the International Network for Corporate Governance (INCG). The latter is an association of institutional investors, representing assets of over US $15 trillion, that has contributed to shaping global CG 'best practice' during the last two decades and has created a 'Non-Financial Business Reporting Committee' aimed to influence regulatory proposals for integrated reporting. In particular, in 2010 an International Integrated Reporting Committee (IIRC) has been set up with the objective of creating "a globally accepted integrated reporting framework which brings together financial, environmental, social and governance information in a clear, concise, consistent and comparable format." Although a recent

report (CorporateRegister.com 2012) highlighted that only a small number of companies are issuing an integrated report, the emergence of this idea marks the recognition that, by any realistic vision of markets and corporations, social and environmental considerations have a material impact.

Lastly, the rise of sustainability as the main challenge that public and private governance are currently facing has, on the one hand, further broadened the issues that are covered in the reports (biodiversity, climate change, etc.) and, on the other hand, crucially widened the potential audience and prepares of non-financial information. In fact, although corporations are still the main issuers, the number of public authorities and NGOs that are experimenting with sustainability reports is on the rise. For example, sustainability reports have been issued by municipalities (i.e. the city of Amsterdam), national and international public authorities, Non-Governmental Organisations (NGOs), Trade Unions (TUs) and even the US Army (see US Army 2008). They are bringing innovative practices and perspectives for integrating the different platforms into a global regime of socio-economic governance. At the same time this explosion of reporting represents a challenge for its codification, coherence and regulation.

3.4. What explains changes? Sustainability accounting and the crises of 'democratic capitalism'

This section attempts to explain the cyclical development of social and environmental reporting regulation that has been described throughout this chapter. Drawing on the explanatory framework outlined in the previous chapter, the key argument is that changes in the regulation of the accounting field can only be explained looking at broader changes in the accumulation of capital in the economic field, assuming there is a relation of structural homology between the two fields.

A clear parallel can be drawn between the different phases of changes in the content and mode of accounting regulation in Europe and in what the Regulation School called the prevailing accumulation regime (see Boyer and Saillard 2002; Jessop and Sum 2006) or, even more clearly, what Streeck (2011) called the progressive crises of 'democratic capitalism'. In general terms, the disappearance of social accounting at the end of the 1970s mirrors the contemporaneous disintegration of the so-called Atlantic Fordist regime of capital accumulation. (see Jessop 1992) The 1990s' process of structuration and standardisation of financial accounting – combined with a less than lukewarming development of non-financial reporting – tunes with the dominance of 'financial capitalism' and the rise of institutional investors. The privatisation of accounting regulation of the late 1990s and 2000s accompany a period of growing self-regulation and autonomisation of the economy from the influence of other (political; religious; legal; etc) fields.

Academic and quasi-academic theories of corporate governance and corporate control that emerged in the UK and the US in the 1980s, by the 1990s became 'the new standard', overcoming, even in Central Europe, the model of corporatist industrial relations. They were based on the affirmation of the contractual theory of the firm, seen as the legal property of shareholders. The prioritization of shareholder value creation over a broader approach considering other stakeholders – for instance employees – was based "not so much on the (problematic) grounds of shareholder 'ownership' rights as on the consequentialist grounds that shareholder-oriented corporations are more efficient and deliver higher rates of growth than their rivals." (Ireland and Pillay 2010: 86).

Accounting had a major and rarely acknowledged role in the 'structuration' of financial capitalism. In effect, if 'neo-liberalism' has been based on the idea of capital share price maximisation as the dominant goal of the corporation (Harvey 2005), then the triumph of financial capitalism has been build upon the disclosure of timely, accurate and relevant information about the financial performance of companies. The result has been the empowerment of shareholders that could better control that companies were actually managed in a way to maximise only shareholder value. Simultaneously, excluding from the company report any information that was not affecting the 'bottom line', this approach to accounting regulation effectively changed the notion of capital, which came to coincide with financial capital. The very idea of shareholder value creation as the main – if not the only – purpose of giant corporations, constitutes, in my view, the other side of the failure in designing new forms of 'social accounting' and management reports that would be able to recognise and universalise other forms of extra-financial and even extra-economic value.

Then the question is: what explains the re-emergence at the end of the 1990s of a lively regulatory debate on non-financial/sustainability disclosure? This appears as a rather counter-intuitive development, considering the dominance of the principle of shareholders value maximisation and of the 'standard' approach to corporate governance, firmly pivoted on the dyadic relation between managers and shareholders.

I suggest that considering the struggles for CSA regulation in a broader historical framework of conflicts for corporate governance and control would allow better explaining its cyclical development. My argument is based on the idea that the political-economic configuration of advanced-capitalist societies during the post-war period, based on the compromise between labour and capital, has gradually collapsed, because of the inner tension between what the author calls "popular ideas of social justice and economic insistence on market justice" (2011: 24). The author identifies four phases in this endemic conflict between capitalist markets and democratic politics,

which characterised the post-war social formation that we call 'democratic capitalism'[99] since the 1970s. This tension, he argues, arises from the fact that "under democratic capitalism, governments are theoretically required to honour both principles simultaneously, although substantively the two almost never align." (2011: 7)

During the 1960s and 1970s period of economic Keynesianism and corporatist employment relations, the economic field was largely under political control, therefore responding to collective choices of democratic politics. This has been the period of first elaboration of 'social accounting' debates. In Europe, the very concept of 'corporate governance' was seen as a sub-system of the state's 'governance of the economy', a triangular partnership between employers and employees with governments playing the crucial role of facilitators of this 'historical bargain'. This model proved astonishingly successful in rising standards of living and warranted three decades of economic expansion. It was based on the Fordist principle that higher wages would be good also for employers, because workers would have been able to buy and consume more, eventually making them richer. However, this model of economic accumulation had two major problems. First of all, it is very resource-intense: social peace is guaranteed by the attractive prospective of infinite material accumulation. However, in a world of limited and unevenly distributed resources this is an illusion. Secondly, as Streeck (2011) points out, the collective rationale of democratic resources' entitlement ultimately conflicted with the laws of economic rationality and efficiency based on marginal productivity.

'Democratic capitalism' entered its first major crisis in the second half of the 1970s, when it appeared clear that wages' automatic increase was creating very high levels of inflation. However, within the Atlantic Fordism, the reaction of Anglo-Saxon Liberal Market Economies (LMEs) and that of more co-ordinated Continental European economies was different. The collective bargain mechanism that had been developed in most of Continental European economies seemed, at least initially, better suited to face the crisis and keep inflation down. It is in this context that ideas of *social accounting* became increasingly popular and debated also in the UK and the US. Social accounting introduction in Company Law was seriously considered and often presented as 'inevitable' and as a way to 'modernise' Anglo-Saxon capitalism, to keep pace with German and Japanese enterprises. In this sense, it should be seen as one of the features of the establishment of more democratic industrial relations, an issue that today is almost completely neglected in the literature. Social accounting was widely discussed in Parliaments and it was seen as a

[99] Wolfgang Streeck (2011) defines 'democratic capitalism' as a political economy ruled by two conflicting principles, or regimes, of resources allocation: one operating according to marginal productivity ('the free play of market forces') and the other based on social need or entitlement ('as certified by the collective choices of democratic politics').

'transformative' device which would have valued human capital and other forms of capitals and given much more power to trade unions to control managers, partly replacing shareholders, reduced to the role of passive *rentiers*. It is clear that this conjunction has represented a major turning point that shaped not only the accounting or the economy but the kind of society we live in. Two models of corporate governance. Two responses to the crisis of 'democratic capitalism': the first one modelled on employees co-determination, mirrored the prevalence of a political principle of resources allocation, based on social need or entitlement. The other, based on the economic laws of marginal productivity and the 'free play' of market forces, was based on the maximisation of 'shareholder value' and therefore on strictly financial disclosure.

In the UK and US, finally, the latter approach prevailed, together with a deregulation of financial markets, accompanied by the notion that the economy should be freed from political control in order to create jobs and operate efficiently. Dispersed investors re-organised themselves as investment funds and large institutional investors, fostered by growing reliance on *private* pension schemes. Together with the re-assertion of the principle of shareholder primacy, the UK and the US governments pursued an aggressive anti-unions campaign. A 'law-and-economics' approach to company law, which identified the problem in 'strong managers and weak owners', excluding employees from the control of companies' resources, became 'the standard'. In Bourdieu's terms, it became the nomos of the corporate field. The autonomy of large companies was promoted through a nominalistic approach to company law: the company was seen as a nexus of contract, free from the strings of social, political, religious or ethical obligations. The nomos of the economic field could be synthesised in the idea of Milton Friedman (1970) that "the business of business is [just] business". The 'neo-liberal' cure seemed to work. During the 1990s, the US and UK economies started to grow much faster than Europe, which was still dominated by the 'old' corporatist system of 'industrial relations' and collective bargain. Therefore, the whole decade was dominated by a great debate on which of the two models of capitalism was the best (see Albert 1993) and, progressively, on whether the Rhine Capitalism should or, had to converge towards the 'neo-American model' of capitalism introduced in the US by Ronald Reagan and in the UK by Margaret Thatcher (Crouch 1997).

Eventually, by the end of the 1990s, also the European Union and many Continental European countries were progressively converging towards a 'money concept of corporate control' (Jessop 2007). Even Germany had to adjust its model of labour relations and corporate governance (Overbeek et al. 2007; Horn 2011). However, the economic success of Anglo-Saxon economies had been based on what Colin Crouch later called 'Privatised Keynesianism' (2011): the substitution of Keynesian public welfare (and public debt) with private debt. The deregulation of the labour market

and the ‘retreat’ of the welfare state were ‘mitigated’ by unprecedented new opportunities for families, individual and firms to indebt themselves. Therefore, democratic governments gave up their social responsibility to guarantee full employment to companies. They offered a favourable tax regime, a flexible labour market and left employers free to abandon the ‘collective bargain’ with trade unions, in exchange for ‘corporate social responsibility’ (CSR). Financialisation and an economy based on debt allowed for more economic growth and further and faster economic development, keeping alive the promises of full employment and infinite growth implicit in post-war democratic capitalism. The economic field became more and more autonomous and truly ubiquitous, while the economic habitus and rationality became extremely pervasive, organising almost every aspects of contemporary societies[100]. Furthermore, the economic ‘success’ of the 1990s and 2000s was achieved at a very high price, in terms of environmental resources; social insecurity (the ‘risk society’ theorised by Ulrich Beck) and rising social inequalities. The effect of Privatised Keynesianism was to make worst the ‘collective addiction’ to economic growth (see Teubner 2011) that had already been one of the worst side effects of the three decades of uninterrupted growth that followed the end of the WWII. It strengthened the idea that the economy is just a market and that companies are only profit-seeking machineries.

However, during the period, together with a further globalisation and harmonisation of mandatory financial disclosure, corporate social and environmental reporting started to emerge as a complementary institutional development to ensure business’ responsibility and accountability (Kinderman 2012). The re-emergence of non-financial disclosure coincided with the first major signs that revealed the structural fragilities of Privatised Keynesianism. The Asian financial crisis, anti-capitalist protests and the intense consumption of Planet resources showed that the expansion of debt was a potentially destructive solution to the crisis of democratic capitalism. When the financial crisis reduced Privatised Keynesianism’ theoretical and practical constructions to ruins it also made apparent the need for a more sustainable, long-term oriented regime of capital accumulation. As Colin Crouch pointed out (2011), it finally appeared clear that CSR debates – and indeed CSA – were serious; they were more than corporate public relation. They have the potential to evolve into a fully fladged regime of political-economic governance, not only corporate governance. Once again, there is a structural homology between the economic field, which seems in search of a ‘long-term’; green and sustainable regime of capital accumulation and the accounting field, where there is a strong debate about sustainable reporting and the integration of financial and non-financial disclosure.

[100] See, for instance, on the relation between education; democracy and the expansion of economic rationality, Nussbaum (2010), *Not for Profit. Why Democracy Needs the Humanities*.

The re-emergence of non-financial accounting, however, takes place in a completely transformed situation as compared to 1970s' 'social accounting', in which a globalised economic field is out of political control. As we shall see in the next two chapters, European accounting regulation and the accounting field are currently crucial, though often misrecognised, terrains on which a major strife is taking place: they are torn by the tension between flows of global financial capitals and territories. On the one hand, there is the force of democratic ideas of *corporate accountability*, which are based on the legal and political right of the states to control economic activities and on the 'right to know' about the impact of large corporations' activities on people's everyday lives. This is basically driven by the growing mistrust of citizens in the current 'out of control' state of global finance-led capitalism (Strange 1996) and it is based also on non-marketised notions of social justice that have resisted efforts of economic rationalisation. On the other hand, there is the economic logic of *corporate accounting*, which interprets confidence crises as "deficits of knowledge of the laws governing the economy as a wealth-creation machine, or from disregard of such laws in selfish pursuit of political power." (Streeck 2011: 8)

A critical question is whether this tension can be potentially creative of a new, more sustainable regime of capital(s) accumulation that takes into account more values than just economic value. The next two chapter (Chapters 4 and 5)will focus on the case study of EU-level regulation of sustainability reporting during the period between the mid 1990s and 2011, in order to narrow down this broad framework analysis into a more dense and detailed account. Therefore, this study will focus on explaining the re-emergence of a strong regulatory debate on non-financial disclosure during the 2000s. It suggests the argument that, when the tenure of the corporatist compromise finally felt apart, during the second half of the 1990s, a 'transparency coalition' (see Gourevitch and Shinn 2005; section 2.5 of this study) emerged in the context of the European corporate governance model. This argument will be further developed throughout the rest of the study. The key insight provided by Gourevitch and Shinn (2005) is that over wage share of income and job security, the interests of owners and trade unions have always been divergent, even during the corporatist period. Quite simply, starting from the beginning of the 1990s, employers organisations started to use the arguments of a loss of competitiveness towards other economies – particularly UK and US – and need for a more 'flexible' organisation of industrial relations to make a series of 'make it or break it' deals with trade unions, menacing to leave the system of collective bargain[101]. The so-called 'social pacts' that were reached between business associations and trade unions in different EU countries throughout the 1990s can be now considered as the last attempt to

[101] Ideas of the need to make employment relations more 'flexible' were strongly supported by various IOs such as the OECD.

save what was left of the great 'historical compromise' that emerged after the end WWI (see Regini 2001). By the end of the 1990s, the bargaining power of trade unions was dramatically decreasing while the one of large European corporations' was growing more and more. The possibility of reaching new social bargains became less attractive to both parties. Trade unions (TUs) arrived to the point that were not able to ask more sacrifices to their members while large companies increasingly lost interest in keeping in place an extremely costly system of labour rights and industrial relations (see Hyman 2004). At the same time, business' threats to relocate where the cost of labour is cheaper or business taxes are lower created a growing asymmetry not only towards trade unions' power but even towards democratic control. Given this situation, the likely possibility of a complete triumph, in Continental Europe, of a CG model based on what Gourevitch and Shinn called block-holders 'oligarchy' created the condition for the objective convergence of the interests of different actors (large pension funds and investors; part of organised labour and global civil society) and the rise of a 'transparency coalition'.

It is important to note that the European corporatist compromise was taking place substantially behind closed doors, mutually accommodating the wishes of trade unions, managers and block-holders to conduct their negotiations over corporate governance arrangements away from public scrutiny. "Public accountability would expose practices and agreements that could be challenged by outsiders such as consumers, managers, and minority shareholders." (Gourevitch and Shinn 2005: 207) In particular, dispersed shareholders suffer from the agency problem: they struggle to gain the necessary information to monitor the financial performance of firms across industries and markets[102]. Crucially for our study, this situation is mirrored by the different attention that insiders and outsiders pay to the provision of accurate financial information contained in the annual report. Insiders might need them only as a means to compare themselves with similar firms within the same industry and across national markets; while outsiders see them as crucial tools to control managers' behaviour. As for workers, in many EU jurisdictions where they have formal representation in the board, such as Germany, the Netherland, some French boards, and many Scandinavian countries, they have gained direct access to privileged information as insiders[103]. However, as the position of workers has been increasingly 'externalised' and marginalised within the corporation by dominant managerial theories of the firm, they found themselves in the need for

[102] Despite its other merits, the 'corporatist compromise' is for investors a "bad governance deal" They fear that managers and block-holders will use their direct access to information as a manner to extract private benefits from the firm.

[103] Japan is also a case in point. There the auditing system is internal, rather than external, guarantying control to insiders In Japan, instead of having an external auditors' system, this is run by retired members of the financial bureau or former main bankers. A system known as 'kansayaku'. (Gourevitch and Shinn 2005: 208)

more information in order to monitor managers' behaviour. Together with governments, minority investors, consumers associations and new global civil society and NGOs organisation they are demanding giant corporations to become more publicly accountable. I will argue that it is around this cornerstone of transparency and both social *and* financial accountability that a new regime of corporate governance is emerging driven by portions of the financial sector; parts of the trade unions and some groups of NGOs.

Likewise the 'corporatist coalition', the 'transparency coalition' should not be seen as a formal alliance. In fact, the social bargain between capital and labour was never an alliance but rather a convergence of interests between archenemies in order to set the 'rules of the game' and exclude the others (namely minority shareholders) from the control of corporate resources. Similarly, the 'transparency coalition' sees, in particular, the convergence of interest between two transnational archenemies, large transnational investors and the global network of social forces and NGOs. They have radically different ideas about what should be disclosed in CSA and to whom managers should be accountable. However, they share the goal of making managers more transparent and accountable. The current global rise of CSA regulation, therefore, is above all explained as a potential manner to oppose the unchallenged influence and power of large corporations' executives.

4. The case study. EU Accounting Law and non-financial disclosure

There is nothing more difficult to carry out, nor more doubtful to success, nor more dangerous to handle, than to initiate a new order of things. For the reformer has enemies in all who profit by the old order and only lukewarm defenders in all those who would profit from the new order. This lukewarmness arises partly from fear of their adversaries, who have the law in their favour; and partly from the incredulity of mankind who do not truly believe in anything new until they have had actual experience of it.

Niccolò Machiavelli, The Prince, Chapter VI, 1513

4.1 Introduction

As revealed by a normative analysis of the relevant provisions of the Treaties recently made by Law Professor Beate Sjåfjell (2012), sustainable development in EU Law is enshrined as a legislative objective and also as a legal principle and it is codified with the aim of promoting it[104]. As she pointed out "sustainable development constitutes an – or perhaps even *the* – overarching objective of the European Union." (2009: 15). However, moving from principles to policies involves political struggles that shape coalitions in favour and against specific regulatory provisions in a relational space that is constructed by such struggles. Indeed, this has been the case for the elaboration of a European regulatory framework for corporate sustainability reporting, which was developed through a dynamic relation between the ambitions of EU regulators – operating, as we have seen in the previous chapter, in a multi-levels and polycentric field of corporate governance

[104] The argument of Prof Sjafjell is that there is no need to juxtapose what EU Law is and what it should as regards sustainability, "as that may render the law induly rigid." (2009: 14) She stresses that EU Law already contains potential for developing sustainability as a overarching objective and perhaps the objective of the Union. Prof. Sjafjell shows how EU Treaty law, "taken seriously", may be used as a tool to ensure that EU law itself and the national laws of its Member States truly work towards a global, sustainable development. She maintains (2012) that particularly the codification of the sustainable development principle in Article 11 TFEU has significant legal implications for the institutions of the European Union, entailing direct obligations on all levels: Law-making, administration, supervision and judicial control. For EU company law, this requires a whole new approach. The implications for the Member States are rather more indirect, but nevertheless highly relevant, influencing: the interpretation, implementation and application of EU law; the justification of Member State initiatives that restrict free movement; entailing a possible duty to act to promote overarching objectives under certain circumstances, and perhaps also indicating a coming general principle of sustainable development on Member State level.

regulation – and the practice of corporate social and environmental accounting – which until the end of the 1990s barely existed and only recently has become more widespread. This is the narrative that this chapter will develop on the basis of documents analysis; a series of interviews and the literature review. The analysis has been strengthened by a participant observation of five months at DG MARKT, from March to July 2012, as part of the EU traineeship programmes. During this period, I have participated to the draft of the Impact Assessment and of the legislative proposal for an initiative on disclosure of non-financial information by companies. The empirical value of this experience is limited by a) the fact that trainees are not allowed to reveal information until they are not publicly available and b) the fact that, by the time the writing of this Thesis was completed, the legislative proposal has not been made public yet[105]. As discussed in Chapter 2, this is not a study based on a participant observation and leaving outside the events that I have been directly involved in implicitly excludes some of the most acute ethical problems that a full participant observation would have implied. I must acknowledge that this invaluable experience has greatly enriched my knowledge of the subject matter, although it has not radically changed my understanding of the dynamics involved in its regulation. I would say that it has been useful to largely confirm and strengthen the work that has been done before the traineeship.

The chapter considers in more details the EU debate on corporate social accountability regulation and the struggles of the different groups of actors in shaping it. It provides an empirical account of the developments in the area of CSA regulation during the period from the mid-1990s until 2011. The rationale for choosing this specific period; the choice of focusing on the EU level as an intersection between national law-making and global norm-making processes; and the research method adopted by this empirical study have been already discussed in section 2.6. This chapter will further assess the research area explored by the previous one, narrowing down the analysis in order to better test the explanatory value of a reflexive socio-legal approach and the hypotheses that have been outlined in Chapter 1. The chapter is divided into two large sections. Within the recursive development of a European regulatory framework for CSA, I would identify three distinct phases. A) From the mid-1990s until 2000, when at the EU-level the 'corporatist bargain' gradually lost ground and it emerged a policy framework on social and environmental disclosure. B) After the

[105] While the writing of this Thesis has been completed in during the first months of 2013, the legislative proposal has been finally made public on 16th April 2013, therefore once the writing of this Thesis was largely completed. However, the final proposal has not been radically different from the one developed at the time when I have been working at DG MARKT, therefore it has not been a complete surprise. Despite being only a proposal, this is rather interesting in the economy of this study. Therefore, I have briefly developed a preliminary analysis in Annex I.

launch of the Lisbon Agenda officially regulatory episodes or cycles[106]: from 2000 until 2006 and C) from 2008 to date. The chapter considers six groups of actors as the main ones shaping the emerging European regulatory landscape of CSA: public authorities; trade unions; investors; companies' managers and block-holders; professional experts (lawyers; accountants; auditors; financial analysts; academics); NGOs and civil society.

The chapter puts forwards the argument that the emergence of CSA regulation should be understood within broader changes and struggles in European corporate governance regulation. First of all, it argues that the rise of CSA in Europe has been the result of the exhaustion of the 'corporatist coalition' between employees and employers that had dominated European industrial relations throughout the post-war period. The need for overcoming the consequent stalemate and the attempt to build a new regime of corporate governance, more adequate to deal with economic globalisation, already emerged by the mid-1990s, when the employers decided to progressively abandon the 'social bargain'. In order to overcome this impasse the leaders of the centre-left Third Way, controlling the EU Commission and most of Member States' governments, opted for introducing more corporate accountability and transparency rules in two manners. On the one hand, they enhanced *corporate governance* mechanisms that strengthened minority shareholders rights, board independence and managers' accountability. On the other hand, they promoted *corporate social responsibility*, which was meant to encourage companies' 'good' behaviour by the introduction of meta-regulatory mechanisms, again based on transparency and accountability (i.e. eco- and social-labels; social and environmental reporting). Both strands of regulation were marking the shift from a 'corporatist' compromise towards the emergence of what Gourevitch and Shinn (2005) christened the 'transparency coalition'. The appointment of the Barroso Commission

[106] This analysis of the emergence of social and environmental disclosure regulation in the last decade can benefit also from the one hand from the socio-legal literature on recursivity of global normmaking (Braithwaite and Drahos 2000; Halliday 2009) and on the other hand from a substantial literature on the regulation of corporate governance (CGR) in Europe (Horn 2011; Overbeek et al. 2007; Aguilera and Jackson 2003; Hopner 2003; Gourevitch and Shinn 2005). According to Halliday (2009) recursive cycles of norm-making evolve dynamically, through iterations among transnational state and non-state organizations and actors operating at different levels of regulation. This norm-making process has a beginning (Time I), when either there are too few or too many conflicting norms. It also has an ending (Time II), "when the normative framework has a qualitatively different character, when behaviour of individuals, groups, and nations is constrained in relatively routinized, orderly, and predictable ways by norms widely held to be legitimate and authoritative." (Halliday 2009: 16.12) Between Time I and Time II there can be quick or slow norm-making cycles or episodes that produce each time a new set of norms. An Episode begins when the problem attracts public attention and it appears in the regulatory agenda. As maintained by Halliday, the beginning of the episode requires the building up of an underlying set of policy problems and the initiative of charismatic norms-entrepreneurs "who mobilize organisations to institutionalise norms that cascade across states, IOs, and networks, eventually to be internalised and taken for granted." (2009: 16.12) [emphasis added]

in 2005 temporarily halted this development towards corporate accountability and transparency, substantially giving free reign to managers in their approach to CSA practices (i.e. the European Alliance for CSR). However, the sudden outbreak of the 2008 financial crisis shuffled the cards again, giving rise to a second regulatory episode of CSA initiatives, both at the EU-level as well as different levels of regulation. While it is certainly too early to assess this ongoing cycle of regulatory initiatives and the catalyst role that the financial crisis had in boosting deep changes in EU corporate governance and company law, the study will highlight two points that seems already more defined. The financial crisis has: 1) made the distinction financial-non-financial increasingly blurred. There is a remarkably strong shift towards integrating the two spheres of financial and non-financial reporting, although they are not yet supported by integrated accounting standard (and indeed, perhaps may not for some time); 2) worked as a catalyst for a stronger legislative and political role of public authorities ('market shaping') in the regulation of corporate social accountability. As the result, also the line law-non-law (voluntary/mandatory reporting) is not as clear as it was in 2007. While it may be too early to say that the 'mantra' of 'light touch' regulation and leaving 'the market' free to operate is gone, yet the epoch of business self-regulation is over. The first victim has been the concept of CSR as it emerged 10 years ago – as a voluntary activity that companies undertake "over and above legal requirements".

A valuable contribution to this analysis has been provided by a review of a recent strand of critical literature that focuses on EU-level corporate social responsibility (CSR) debates and, in particular, on the key rifle between *mandatory* and *voluntary* approaches to CSR (including social and environmental disclosure). In particular, insights came from recent researches by Daniel Kinderman (2013), who has studied the role of business in shaping the EU CSR agenda from the mid-1990s until 2012. Fairbrass (2012) has explained the emergence of EU-level CSR policies as the result of the prevalence of a large, organised and powerful business advocacy coalition favouring a 'voluntary' approach against the smaller, more disparate coalition favouring a 'mandatory' approach. Ungericht and Hirt (2010) have analysed the CSR discourse as a "political arena" in which "differing conceptions of CSR are pitted against one another" (2010: 17). The authors assess the positions and interests of different stakeholders and fundamental changes in power relations between 2001 and 2006. Kröger (2011) reflected upon the "abandonment of CSR as public policy" and the "abandonment of the formal equality of social partners in favour of business." The author concludes that there has been the victory of the business case over the social case (Kröger, 2011: 248).

Although this chapter builds on the above contributions, it also attempts to go beyond them in three fundamental ways. First of all, consistently with the aim of this research, it attempts to

insert them in the broader historical and institutional context in which they came about and that has been outlined in the previous chapter. On the basis of the 'double historicisation' reflexive method, I claim that the re-emergence, during the last decade, of a lively regulatory debate on non-financial reporting cannot be fully understood without considering why it disappeared in the first place and the collapse, during the 1990s, of the 'corporatist coalition' that had characterised European industrial relations until then. Therefore the object of analysis is not limited to EU policies *per se*, they provided me with a lens through which broader changes in business and society relations could be studied.

Secondly, I am considering sustainability reporting as anchored within changes in the regulation of corporate governance (CGR). Again, this is not conventionally done, but so doing it becomes possible to overcome not just the arbitrary distinction between 'social' and 'economic' aspects of corporate governance but the distinction between the two academic traditions and bodies of knowledge that structured this distinction. This is a change in the perspective that might illuminate broader dynamics that would be missed focusing only on CSR policies or CGR. In this case I adapted Gourevitch and Shinn's framework, elaborated for the analysis of CGR changes, to the study of sustainability reporting. In the future, this approach could be done more systematically for other areas such as remuneration, public procurement, employees' participation, etc. This approach allowed me to move the key line of struggles from the classic division between 'social' actors and 'business' lobbies that characterises the literature on EU-level CSR towards the historical analysis a struggle based on agency and of the emergence of a European 'transparency coalition' challenging managers' power.

Lastly, consistently with a reflexive approach to Sociology of Law, this analysis does not treat EU Accounting Law or emerging CSA regulation as the mere result of interest groups lobbying activities. Nor it takes regulation for granted, as an independent variable like many managerial and law-and-economics studies do. Both law and accountancy emerged as historically constructed social practices that have been granted a special 'symbolic power' of 'naming' and legitimately exercise symbolic violence. The Law "creates the things named, and creates social groups in particular. It confers upon the reality which arises from its classificatory operations the maximum permanence that any social entity has the power to confer upon another, the permanence which we attribute to objects." (Bourdieu 1984: 838)

The following sections will consider the gradual shift away from 'voluntary' disclosure of corporate non-financial reporting, towards the steady, although still unaccomplished, integration of ESG information in the EU Accounting Directives. Two regulatory episodes are identified. The first one really began only in 2000, with the launch of the so-called Lisbon Agenda (see O'Riordan and

De Smedt 2009) and lasted until 2006, while the second one started after the onset of the current financial crisis and it is not over yet.

4. 2 Managing change. The collapse of the European 'corporatist coalition'

Most of the literature tends to present corporate sustainability reporting as an example of 'corporate social responsibility' (CSR) policies, meaning a pro-active initiative that a certain company spontaneously decide to undertake. However, at least in Europe, the struggle for non-financial reports had a much broader 'political' significance of economic changes management. It arrived later than in the US and the UK and it was largely different from 'explicit' Anglo-Saxon CSR (see Matten and Moon 2007; Morgera 2009; Marens 2012). In the European context public authorities and in particular the EU institutions played a crucial role in promoting and almost (re)inventing corporate social accounting as a public policy tool. I suggest that the 'European way' to corporate social accountability represented a often ambiguous and hesitant political response to the exhaustion of the 'corporatist coalition', the 'great historical bargain' between capital and labour that had been at the basis of post-war 'democratic capitalism' (Streeck 2011) and, until the mid-1990s, dominated European industrial relations.

According to my analysis, social accountability policies were first elaborated by centre-left governments – the so-called 'Third Way' that evolved from Delors to Blair, Jospin, Prodi, and Shroeder – between 1995 and 2005. They believed that in order to address the worst employment, environmental and social consequences of otherwise positive markets integration, legal provisions and the state alone were not sufficient and the mechanisms of 'collective bargain' had become inadequate. In fact, due to high public debt, the state had limited capacity to directly intervene in the economy. There was the need for an act of responsibilisation of business actors in order to tackle global social and environmental challenges. At the broad EU-level of analysis chosen by this research, the 'Third Way' represented also the political project of using the single market project to integrate more liberal market economies (LMEs) – such the UK and part of the Scandinavian and new eastern bloc – and more co-ordinated market economies (CMEs) – such as France, Germany, Austria, Benelux and to a lesser degree the 'Mediterranean capitalism' – into one single "dynamic, competitive and cohesive" social market economy. A political 'oxymoron' that the EU has being redefining but that was never fundamentally abandoned ever since, as demonstrated by the recent EU Agenda2020 on 'sustainable growth and jobs' (Friedrich Ebert, Stiftung 2010). From the documents analysis and interviews clearly emerges the role of the Commission in managing the transition from a corporate governance regime based on what Gourevitch and Shinn would call

‘sectoral conflicts’ to one based on ‘agency, transparency and accountability’. In this new context, only few immediately understood the new relevance that mechanisms of corporate social accountability and methods of assessment, verification and disclosure were assuming in re-structuring and negotiating a new ‘division of labour’ between states and markets (see for instance Zadek et al. 1997).

The origins of the current regime of European corporate social accountability regulation can be identified in 1993, when Jacques Delors, as President of the EC, made an unprecedented, ground-breaking, appeal to business to address structural problems of unemployment, restructuration and social exclusion. He invited companies to adopt a ‘European Declaration against Social Exclusion’. As an EU policy-maker recalls, the political strategy of the Commission was to “put some pressure on the employers and to break their ranks”[107] because the European employers association, UNICE, was “kind of a monolith against any progress or any move.” In fact, around 1993-1994, the so-called ‘tri-partite concertation’ involving governments, employers and employees was already “frozen”[108] and characterized by a strong opposition between the two social partners. Following the collapse of the Soviet Empire and the ‘new international division of labour’[109], there was a need for a more comprehensive strategy, adequate to a complex and globalised economy which were seeing Continental Europe growing slower and creating fewer jobs than in the US and the UK. The EU was in the middle of an economic stagnation, characterised by high unemployment rates and major industrial restructuring process. Employers were increasingly fractious towards the rituals of the corporatist collective bargain. They were demanding governments for a more flexible labour market, more in line with LMEs standards, in order to become more competitive. European trade unions initially accepted deep sacrifices – particularly reached through the 1990s ‘social pacts’ – but soon exhausted their bargaining power (see Regini 2001). As emerged in another interview with an EU official who had worked with Delors[110], job was the argument of the industry to “sort of hijacking us” and “so the growth and jobs took too much place.” Delors’ Commission intended its call for business responsibility as a political opportunity to separate the most pro-active and progressive group of business entrepreneurs – ‘good business’ committed to social causes and willing to go further, beyond its legal obligations – from the “ranks” of employer federations. This file was handled by Jan Noterdaeme, from the Directorate

[107] Interview # 13 (23.07.2012)
[108] Interview # 13 (23.07.2012)
[109] “Globalisation leads to worldwide business netweorks, contractual arrangements and new forms of division of labour. This means that companies must increasingly consider the international dimension of their social responsibility.” COM (2002/C 125/11) Opinion of the Economic and Social Committee on the ‘Green Paper: Promoting a European framework for Corporate Social Responsibility.
[110] Interview # 16 (27.07.2012)

General on Employment, Industrial Relations and Social Affairs (DG EMPL), who was asked to promote good companies that would be more proactive in terms of relations with workers.

The 10th January 1995, 20 business leaders and Jacques Delors adopted and announced the Business Declaration against Social Exclusion[111]. In March 1996, the European Business Network for Social Cohesion (EBNSC) was established, with the financial support of the European Commission. By the end of the 1990s, almost sixty large companies had joined the EBNC, having to commit themselves to what started to be called the "social responsibility of enterprises". As Kinderman (2013) points out this EU initiative preceded and fostered similar initiatives across Europe, at the national level. Backed by both the European Commission, at the highest level, and some of the largest industrial groups operating in the EU, the success of the initiative was put over by the multiple identities of some key agents. In particular, Noterdaeme, who moved from DG EMPL to directly organise and coordinate the EBNSC but, more importantly, the Viscount Etienne Davignon, a Belgian politician, businessman and former vice-president of the EU Commission, who became the long-term President of the new organisation. Notably, as Internal Market Commissioner, in the 1980s, he had already been one of the main architects of the European Round Table of Industrialists[112]. Despite its half a dozen staff (Kinderman 2013: 9), with the support of the new EC President Santer before and of his successor, Romano Prodi, the EBNSC used its strong ties to shape the EU way towards enhanced business responsibility, launching a series of initiatives including the European online research centre on CSR, in 1998.

In 2000, Davignon managed[113] to promote the idea of corporate social responsibility at the heart of the Lisbon Agenda, which was setting the targets for the next decade of EU economic

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[111] See http://www.csreurope.org/pages/en/declaration.html.

[112] According to the ERT website, while Internal Market Commissioner, Etienne Davignon, had challenged industry to produce an initiative, posing the simple question: "whom do I call when I want to speak to European Industry?" The ERT, was created the 6-7 April 1983 under the impulse of as a group of 17 amongst the most influential businessmen in Europe. The original Round Table included: Karl Beurle (Thyssen), Carlo De Benedetti (Olivetti), Curt Nicolin (ASEA), Harry Gray (United Technologies), John Harvey - Jones (ICI), Wolfgang Seelig (Siemens), Umberto Agnelli (Fiat), Peter Baxendell (Shell), Olivier Lecerf (Lafarge Coppée), José Bidegain (Cie de St Gobain), Wisse Dekker (Philips). Antoine Riboud (BSN), Bernard Hanon (Renault), François-Xavier Ortoli (EC), Pehr G. Gyllenhammar (Volvo), Etienne Davignon (EC), Louis von Planta (Ciba-Geigy), Helmut Maucher (Nestlé).

[113] According to the information retrieved from the website of CSR Europe: in 1999 at the European Day dedicated to 'Business & Government Joining Forces for Employment and Social Cohesion', the forthcoming Portuguese EU Presidency (centre-left) invited Etienne Davignon, together with other leaders of CSR Europe and the Copenhagen Centre for CSR, to provide input into the European Summit on Employment, Economic Reform and Social Cohesion to be held in Lisbon in March 2000. It is stated that President of the European Commission Romano Prodi (centre-left) and European Commissioner Anna Diamantopoulou (centre-left) provided strong backing for this Portuguese invitation. As the result, plans for promoting CSR to Portuguese Prime Minister were presented to Prime Minister Antonio Guterres (centre-left Portugal Prime Minister from 1995-2002). European business leaders met with Guterres on 8 March 2000,

policies[114]. At point 39, the text states: “The European Council makes a special appeal to companies' corporate sense of social responsibility regarding best practices on lifelong learning, work organisation, equal opportunities, social inclusion and sustainable development.” Despite frequent ‘corporatist’ references to employment, social inclusion and training, the backbone of the Lisbon Agenda has to be found in the duo ‘fiscal sustainability of public finances’ and ‘economic growth’ through the completion of the internal market that ‘will be able to improve citizens’ quality of life and the environment’. The ‘mantra’ became that, in order to maintain the leadership in a globally integrated knowledge-based economy, European business should be given more responsibilities and the opportunity to combine economic competitiveness with the creation of welfare. As explained by an EU officer working on CSR[115]: “There was quite a move 5 to 10 years ago that business ‘knows best’; ‘business should be allowed to make business, do business, and create wealth for the economy. What do we want? We want growth! We want employment! We want competitiveness! We want profitability! Companies said they can do it? They proved themselves in the 1990s? So let them carry on…” From another interview[116] emerged that: “Around 2000, in the conclusions of the Lisbon Summit there was stated that the EU is supporting that more companies are getting into CSR. And then the language started to change. It started to look a bit beyond workers, trade unions and employers, looking at the bigger picture. At what was happening in the US. It was also the time when ethical investment was increasingly growing in the US.”

The launch of the Lisbon Strategy represented the turning point between the marginalisation of corporatist industrial relations and the promotion of corporate governance policies based on agency theory and accountability. In between, according to my interviews, there has been a strong clash between the network of companies organised in the EBNC and the UNICE, the largest federation of European businesses[117]. As showed by Kinderman (2013), this turning point also

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just 16 days before the EU summit in Lisbon. Etienne Davignon, stressed that the Lisbon Summit was the right moment for governments and the European Commission to recognise that business can successfully combine economic competitiveness and social responsibility. He presented a document elaborated by twenty CEOs and addressed to all EU Heads of State and Governments, which proposes 12 concrete ways to build an “entrepreneurial and inclusive knowledge society; develop a culture of communication and multiplication of best practices; expand teaching of corporate social responsibility, corporate citizenship and business ethics; invest in public-private partnerships for effective responses to economic and social challenges.” The document presented by Davignon can be retrieved here: http://www.progressiofoundation.org/projects/documents/Lisbon2000TCC.pdf

[114] The Agenda "to make Europe the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010." http://www.europarl.europa.eu/summits/lis1_en.htm

[115] Interview # 12 (26.06.2012)

[116] Interview # 13 (23.07.2012)

[117] According to one source, around 2000, during a high-level meeting to which participated the EC President, UNICE leader publicly reminded CSR Europe’s members: ‘remember you are companies before’.

marked important tensions and changes within the business network coordinated by Noterdaeme and Davignon. That corresponded to a change in the name of the organisation, from EBNC to CSR Europe and a growing convergence towards the position of UNICE. Kinderman's researches demonstrate that, during the period after 2000 national organisations promoting CSR multiplied across Europe but the membership of CSR Europe almost stop growing. That might imply that companies were not perceiving anymore the advantages of being part of CSR Europe rather than UNICE. Secondly, Kinderman highlights that, by the year 2000, all German companies, except from one, had left the EBNC, despite they had been amongst its founders[118]. There is also a second element that emerges from the data on the membership of EBNSC, which concerns the sharp rise of US and French companies right after 2000. In my opinion, these trends show the complexity of the shift from 'corporativism' to 'transparency' that characterised the EU economic regime. CSR was 'in tune' with global US multi-national corporations operating in Europe but why French participation increased while German one declined? A possible explanation is that, as one EU official put it[119], "If you look at the system, in Germany trade unions are quite strong, or were quite strong, and the main system was negotiation with employers. In France social dialogue has never been very effective so trade unions were looking for new tools, for new ways to have an impact, so they were more open. Central Europe did not get into CSR: Germany, Austria said: 'no, thank you!' Their system was working, so they saw no need." This argument suggests that, beyond the emergence of CSA in Europe, there has been a new coalition that defies the traditional categories of corporatist or class conflicts divisions and which was constructed bit by bit as the 'corporatist' social configuration started falling apart.

The outcome of the 2000 Lisbon European Council, however, was very much open to different interpretations. What the 'special appeal for corporate sense of social responsibility' meant was unclear. No one really knew what that would exactly lead to, in terms of policies or regulation: it was a work in progress. The late 1990s had seen a number of signals clearly showing that markets globalisation was creating wealth but also waves of social inequalities and strong opposition and discontent (see Strange 1996 and 1998; Klein 2000; Bazan 2004)[120]. That created high public

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The accusation is of not behaving accordingly to the nomos of the economic field "the business of business is business". Interview # 13 (23.07.2012)

[118] The author maintains that German companies perceived the Commission's activities as threatening, in particular the initiatives from DG EMPL, fearing that it would impose standards, guidelines and directives that were not welcome (Kinderman 2013: 13-14)

[119] Interview # 13 (23.07.2012)

[120] For instance, NGOs like Greenpeace and Friends of the Earth attracted universal attention to the negative impact of business on the environment, forcing many companies to issue environmental reports. Other NGOs used new communication strategies for 'naming and shaming' TNCs for their exploitation of sweatshops in less developed countries and lack of any respect for fundamental labour rights. Exploding in 1997, the Asian

expectation for regulatory interventions promoting more and better corporate accountability, driven by the growing protagonism of global NGOs. At the same time, as Peter Utting (2008) pointed out, "the root to justice through liability is fraught with obstacles" and, in any cases, there was no real political will to reach an international agreement on human rights or environmental regulation.

DG EMPL was assigned the task of leading the follow up initiatives on CSR launched in Lisbon. However, this appeared immediately wider than more familiar issues of addressing social exclusion, employment restructuration and adaptation to changing working conditions. The arrangement had changed since Delors first appeal to 'business responsibility' to tackle social exclusion. Looking at it in retrospect, it represented the merger of two major regulatory strands, as CSR was expanding to cover also environmental issues under the umbrella of achieving sustainable development. In fact, as regards issues such as environmental reporting or eco-label[121], DG ENV had developed a system for voluntary mechanisms that paralleled the work developed by DG EMPL on social labels (see Zadek et al. 1998). There were also CSR instruments such as the codes of conduct and 'fair trade labels' which had been mostly developed outside the European Commission. The uncertain nature of the baby that was born in Lisbon is also illustrated by the many documents issued in between the 2000 and the 2001 Green Paper on CSR. Given the situation, the Lisbon pledge for 'business responsibility' could have been interpreted by business either as a threat or as a capitulation. As I already mentioned, some – particularly the German employers' associations (BDI and BDA) – feared it could mean, as the word might also imply, that business had to accept extra responsibilities beyond the ones it already had. However, CSR Europe gamble was that 'more responsibility' would signify 'soft' regulation and more autonomy from the state. The latter position substantially prevailed, before in the 2001 Green Paper, aimed to promote a European framework for CSR, and much more explicitly in the 2002 Communication concerning 'Corporate Social Responsibility: a business contribution to sustainable development'. According to one interview I had at the EU Commission[122], "So it was a time where there was more demands expressed towards companies but, at the same time, not willingness to regulate. So the way in between was to ask for *transparency*, and the consumers and investors would judge."

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crisis first signalled that the huge financial sector was irrational and potentially destructive, raising fear of a global economic meltdown due to financial contagion and it represented, in effect, a 'dress rehearsal' of the 2008 global. Lastly, an unprecedented rage of anti-capitalist demonstrations across the world had exploded in 1999 in Seattle, contesting the dominant power of the WTO, WB and FMI and chanting that 'another world is possible'.

[121] The EU ecolabel helps to identify products and services that have a reduced environmental impact throughout their life cycle, from the extraction of raw material through to production, use and disposal. Recognised throughout Europe, EU ecolabel is a voluntary label promoting environmental excellence which can be trusted.

[122] Interview # 13 (23.07.2012), emphasis added.

As already mentioned above, from the fieldwork emerged that the original aim for launching an appeal to business' sense of responsibility, in the mid 1990s, was to divide the ranks of business' federations and attract a group of large companies willing to discuss employment policies and a further involvement in the community. The gamble was that this move would have forced the others, for reputational reasons, to follow their best practices. In fact, markets' globalisation was increasingly transforming the traditional reference points of European industrial relations. The epicentre of conflicts was not anymore, like in the 1970s and 1980s, national labour markets – where trade unions demanded politically guaranteed full employment. The conflict had shifted to create a tectonic tension between global and local dimensions. The rise of institutional investors and liberalisation of trade and finance had originated a dimension of almost ubiquitous 'flows' of economic capital. This had become increasingly autonomous from the territorial dimension, the 'locus' where relatively smaller businesses are embedded in communities' and social relations and organised, at least in Europe, accordingly to the norms of democratic polities (see Bonomi 2006). Giant corporations were now able to exploit both dimensions, gaining an enormous bargaining power in their relation with trade unions but also with governments. That is why collective bargaining and social dialogue was formally still in place but had lost most of their structuring power.

However, the initial gamble of Delors, who attempted to use his authority to divide business, largely failed. As it appears already clear from CSR Europe response to the 2001 Green Paper, in a strange 'boomerang effect', this organisation had become the most influential advocate of business interests at the EU Commission, effectively ensuring support for a 'flexible approach', based on the idea that companies voluntarily *do* CSR because it increases their profitability. As we shall see in the next section, after 2000, also the political strategy of the Commission became more 'pragmatic', recurring to the idea of using market-based meta-regulatory tools to discipline multinational companies. In other words, they accepted that regulation was not feasible, collective bargaining was not working anymore and therefore they turned to 'the market' as the best way to discipline 'the market', *de facto* acknowledging its 'autonomisation' from legal and political control. As emerges from one interview[123], "So I think it was the time for the call for self-regulation and it was also the time when the principle of self-regulation came to Europe. It had started 20 years earlier in the US but only in the early 2000 there was the mind that there should be self-regulation and that it could be a good approach to, let's say, the relations between the state and companies."

[123] Interview # 13 (23.07.2012)

4.3 [2001-2006] 'Voluntary' CSR, corporate governance reforms and the emergence of a European 'transparency coalition'

The history of the birth of CSR has been already exhaustively retraced elsewhere (Fairbrass 2011; De Shutter 2008) and it is usually considered as starting from this point in time: the 2001 Green Paper, 'Promoting a European Framework for Corporate Social Responsibility' (except Kindeman 2013). The literature tends to focus on the rift between mandatory and voluntary CSR, respectively supported by business and social groups of actors. However, this research tried to move the angle from which we are looking at this rift, gaining three original elements.

First of all, I underline what I would call *the symbolic power of non-law*: the fact that CSR was legally constructed as a voluntary practice, which is rather different than simply being undertaken by companies on a voluntary basis. In fact, it entails, in the specific case of EU company law, a remarkable shift from the traditional 'corporatist' Continental European view that structured corporate governance as a sub-system of public economic governance and industrial relations policies. However, it also differs from shareholder-centred voluntary CSR, a difference that has been often negated, for opposite reasons, by what Bourdieu called activist-academics, both from the conservative and the progressive camps. I would therefore simply claim that voluntary regulation is law and it carries the symbolic violence of law.

Second, I maintain that the analysis of the emergence of a European framework for CSA regulation should be made considering the parallel development of two regulatory trends that are conventionally isolated. The first trend, usually labelled as '*corporate governance regulation'*, emphasises accountability, transparency, board independence and maximisation of long-term returns and produced, amongst other requirements, an EU obligation for listed companies to produce a non-financial corporate governance statement in the annual report on a comply-or-explain basis (Directive 2006/46/EC). The second trend, conventionally labelled as '*corporate social responsibility'*, also concerned corporate transparency, accountability, long-term sustainable investments and disclosure and – at the EU-level – produced a requirement for all companies to include, "where appropriate", information about their social and environmental performance (Directive 2003/51/EC). As we have seen in the previous chapter, in the long-term the two strands are *de facto* converging, particularly after the financial crisis. In practice, the overwhelming majority of large firms started to issue ESG information and triple bottom line reports. However, the puzzle is why they have been widely kept separated? They clearly deal with the same issues and increasingly overlap. However, the EU regulator and the academic literature have systematically treated them as two completely distinct realities. This arbitrary isolation can be demonstrated empirically confronting the scarcity of references to CSR in the EU financial accounting and

corporate governance official documents and discussion papers with the lack of references to financial accounting in the CSA and CSR regulatory debate. One possible answer which has been often suggested is that CSR regulation, supported by NGOs and trade unions, has been co-opted by business and kept voluntary while powerful business lobbies successfully promoted CG reforms (Shamir 2005; Gill 1998). In other words, social forces have lost their battle against economic lobbies and the regulator has accommodate social and environmental issues in the 'bush league' of voluntary policies and the protection of shareholder minority rights in the 'first league' of legal enforcement. This explanation is intuitively and descriptively convincing, if we look at the two policy areas (CSR and CGR) as separated. Yet, leading towards my third point, I claim that considering them together might be more useful and revealing.

In fact, third, I maintain that setting the clash between business lobbies and advocates of social and environmental rights would, paradoxically, reproduce and reinforce the dominant representation of the division between economy and society that it tries to refute. It is an intellectually comfortable position, as it 'gets back to' the categories of class conflicts between dominant and dominated economic actors. However, in doing so it misses the possible 'objective convergences' and the many trespassing, soft coalitions and compromises that are possibly creating multiple and different cleavages. After all, temporarily but quite successfully, the corporatist compromise had already overcome this conflict creating 'shared value' for business and society. However, in my opinion, a 'new green deal' or a 'great sustainable bargain' (see Stern 2008; NEF 2009) does not come from neutralising or denying conflicting rationalities nor trying to mark the distance from one to the other 'reasons' (democracy versus capitalism), it only arises from the institutionalisation of social conflicts and the recognition of different instances. This means that only from a confrontational search for finding not a 'rational' but a 'reasonable' compromise it is possible to overcome the existing crisis and see different groups of actors working together[124].

From a scientific point of view, this way of proceeding, led me to identify the main divide that characterised this phase of EU corporate accountability policies in the clash, all internal to the economic field, between a more globalised '*transparency coalition'* and a dominant 'oligarchy' of Continental European firms, dominated by *managers and block-holders.* The former, supported by the centre-left parties of the Third Way, was seeking to create a broader convergence amongst minority shareholders, workers and other social forces (NGOs and civil society), all of them interested in enforcing more transparency and accountability in managerial decisions. They have been the drivers of both the corporate governance and the CSR agendas that emerged between 2000

[124] I own these categories to the indispensable work of Maria Paola Mittica on Law and music (see in particular 2012)

and 2005. The ‘oligarchy’ suffered a number of ‘retreated’ in the field of company law and corporate governance, which was ‘modernised’ to break ownership networks, pyramids and other mechanisms that had been built during the corporatist period to shelter companies from take over and cut minority shareholders off from companies revenues. However, managers prevailed in the area of CSR where CSR Europe and BusinessEurope progressively joined forces and managed to postpone and finally largely empty the initial EU regulatory ambitions.

To start with the ‘symbolic violence’ of ‘non-law’, the CSR Green Paper (Commission 2001) was meant to launch a public consultation on the concept of CSR and it contained a statement affirming that: “*Most of the definitions* of corporate social responsibility describe it as a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.” As the statement implies, this was not the EU definition of CSR, it was rather to affirm that, as the following sentence clearly explain: “Being socially responsible means not only fulfilling legal expectations, but *also going beyond compliance* and investing ‘more’ into human capital, the environment and the relations with stakeholders.” (p. 6) After considering the 250 responses to the Green Paper public consultation, this ‘voluntary’ standing of the Commission was made much more explicit by the CSR Communication issued in July 2002,[125] which states: “CSR is behaviour by businesses over and above legal requirements, voluntarily adopted because businesses deem it to be in their long-term interest” (Commission 2002: 1).

The symbolic violence that the regulator exerted through this definition can be illustrated using as an example the interview I had with Penny Clark[126], a trade unionist who had been following for the ETUC the first years of EU-level debates on CSR, after the launch of the Lisbon Agenda. The way she explained me the development of a ‘voluntary’ conceptualisation of CSR has been: “We have a number of <u>things that come from Europe, concepts</u>. The European Commission says, sometimes, that Member States don’t let them do things on social policies. But it is the Commission that has the <u>power of proposal</u>.” Despite the fact that recently some of this power has been given to the European Parliament, “in reality, is the Commission that has always been <u>the driver</u> of all this. <u>They both drive and they block</u> and <u>they came up with this concept of CSR</u>, which is not workable.” And, again, she explained me that trade unions could have decided to boycott the whole process, however, “Looking back, it is difficult to outright reject things. And that also is the

[125] Notably, the 2002 Communication instrumentally used the statement contained in the Green Paper as if it had already provided the EU definition of CSR being ‘voluntary’. “The Green paper defined CSR as ‘a concept whereby companies [...] on a voluntary basis’ as they are increasingly aware that responsible behaviour leads to sustainable business success.” (COM 2002 347 final: 1)

[126] Interview #20 (02.11.2012)

problem with the EU. Because they have the monopoly of this, I could have say that we boycotted it but, you know, you think that something good might come out of it and to be frank, I don't think we had enough people that wanted us to pull out either. So we did take part and the ETUC put quite a substantive input into this [Multi-stakeholders Forum on CSR]."

From the excerpt it emerges both the special power of policy- and law-makers "to do things with words" (Bourdieu 1984: 809) that recent developments towards 'soft law' and 'better regulation' have not diminished. Secondly the excerpt reveals the symbolic violence by which this social process takes place: the imposition of concepts, thoughts and mental categories. The most striking aspect, perhaps, is that the 'classificatory operation' performed by the Commission was able to objectivise and shape the reality of CSR for over a decade, right until 2011, when the Commission wrote a new definition of CSR. However, in affirming that CSR is 'over and above the law' EU policy-makers brought this symbolic power of law to a new, paradoxical, end and did something truly creative and innovative. The fact that companies are socially responsible is a 'pre-evident' concept. Therefore, by definition, law-makers cannot impose a 'responsible behaviour' neither on companies nor on individuals[127]. However 'naming' that business has social responsibilities, the EU Commission created them almost *ex nihilo* – it was not business that created CSR in Europe, it was the regulator. At the same time the law could do that only stretching itself beyond its limits, affirming that they exist *over and above* the law[128].

In my opinion, however, there were already two crucial but almost imperceptible differences between the Green Paper and the Communication. First, in the former there were frequent references to the law, which played a critical function of implicitly defining what could not be explicitly regulated. On the contrary, in the Communication they are absent or much more scant. Secondly, the Communication is much clearer in affirming that CSR is "adopted because businesses deem it to be in their long-term interest"[129] (Commission 2002: 5), therefore espousing the rather weak 'CSR business case' approach suggested by CSR Europe and the idea that such case would be

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[127] In that sense, Milton Friedman (1970) was absolutely right in affirming that imposing by law to companies to become 'socially responsible' was either talking nonsense (demonstrating "analytical looseness and lacking rigor") or "preaching pure and unadulterated socialism."

[128] Notably, the definition of CSR contained in the 2001 Green Paper and the 2002 Communication have widely circulated across the world and they have been copied and pasted in virtually all the text providing a definition of CSR and had a huge echo both in the outside Europe. In this sense the Commission has been truly creative of a new use of the concept by public regulators.

[129] Emphasis added by the author. The whole passage states: "Despite the wide spectrum of approaches to CSR, there is large consensus on its main features: CSR is behaviour by businesses over and above legal requirements, voluntarily adopted because businesses deem it to be in their long-term interest; CSR is intrinsically linked to the concept of sustainable development: businesses need to integrate the economic, social and environmental impact in their operations; CSR is not an optional "add-on" to business core activities - but about the way in which businesses are managed." COM (2002) 347 final p. 5.

sound enough to support the creation of a whole new set of EU policies. Therefore, more than the definition of CSR as ‘voluntary’ *per se*, which is pre-evident and tactical, it has been the disappearance of politics and law that revealed this was a retreat of the State (see Strange 1999), the dismissal of a whole European tradition that was still embodied not just in the 1995 ‘European Declaration of Business against Exclusion’ but even in the ‘Strategy for sustainable development’ (COM(2001)264 final) proposed by the Commission and approved by the Goteborg European Council in 2001, which was still stressing the key role of public policy in establishing a CSR regulatory framework[130]. “In fact”, told me an EU official who had been involved in the process[131], “CSR was promoted because of the failure to impose legislation. The ideal of governments is to impose legislation. But when you see that *politically* you will not pass, you start to reach the same objective via another way which is acceptable.”

Ideas of ‘better regulation’ and ‘meta-regulation’ were introduced to shape and legitimise this new geography of power relations between states and markets. During this phase, these regulatory approaches started to be actively promoted at the EU-level. However it has been mostly since 2006, with the re-formulation of the Lisbon agenda, that ‘better regulation’ became instrumental for a pro-business agenda (see Radaelli 2007) and were ‘usurped’ to justify deregulation[132]. Following this ‘voluntary’ framework, DG EMPL, charged with the task to elaborate an ambitious EU framework on CSR, had to exclude *a priori* any proposal entailing direct legal obligations on companies. The DG faced the dilemma: how to enforce CSR by law if it is not law? As a solution, it was agreed to focus on meta-regulatory mechanisms of corporate accountability (see Parker 2002 and 2007) based on what was already the dominant regulatory principle in business regulation: *transparency and disclosure* (Braithwaite and Drahos 2000). In fact, as explained by Parkinson, “while CSR refers to conduct that is voluntary, the techniques relied on to promote it might themselves involve the imposition of binding obligations.” (Parkinson 2006: 6)

[130] For instance the Communication states: “The sustainable development strategy should be a catalyst for policy-makers and public opinion in the coming years and become a driving force for institutional reform, and for changes in corporate and consumer behaviour. Clear, stable, long-term objectives will shape expectations and create the conditions in which businesses have the confidence to invest in innovative solutions, and to create new, high-quality jobs.” (p. 3) “public authorities have a key role in providing a clear long-term framework” (p. 5) “Public policy also has a key role in encouraging a greater sense of corporate social responsibility and in establishing a framework to ensure that businesses integrate environmental and social considerations in their activities.” (p. 8)

[131] Interview # 13 (23.07.2012)

[132] Looking at BusinessEurope’s position and open support of ‘better regulation’ as “central to strengthening competitiveness and supporting sustainable growth and employment”, it appears clear what Zumbansen called the “a strange turn and usurpation” of originally progressive ideas of ‘post-interventionist’, ‘post-regulatory’ law, as expressed, for instance, by concepts such as ‘responsive regulation’ (Ayres and Braithwaite 1992), “into a market-oriented functionalist agenda.”

The idea, therefore, became to create a European regulatory framework that would *encourage* corporations, through transparency and disclosure, to become more socially and environmentally accountable to their stakeholders. In particular, from the fieldwork it also emerged that the tactical position found by the Commission between 2000 and 2002 was to say that there were three levels of regulation[133]. There are rules that are defined by legislation and imposed by the state. There are rules that are the outcome of negotiations between employers and employees, through collective bargain and collective agreement. Then there is a "third layer, which is CSR, which is self-imposed, when a company takes certain behaviour because they anticipate expectations from consumers, from investors, also from workers, but it's because they respond to expectations, not to rules."[134] On the basis of this framework, the Commission proposed the establishment of a CSR European Multi-Stakeholder Forum on CSR (EMSF-CSR) "promoting transparency and convergence of CSR practices and instruments" (Commission 2002: 17). At the political level, the reason for establishing the EMS Forum was motivated within the Commission by the need to secure the support of the parties, including TUs and employers[135].

The EMSF-CSR had been originally proposed, in 1999 and in 2001, by the EP Rapporteur for CSR, the British MEP Richard Howitt. However, in the original proposal advanced by the Parliament the Forum was meant to be a way to enhance transparency and credibility of codes of conduct and social and environmental reporting. The idea was to have an independent monitoring and verification body, composed of 'highly skilled' persons, where the business and industry would have to provide information about their voluntary initiatives to verify their compliance with international standards and – if adopted – voluntary codes of corporate practice. After three exploratory meetings that took place between April and June 2002, the Forum was restricted to the main groups of stakeholders[136] and began its activities, in October 2002. However, the mandate of the platform had been further restricted, not just compared with the original proposal of the Parliament but even to the wording of the 2002Communication. The objective of "identifying and

[133] The reference about the three levels of regulation categorization has emerged in several interviews (# 13; # 20; # 10).

[134] Interview # 13 (23.07.2012)

[135] According to my fieldwork research, this support was far from obvious. In fact, the employers' federations were against the CSR because they "did not want any more pressure." Also trade unions were very much against. In fact, they perceived it as a process in competition with social dialogue. Furthermore it would have been a situation in which they were not anymore in bilateral (or tri-lateral including public authorities) negotiations but in a broader context including potential competitor social actors: organised civil society and NGOs.

[136] Members of the CSR EMS Forum included three main blocs: employers (e.g. Eurocommerce; Eurochambers; CSR Europe; UNICE), trade unions (e.g. ETUC), NGOs (Green 8 and Oxfam).

exploring areas where additional action is needed at European level" had been dropped[137], possibly, as hypothesised by Olivier De Shutter, to convince the business to participate. Therefore, the Forum had become a mere relational space for dialogue amongst the main stakeholders, starting from very distant positions.

Intervening at the first meeting of the EMSF-CSR, Philippe de Buck, UNICE Secretary General stressed that it would have been "inappropriate to conceive the forum as a place where the participants are expected to negotiate or define guidelines or guiding principles." (UNICE 2002) Using the same dilatory arguments that the industry used in the 1970s to avoid mandatory social accounting, the Secretary General of the European Roundtable of Industrialists (ERT), made clear that the current development of companies' practices "should not be placed at risk through development of specifically European standardised approaches, certification procedures or reporting requirements that may frustrate innovation and damage competitiveness." (ERT 2002) On the contrary, Anne-Sophie Parent, as spokesperson of the European Platform of NGOs, declared "it is clear that the Forum must make strong recommendations on how to establish a convergence of standards on CSR, in order to promote credible, verifiable systems of reporting and auditing." (Parent 2002) In between the two extreme, trade unions, CSR Europe and the Commission were more open to find some middle-ground position[138]. In effect, the hope of the Commission was that from the simple fact of bringing together a number of actors with different positions in the same place during two years, they would have come out with a common understanding of CSR and some points on which they could voluntarily converge.

The Forum worked during 18 months, with the participation of about 30 member organisations and observers but it was not open to members of the public. It operated on two levels. From December 2002 to July 2003, a series of high level meetings took place to evaluate progresses while four thematic roundtables were convened in three occasions each, between the beginning of 2003 and early 2004. Notably, during this process, the three levels of regulation mentioned above had become two: either voluntary or mandatory; either law or non-law. Despite the efforts of trade unions representatives, the link between CSR and social dialogue was progressively dismantled and

[137] In its objectives, the CSR EMS Forum included the promotion of "innovation, transparency and convergence of CSR practices and instruments through: exploring the appropriateness of establishing common guiding principles for CSR practices and instruments, taking into account existing EU initiatives and legislation and internationally agreed instruments such as OECD Guidelines for multinational enterprises, Council of Europe Social Charter, ILO core labour conventions and the International Bill of Human Rights." (CSR EMS Forum 2002: 1-2)

[138] Press Reliese IP/02/1487 on 16 October 2002. Employment and Social Affairs Commissioner, Anna Diamantopoulou said: "Corporate Social Responsibility is the business contribution to sustainable development. The purpose of this Forum is to help business and other stakeholders to agree on how to make this contribution effective and verifiable, to the benefit of all, including of business itself." http://europa.eu/rapid/press-release_IP-02-1487_en.htm?locale=it

marginalised from the debate and finally dropped. Instead of converging, at the end of the works of the Forum, the position had become more polarised between business actors, strenuously defending the position that CSR should be business-driven, and trade unions and NGOs, who remained on their position that it should be legislative-driven.

Business representatives were very skilful in shaping the debate on the need for further researches that would prove the existence or not of a 'business case' for CSR as the preliminary step for them to undertake it 'on a voluntary basis'. On the other hand, NGOs and TUs kept blaming the Commission for failing to ensure that the EU would directly tackle the 'real issues' of companies' misbehaviour within and outside the Union. For them transparency and disclosure talks were already perceived as a renunciation to direct legal liabilities. Therefore they insisted on obtaining, at least, binding and detailed disclosure rules that had to be independently monitored. The debate resulted in a deadlock on the issue of mandatory versus voluntary rules. The final outcome, in 2004, is a document that leaved everyone firm on its position and which met the scepticism of TUs and was never endorsed by the platform of NGOs.

In its opening remarks at the EMSF-CSR, Davignon seemed almost hoping that some external event would have pushed forwards the works of the Forum. He stressed: "It is a dynamic process. What we are going to treat in 2004 is not what we are treating in December 2002. The world will change. We are going to change with the world." (Davignon 2002) In effect, during the period between 2001 and 2003, a series of major corporate scandals in the US (Enron, Worldcom) and in Europe (Vivendi, Royal Ahold and Parmalat) erupted. They involved managers' manipulation of annual reports and the expropriation of company's resources, further underlying the need for business' responsibility in order to rehabilitate investors' and the people's trust. The scandals boosted voluntary CSR initiatives, starting from social and environmental reporting and attracted a remarkable number of managerial researches on the issue of CSR reporting (see Gray 2008). It also boosted European ethical investment that so far had been a US phenomenon (EUROSIF 2003)[139]. However, business' instrumental use of CSR was stigmatised as 'cynical marketing' by many NGOs and trade unions that denounced CSR reports were little more than PR practices[140]. Overall, business reaction to the scandals strengthened the general perception that the key driver for CSR disclosure was reputation, further shifting the attention from the regulatory and public policies dimension of social and environmental reporting to their use as a management tools.

[139] EUROSIF was founded in 2001 as a federation of five SIFs from France, Germany, Italy, The Netherlands and the UK.
[140] A famous example of exposure is ChristianAid (2007) *Behind thye Mask. The real Face of Corporate Social Responsibility*.

However, Enron-style scandals also provided the Commission with an unprecedented consensus for approving comprehensive reforms of EU CGR and company law. For the scope of this study, this wave of corporate governance regulation is extremely interesting because it was also pivoted on transparency and corporate accountability[141] (Overbeek et al. 2007; Armour and Ringe 2010). In this sense, likewise the call for corporate social responsibility, it represented pressures for reforming the traditional features of the corporatist *ancien regime*, which was perceived, not only from Brussels, as fundamentally flawed. By the beginning of the 2000s, in Continental Europe only few listed companies were widely held. Instead, the typical feature of firms in German, French or Italian (relatively underdeveloped) stock exchanges had a dominant shareholder, often an individual, a family or a very restrict number of individuals, who controlled the majority of the votes (block-holders). In very general terms, block-holders typically exercise control owning only a fraction – sometimes a relatively small fraction – of the cash flow rights, exploiting sheltering corporate governance mechanisms such as pyramidal ownership[142]; shareholder agreements and dual classes of shares that were not allowed in the US and the UK (see Enriques and Volpin 2007). While this can have positive aspects, because the dominant shareholder(s) has the power to discipline management, resolving the problem of agency that exists in Anglo-Saxon, more dispersed, systems of corporate ownership, very concentrated ownership tends also to exclude minority shareholders from the firm's income stream (Pagano and Volpin 2001). Until the 1990s, the power of block-holders was politically supported by European TUs, in exchange for collective bargain, some mechanisms of management supervision (i.e. German co-determination) and jobs preservation, depending from the size of the company. However, as I already mentioned, European employers and managers had become increasingly hostile to the idea of keep going with the corporatist arrangement, pictured as a burden that limited their global competitiveness. By the mid-1990s, Central Europe was invested by a dramatic wave of industrial restructuration and redundancy, often publicly justified as the inevitable outcome of an historical shift towards post-Fordism. This eventually broke the corporatist 'solidarity' between employers and employees.

A major insight offered by the work of authors such as Hopner (2003) Cioffi and Hopner (2004); Deeg (2005) and later re-elaborated by Gourevitch and Shinn (2005) in analysing this phase has been that, under some circumstances, trade unions and labour parties developed a preference for corporate governance reforms that enhanced managers accountability and transparency reforms,

[141] For a detailed critical political review of the EU company law and corporate governance reforms see Horn (2011) Armour and Ringe (2010) provide a legal account. The reforms were highly debated and their significance has been further questioned after the onset of the financial crisis.

[142] A pyramid is conventionally defined as an ownership structure in which the controlling shareholder exercises control of one company through ownership of at least one other listed company.

typically considered by most of the literature as prerogative of Anglo-Saxon capitalism. This might lead to a – so far little studied – 'objective convergence' of interests between different social and economic forces 'federated' against the unwarranted power of managers and block-holders, including global institutional investors and part of trade unions. This is what Gourevitch and Shinn (2005) have defined as a 'transparency coalition'[143]. According to Hopner (2003) this has been the case in Germany under the SPD government during the first half of the 2000s[144]. Deeg (2005) reached a similar conclusion as regards the Italian wave of corporate reforms – also promoted by a centre-left political majority - favouring minority shareholders protection, enhancing transparency and dismantling the most antic features of Italian family block-holders' capitalism. A similar explanation has been recently applied to the US by Gelter (2012), although the origins of 'transparency coalition' in the US are much more focused on the 'double identity' of employees as 'labour' and 'investors' in private pension schemes that are still much more developed than in the EU[145]. However, the 'transparency coalition' was first elaborated to explain the very European political paradox of 'financial capitalism' being promoted by centre-left parties (Hopner and Cioffi 2003). In the European context the weight of pensions should not be overemphasised.

In Europe, the stalemate of EU corporate reforms that characterised the 1990s had seen the advocates of block-holder ownership systems (as diverse as Germany, France and Italy can be) under opposing pressures for converting or resisting to the overwhelming magnetic attraction of Anglo-American systems of corporate governance, based on liquid equity markets and diffuse shareholding. In practice, the Commission put in place a CG strategy that favoured deep changes in financial accounting, audit and disclosure standards. As I mentioned in the previous chapter, during the 2000s, the Commission and in particular Commissioner Bolkestein, after long and complex debates, obtained that all EU listed companies were required to prepare consolidated financial reports in accordance with the IFRS starting from 2005. The year 2001 represented a watershed in this long historical development as it showed the prospective of an eventual convergence of US, EU

[143] As Gourevitch and Shinn maintain, "The labour versus capital, "us versus them" argument no longer looks so simple. If the starting point was a country in a corporatist compromise, workers don't think they are necessarily in the same boat as managers, and they no longer have an attractive "deal" with block-holders, swapping agency costs for expropriation costs; expropriation cost, the block-holder's private benefits of control, now come partly out of the workers' hide. As this new set of preferences sinks in, the corporatist bargain becomes unstable; workers are tempted to defect from their coalition with manager, and throw in their lot with shareholders. The corporatist consensus could begin to unravel." (2005: 221)

[144] Hopner (2003) has showed that transparency for preservation of jobs and wages has been a major factor in shifting the corporate governance policies of German SPD and German trade unions.

[145] Although in most of Europe private pension schemes are not yet as developed as in the US, the idea of labour forces' 'double identity' will be increasingly relevant also in the EU context given the widespread reforms of pensions (Ebbinghause 2011).

and international standards (which actually did not take place). In fact, the Enron scandal had shaken the credibility of US accounting standards, otherwise widely considered as 'best in class'.

As argued by Dewin and Russell (2007: 150-151), this shift is "a case in point where the profession, or perhaps more correctly the Big Four accountancy firms and their alumni, acting in the public interest may play a critical, but not fully recognised, role in maintaining and improving national and international financial architecture." At the same time, the authors pointed out, "acting in their own interests or their clients' private interests" they may represent a critical "threat to the stability of these architectures." The introduction of such shareholder-centred mechanisms of corporate governance by a centre-left political majority was justified by the aim of developing the comparatively modest European stock market, a fact that some authors have seen as making decisions less contentious (see Armour and Ringe 2011). At that time it also seemed that the idea of strengthening managers' accountability would have also benefitted employees, as transparency allowed both insiders and outsiders to monitor the health of their firm. In line with benchmark corporate governance best practices promoted, among others, by the OECD[146], EU reforms were aimed to emphasise board independence, accountability to shareholders, maximisation of shareholder value and transparency. This approach was designed to make block-holders and managers more difficult to hide losses or "manage" earnings, which may lead to sudden bankruptcies, with the aim of avoiding new Enron or Parmalat cases.

Between 2001 and 2005, 17 Member States adopted corporate governance codes, largely inspired by the United Kingdom approach of 'comply-or-explain' CG principles[147]. This movement lasted until 2007/2008, when such codes were adopted by the remaining EU Member States, under the impulse of the 2006/46/EC European Directive. The latter introduced for the first time in European Law the comply-or-explain principle. This is a flexible approach to create a pan-European corporate governance framework. It amended EU Accounting Law, mandating the application of national corporate governance codes by all listed companies that will have to either comply with the code or explain why they do not. Overall, this wave of CG reforms was in the interests of global institutional investors which, as outsiders to the day-to-day management of the firm, need reliable

[146] The OECD Principles of Corporate Governance were endorsed by OECD Ministers in 1999 and have since become an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. They have advanced the corporate governance agenda and provided specific guidance for legislative and regulatory initiatives in both OECD and non OECD countries. In particular, espousing the agency theory approach, they promoted and legitimised the growing role of institutional investors and of accounting standards, underlying that transparency and disclosure are the key conditions for effective corporate governance and managers' accountability.

[147] The UK Cadbury Report was the first to promote a 'comply-or-explain' set of guidelines. This approach advised companies to voluntarily refer to the principles contained in the Report, either adopting its principles or explaining any deviations from these recommendations.

and comparable information about the risks of their investments. Although it is crucial to understand and stress that the attitude of institutional investors might vary greatly and that the large majority of them often demonstrated a rather passive approach towards managers. On the other hand, though there are major national differences in trade unions' position to be considered, transparency might also be seen as in the best interest of trade unions and workers, which are generally interested in reducing the risks of exploitative management practices that dissipate companies' resources and put jobs in danger.

While the 2000-2005 CSR debate on social and environmental disclosure requirements has been traditionally analysed in isolation from the contemporary debate on corporate governance regulation (CGR), I would suggest that the two areas could be better understood if considered together[148]. In effect, both strands of regulation were hinged on transparency and disclosure as a strategy to build a new architecture of governance able to overcome the exhaustion of the corporatist coalition. Both represented a major departure from the traditionally prescriptive approach adopted by the Commission until the 1990s, towards greater reliance on 'meta-regulatory' mechanisms of corporate accountability. The desire of improve enterprises' risk management is a powerful factor behind both CSR and CGR. However, while in 'corporate governance' regulation area the EU regulator succeeded in pushing for transparency and disclosure imposing significant regulatory changes, in the area of CSR it largely failed to deliver. In effect, going back to the development of EU-level CSR policies, the main result of this phase has been the Directive 2003/51/EC that introduced into EU Law the requirement on companies to include "both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters." While this change in the EU Accounting Directives was meant to be the first step towards the creation of an EU framework on social and environmental disclosure, it turned out to be the only one. After the end of the CSR EMS Forum, a Communication containing a number of regulatory measures to promote CSR and taking into account the outcome of the Forum was draft and it was ready in 2004. However, the Prodi Commission had arrived to the end of its tenure. So it was "purely because of administrative reasons"[149] that DG EMPL services decided to wait until the end of 2004, when the new

[148] The symbolic violence exerted by EU policy-makers in defining CSR as taking place "over and above the law" has add much to the arbitrary division. It diverted the attention from the possible synergies between the two developments that appear evident just even looking at the legal text where disclosure of social and environmental information occupies article 46 of the Fourth Directive 68/660/EEC and corporate governance reporting article 46a. During my fieldwork experience, the most challenging aspect has been to find a way to address the issue of 'CSR regulation' which to many would had appear as an oxymoron. However, this task was made easier by the 2008 crisis, which revealed the relation between these categories, showing the social consequences of financial irresponsibility.

[149] Interviews # 13 (23.07.2012) and # 18 (08.08.2012)

Commission would have come. However, the change from Prodi to Barroso proved to be a 'sea change' for EU policies in this area.

In 2005, the Barroso Commission replaced Prodi's and the EU initiative on CSR lost momentum. From that moment a long stalemate began. The new Commission first decided to assign the CSR file 50/50 to DG EMPL and DG ENTR (traditionally more business-oriented). In the early 2005 the Communication was jointly draft by both DGs and presented to the respective Cabinets and it was rejected. In the same year, in order to celebrate its 10th anniversary, CSR Europe organised the first 'European MarketPlace on CSR', which gathered some 400 business and CSR practitioners. At this occasion, Frank Welvaert, Chair of the Board of CSR Europe, presents the "European Roadmap for Businesses. Towards a Competitive and Sustainable Enterprise". In response to the Roadmap, European Commission President José Manuel Barroso offered businesses a new partnership. Commissioners Günter Verheugen (Enterprise and Industry) and Vladimir Spidla (Employment and Social Affairs) invited Etienne Davignon and CSR Europe's member companies to elaborate on this partnership. Barroso decided to transfer from the DG Employment to the Enterprise the mandate for elaborating CSR policies. This political decision – described as 'brutal' by one of my key informants - was followed by the publication, on 22 March 2006, of a second CSR Communication 'Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility' (EC 2006).

The 2006 Communication signalled the political failure of the European 'transparency coalition' to deliver in the area of CSR policies. As Gourevitch and Shinn (2005: 66) highlighted: "if owners and workers fail, then managers prevail" and so it happened. "Between 2000 and 2005 the line was to say 'you need a good social and environmental environment for competitiveness'. Then there was a complete reversal", told me an EU official[150]. "It was 'No. You need good competitiveness first, before you can afford social and environmental performance'. Putting rules and constrains on companies was not fashionable anymore." Then it came the 2006 Communication, "which basically gave the baby to CSR Europe" saying that they should lead the Alliance and they should organise the workshops. According to another EU official, the 2006 Communication was politically driven by DG Enterprise Commissioner Gunter Verheugen and the Alliance has been "agreed by the Cabinet directly with CSR Europe", while the people at the service were "not sure what it was"[151]. In response, the EU Parliament passed, by a large majority in plenary, a resolution urging the EU executive to extend legal obligations to some key aspects of corporate accountability, such as directors' duties, foreign direct liability and mandatory disclosure

[150] Interview # 13 (23.07.2012)
[151] Interview # 18 (08.08.2012)

for lobbyists (European Parliament 2007). The EU executive's reaction was to reaffirm once again that CSR is a uniquely voluntary measure which "should not be regulated at the EU level." As a result, NGOs and TUs started to boycott and, finally, abandoned the High Level Forum for CSR, which soon became a privileged partnership between BusinessEurope, CSR Europe and DG Enterprises. On 1st March 2008 a European Alliance for CSR led by corporate representatives was created by the EU Commission. The 'Alliance for CSR' was "a slightly strange animal."[152] Companies were encouraged to express support for the Alliance, which means writing a letter to the Commissioner, but "they did not have to commit to do anything. It was slightly odd and there were quite though discussions within the Commission." [153] As I have been told by a responsible investment (SRI) expert, who had been previously an intern at CSR Europe and participated to some of the 'laboratories' organized by the 'European Alliance for CSR', "I have seen the laboratories. So, basically, five people, meeting twice a year, writing a leaflet to say what a company should do to have a better looking packaging; writing on what is responsible marketing; an publishing it on their website. And this was at the centre of the European Commission's strategy on CSR!"[154]

Managers had succeeded in keeping EU social and environmental disclosure confined within a self-regulatory scheme. As requested by BusinessEurope, the Commission explicitly suggested that non-financial disclosure should be regulated through voluntary guidelines, principles and standards that had been created by global voluntary regulatory networks, such as the UN Global Compact and the GRI.

4.4 [2008-2011] "Footprints on the beach". From 'voluntary' and 'non-financial' accounting to corporate social accountability?

In November 2008, few months after the creation of the 'Alliance for CSR' and the triumph of managers, the collapse of the financial sector rapidly turned upside down the EU debate on CSR policies. The impact of the crisis emerges clearly from all the interviews carried out within Commission as well as with the various stakeholders involved in the broader debate on corporate sustainability regulation, although opinions about the nature of the changes that it provoked might vary. In effect, the consistency of the references to the crisis as the catalyst for changing not just European but the global politics of CSA seems to confirm that a close relation exists between accumulation of economic capital and the sustainability reporting debate. This also

[152] Interview # 18 (08.08.2012)
[153] Ibid.
[154] Interview # 19 (07.09.2012)

emerges in a number of interviews. For instance, ECCJ, the NGOs' platform that represents and co-ordinates at the EU-level over 250 CSOs (civil society organisations), confirmed[155] that the crisis transformed the debate: "Even BusinessEurope was asking for mandatory reporting and accountability *for the finance sector*!" One EU policy-maker remarked[156]: "The fact is that the financial crisis revealed just how much the market depended on short term: short term activities, short term profitability: never thinking about long-term. Sustainability means thinking about long-term, taking into account civil society and the environment more broadly. It is very broad, not just traditional social and environmental matters but also things like corruption, anti-corruption and bribery; and things like, ethic in the workplace, ethic in the boardroom." An experienced EU official, who had a key role in the EU CSR debate, stated[157], "I think what came was the financial crisis. Because it showed that you cannot trust business."

While it is still too early to assess the outcome of the current EU regulatory debate, this section will briefly outline some aspects concerning changes in the mode of regulation, in its content and in the socio-economic forces that are driving those changes as compared to the previous phase.

The first consequence of the 2008 shift, which emerges from the research fieldwork, concerns a more active role of public authorities in their regulatory capacity. This shift widely emerges from every single interview with EU officials currently working on CSR. One affirmed[158] that, in "ways that we cannot really appreciate or calculate", the financial crisis begins to "re-open the question of the role of regulation generally", it begins to make regulation "*a less dirty word*." A top official stressed[159] that the overall thinking before the financial crisis was "not to regulate with the strictness necessary. It was more a 'light touch' approach to regulation both in financial services but also in the area of CSR. Yet, another official described the current shift saying that today it is "*no longer a question purely of mandatory or voluntary*. The days of the mantra of voluntary are gone. We are now talking about this 'mix'. An appropriate mix for each situation to bring about the best combination, whatever it could be." This shift in the mode of regulation primarily concerns a reconsideration of the relation between the state and companies as compared to the previous phase. More specifically, it regards the line between law and non-law that had been set back at the very beginning of the 2000s, officially

[155] Interview # 12 (17.06.2011)
[156] Interview # 12 (26.06.2012)
[157] Interview # 13 (25.07.2012)
[158] Interview # 18 (08.08.2012)
[159] Interview # 14 (25.07.2012)

acknowledging the existence of a space, a field of economic activities, which is "over and above the law" and relatively autonomous from the control of the regulator.

In the economic field of practice, which increasingly coincides with the sphere of influence of giant corporations, managers became able to set their social policies, write their codes of conduct and issue corporate governance statements on a comply-or-explain basis. This regulatory activity has an unprecedented impact on the lives of millions of people, considering the leverage of TNCs. However, this new regime had foreseen only a weak mechanism of corporate social accountability to check whether TNCs were actually doing what they claimed and what was their social and environmental impact. The only information required were 'financial' information, the large sphere of non-financial disclosure was left to the willingness of managers to pro-actively communicate on those issues. Today, after the financial crisis, regulators are increasingly under pressure for building a new framework of rules of the 'economic game' and, as an interviewee acknowledged[160] this is "a big challenge for us" because "things are not as simple as they were." The 'deal' between states and markets that had emerged during the 1990s is gone, companies have to prove that they do what they say and they say what they do. The respective spheres of influence of states and companies return to be blurred and themselves subject to power relations. The very idea of CSR as a public policy tool has been almost 'suspended' as a consequence of the fact that the crisis has turned into a complicated "tug-of-war between global financial investors and sovereign nation-states" (Streeck 2011) of which Brussels is the epicentre. As maintained by an EU official, in the economic field we are definitely, we are seeing a return to legislation, "the time of self-regulation by the industry is lost". In this context CSR is not a priority, at least not in the short-term, as it was 10 years ago[161]. At the same time, "if something will come, it will be stronger" because, after the bailout of banks and the financial crisis, "the power relationship has changed."

In this new context, it is extremely significant that the first ponderous step the Commission has taken towards the (re)construction of a meaningful strategy in the area of corporate social accountability has been to write a new definition of what CSR is, contained in the 2011 Communication, 'A renewed EU strategy 2011-2014 for Corporate Social Responsibility'. The new definition makes some important steps forwards. First of all, exactly ten years after the publication of the 2001 Green Paper, it wipes out the notion that CSR is something that companies *do* "on a voluntary basis", therefore voiding what has been at the origin of endless

[160] Interview # 12 (26.06.2012)
[161] Interview # 13 (23.07.2012)

ambiguities[162]. CSR is now officially defined as "the responsibility of enterprises for their impacts on society" (p. 6). As it emerged from the interviews[163] carried out at the EU Commission, the new definition is meant to make sure that "the word 'responsibility' is used in the way the word responsibility is meant to be used: so you are *responsible to somebody or for something*." Namely, you (company) are responsible for your impact on society.

The first major implication of this change is that "every company has a social responsibility. It is unavoidable: positive or negative. So if every company has an impact, every company has a social responsibility. So, the all starting point is completely different." Companies *have* a social responsibility, they don't *do* CSR. Starting from this perspective, the question whether CSR is mandatory or voluntary, according to one of my interviewee[164], just does not make any sense. "*It is voluntary or mandatory leaving footprints on the beach when you walk across the beach? Meaningless question.*"

Secondly, the Communication adopts and legitimises a new vocabulary, a new terminology more adequate to the challenges of a field which has enormously evolved during the last decade and which, after the crisis, will have to face new challenges. This language is "consistent with new and updated international principles and guidelines" such as the ISO 26000, the OECD Guidelines. In particular, the contribution to the debate made by the UN Guiding Principles on business and human rights has been rather distinctly taken into account. For instance it states that, "in order to fully *meet* their social responsibility", enterprises "should *have in place a process* to integrate social, environmental, ethical and human rights concerns into their business operations and core strategy in close collaboration with their stakeholders." (Commission 2011:6). Therefore, "without being legal about it", the Communication became much more explicit as regards its expectations from business in the areas of social and environmental matters and human rights stressing that, in order to meet their corporate responsibility, all companies should integrate those issues in their core strategy and operations, in collaboration with stakeholders.

However, it is clear that the end of purely voluntary corporate social responsibility and a stronger role of the state also mean the end of CSR as we used to know it. "I wonder whether that will be the last Communication of the Commission on CSR", acknowledged one[165] EU officials that has been working on this issue for many years. "It is possible. But I think that if you break

[162] To make the discontinuity even clearer, then it remarks: "Respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility." (p. 6)
[163] In particular, interview # 18 (08.08.2012) and interview # 12 (26.06.2012).
[164] Interview # 18 (08.08.2012)
[165] Interview # 18 (08.08.2012)

down some of its component parts, they potentially go up in importance. Non-financial disclosure is one part." In effect, as the idea of a purely voluntary approach to CSR is giving way to a 'smart mix' of mandatory and voluntary approaches, a series of fragmented regulatory initiatives that in 2006 would had been impossible to approve were included in the new CSR strategy 2011-2014[166], including a proposal for expanding the current EU requirements for non-financial reporting. However, they are emerging in a completely different context and in a rather paradoxical political situation.

On the one hand, there is a far stronger momentum and support for mandatory non-financial disclosure, as compared to the early 2000s. As we have seen in the previous chapter, the European 'transparency coalition' continues to expand at different levels of regulation and through various modes of corporate governance, from global to national initiatives. As I should argue in the next Chapter, it has actually become much more structured and organised than it was in the early 2000s and it is now more equipped for designing high quality legislative and policy proposals. Both responsible investors (EUROSIF) and NGOs (ECCJ) have transformed and consolidated their organizational networks and structures, while TUs had "a difficult time since 2005"[167], which may be challenging them to seek in corporate sustainability regulation the basis for "creating alliances with NGOs and other actors" (Vitols and Kluge 2011: 35).[168]

On the other hand, however, the 2008 financial crisis has also revealed the symbolic violence of financial markets and their capacity to directly threaten European stability. This has provoked a 'tug-of-war' (Streeck 2011) between EU states and global financial markets in which the 'pro-business' and 'not really keen on regulating markets' Barroso Commission had to measure itself with a new unexpected scenario. When the crisis exploded, infact, the EU Commissioners in charge for CSR (EMPL, MARKT, ENTR) were culturally inadequate to grasp the possible value of elaborating a strong proposal for non-financial disclosure. They were more in favour of a 'market-making' than a 'market-shaping' approach to EU economic policies (Quaglia 2009).

In sum, the crisis has objectively changed the EU policies landscape, forcing regulators to become more active. However, when it erupted, the Commission services were led by the

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[166] "Now, 10 years later, in the Communication all the things that had been said 10 years ago have finally been validated." Interview # 13 (23.07.2012)

[167] Interview # 13 (23.07.2012)

[168] "Important dimensions of sustainability, such as employment conditions and occupational health and safety, have long been core issues for trade unions. Other dimensions, such as finances of the firm, have also been longstanding concerns of work councils and employee board level representatives. Nevertheless, many elements of the multi-dimensional concept of sustainability stretch beyond the traditional core concerns of trade union" They represent "a challenge for current trade unions' capacities to take positions on these issues" [...]. (Vitols and Kluge 2011: 34)

champions of 'soft' regulation and market liberalisation[169]. The result has been a late and problematic understanding of the relevance and potential of corporate sustainability as a response to this deep crisis. The 'mindset' of EU regulators seems still pivoted on the very 'law-and-economics' vision of the world that has been at the origin of the crisis. Meaning, a vision of companies as purely 'market actors' and not also as social organisations that are also becoming major political players. Some EU law-makers only see the value of financial reporting. In fact, paradoxically, the relevance of adopting non-financial disclosure has been still largely assessed on the basis of financial and economic criteria (see Commission 2013a).

Despite this paradoxical situation, already in February 2009, at the annual high-level meeting of the EMSF CSR, it was possible to perceive that something had changed because of the crisis. In its speech, DG ENTR Commissioner Verheugen highlighted, for the first time since the Borroso Commission took office, the need for talks among all stakeholders on ESG disclosure[170]. As a consequence, in September 2009, DG ENTR took the initiative of hosting a series of workshops on ESG disclosure each exploring the position of six groups of stakeholders: enterprises; investors; TUs; NGOs; public authorities; and professions (academics, accountants, financial analysts, etc.). Significantly, in the summary of discussion of the final workshop, it emerged that "a decision not to change EU policy would send a strong political message to enterprises and other stakeholders that the European Union believes business-as-usual is desirable and feasible, whereas the multiple sustainability challenges we face demand fundamental change. […] *ESG disclosure is a political issue not just a technical issue*. Tinkering is not a political message". (Commission 2009: 3) The conclusions of these workshops have been discussed during the conference organised by the Spanish Presidency on 25-26 March 2010 and further debated in a plenary meeting of the EMSF-

[169] When the financial crisis erupted, Internal Market Commissioner, Charlie McCreevy, an Irish liberal politician, was in change for changes in accounting rules. He is well known for having promoted as Irish Minister of Finance a public policy of financial deregulation and liberalization often defined as "fiscal dumping". During my interviews it emerged that he was "very no-regulation" and had a "light-touch regulatory approach". DG EMPL Commissioner, Vladimir Spidlar, showed little interest in CSR policies, on the contrary of his predecessor the Greek Diamantopulos. In fact he ceded CSR leadership to DG ENTR. As for DG ENTR Commissioner, Gunter Verheugen, the interviews revealed that he "genuinely believed it was important", but he was very clear about the fact that CSR "wasn't about setting rules."

[170] "One issue that stands out for particular consideration in the context of the current crisis is that of transparency and the communication of non-financial performance by companies. The work of the Alliance laboratory on this topic has been timely and impressive. Investors who are able to value the role of CSR in the future prosperity and sustainability of a company can be hugely influential in creating the new economy to which we aspire. If companies expect a premium and reward from the market and from other stakeholders for their CSR performance, then they may wish to communicate their achievements in a transparent and credible manner. It is in their interest and I very much encourage the companies concerned to approach this issue very seriously. I also understand that quite a number feel the need to have a framework in which this can be done and I invite companies, investors and other stakeholders to work together on this issue. (Verheugen 2009: 4) The speech can be retrieved here: http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/documents/stakeholder_forum/csrforumspeech_onlineversion_en.pdf

CSR in November 2010, confirming the broadening interest for reviewing the existing regulation on non-financial disclosure. However, the real turning point was when the new Commission took office, the 10th of February 2010, still led by José Manuel Barroso and supported by a 'conservative' majority in the European Parliament. According to all my interviews with EU officials, the rather controversial appointment of Michel Barnier, a French politician widely seen as having 'market-shaping' economic views, as Internal Market Commissioner had a major impact in boosting support for a more active role of the EU.

According to one EU official I interviewed, the shift in the EU debate on regulating NFR[171] "can be reduced to two words: Barnier plus the financial crisis." Perhaps, the discontinuity appears even more pronounced as Barnier succeeded the Irish Charlie McCreevy, who has been a champion of market 'light touch' regulation. According to my source, "French Commissioners are by nature more interventionist and he comes from a country that already has non-financial reporting law in place." In 2010, the issue of companies' non-financial reporting moved in the hands of the Accounting and Financial Reporting Unit of the DG Internal Market, which had the "legal instruments"[172] for drafting a legislative proposal on non-financial disclosure. DG MARKT had been "involved but, to be honest, not very involved"[173] in the 2009-2010 series of ESG workshops. In February 2010, the Commission launched a 'Public consultation on disclosure of non-financial information by companies' open to all interested stakeholders "with the view of improving existing policies on disclosure of corporate social and environmental information, and respect for human rights, including possible proposals for new initiatives and/or revised legislative measures." (Commission 2011: 2) The consultation attracted an extraordinary number of responses - over 300 - and in April 2011 the Commission officially announced that it will put forward a legislative proposal by the end of the year on non-financial disclosure.

Significantly, the 2011 'Single Market Act I', an initiative strongly bolstered by Barnier, states: "The tremendous financial lever of the European asset-management industry (EUR 7 000 billion in 2009) should be used to promote the development of businesses which have chosen – above and beyond the legitimate quest for financial gain – to pursue objectives of general interest or relating to social, ethical or environmental development. *In order to ensure a level playing field, the Commission will present a legislative proposal on the transparency of the social and environmental information provided by companies in all sector.*" (Commission 2011a: 14-15) According to a high-ranking EU official the inclusion of non-financial disclosure as one of the twelve priorities of the Single Market Act I happened "because it was a political priority for the Commissioner [Michel

[171] Interview # 18 (08.08.2012)
[172] Interview # 14 (25.07.2012)
[173] Interview # 18 (08.08.2012)

Barnier], who really wanted to demonstrate that the Single Market is also about the social component of Europe and sustainability. So it clearly was a strong political signal."[174] This announcement represents the completion of a U-turn in the EU Commission's standing as compared to June 2007, when it explicitly excluded the need for further legislative initiatives ("CSR should not be regulated at the EU level").

This point in time – the year 2011 – has been also the temporal limit of this research. It ideally represents the point in which the two negative definitions of CSA as non-law and non-financial have been overcome. However, since the publication of the SMA I, the regulatory process has further advanced. In 2011 and 2012, the EU Commission has strongly, officially, renewed its pledge to present a legislative proposal (Commission 2011b; 2012). However, the opposition inside the Commission and from managers has been considerable. As pointed out in a recent press release by the ECCJ, the coalition of NGOs, after the meeting with Barnier, in February 2013, "The ECCJ was very pleased to see Commissioner Barnier's openness and ambitiousness. He showed a great interest in the points raised by the participants and reiterated his support for regulation and accountability, refusing that the crisis is misused in order to deregulate. He wants a credible and effective reform. Among other things, he agrees that non-financial report has to be mandatory for all large companies; that the non-financial report must have a legal status and be voted by shareholders; that providing general information instead of risks and impacts might not be enough. *He seems ready to fight the battle in the College of Commissioners. However, realistically, other DGs and the strong opposition from the business community might water down the text and it will have to leave flexibility to companies on how to report*. (ECCJ 2013)[175] Far from contradicting the hypothesis of this study, the current struggle that surrounded the EC proposal on NFR confirms the tension between managers and a 'transparency coalition' that existed even before the crisis. However, it adds a new dimension. Some politicians and representatives of public authorities, embodied here by the conservative dirigisme of Commissioner Barnier, are supporting a stronger role of the State in the economy. After the crisis, regulators appear uncertain between the old *habitus* of law-and-economic 'market-making' policies and the strong temptation to reclaim their legitimate role and function of democratic control and initiative (market-shaping) over the increasingly autonomous power of economic actors.

Finally, on April 16 2013, the European Commission adopted on 16 April 2013 a proposal for a directive enhancing the transparency of certain large companies on social and environmental matters (Commission 2013). This Directive amends the Accounting Directives (see Annex I).

[174] Interview # 14 (25.07.2012)
[175] Emphasis added.

Presenting the proposal, Commissioner Barnier said: "Today we are proposing important legislation on business transparency across all sectors. This is about providing useful information for companies, investors and society at large - *much demanded by the investor community*. Companies that already publish information on their financial and non-financial performances take a longer term perspective in their decision-making. They have lower financing costs, attract and retain talented employees, and ultimately are more successful. This is important for Europe's competitiveness and the creation of more jobs. Best practices should become the norm." (Commission 2013a)[176] The companies concerned will need to disclose information on policies, risks and results as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, and diversity on the boards of directors. This statement will include a description of the policy pursued by the company in relation to these matters; the results of these policies; the risks related to these matters and how the company manages those risks. If a company fails to do so, it has to explain why they have not included such information. The new requirement would apply only to large companies, above 500 employees. This is about 18 000 companies across Europe, substantially increasing the number of companies reporting ESG data. The proposal also specifies a number of frameworks on which companies might rely in disclosing such data[177] but it does not require information to be externally verified or certified.

However, the EC proposal on NFR does not represent the end of the debate. Quite on the contrary, it hopefully marks the beginning of a comprehensive discussion about the integration of ESG information in financial report, therefore responding to a structural societal transformation prompted by the crisis of accounting practices too narrowly focused on short-term accumulation of financial capital.

[176] Emphasis added

[177] "In providing this information, companies may rely on national frameworks, EU-based frameworks such as the Eco-Management and Audit Scheme (EMAS), and international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation (ISO) 26000, the International Labour Organization (ILO) Tripartite Declaration of principles concerning multinational enterprises and social policy, and the Global Reporting Initiative." (Commission 2013)

5. Shifting grounds. From corporatism to agency

5.1 Introduction

This chapter integrates the framework outlined in Chapter 4, looking at the actor-level analysis of changes in CSA regulation, and it expands the narrative outlined in the previous chapter. As Gourevitch and Shinn (2005) hypothesised, the end of the 'corporatist compromise' marked a shift in the economic field, with the emergence of new coalitions and new struggles. This trend was further strengthened by the accounting and financial scandals (2001-2003) and the economic crisis (2008-date), which worked as catalyst for changes.

How has the current EU debate on CSA regulation come about? Which social and economic forces have driven changes in the content and the mode of CSA regulation over time? Consistently with a reflexive socio-legal approach, this section further outlines the drivers of regulatory changes, focusing on the relation between the six groups of actors that have been empirically studied during the research: public authorities; trade unions; investors; companies' managers; block-holders; professional experts (lawyers; accountants; auditors; financial analysts; academics); NGOs and civil society. Specifically, the chapter is organised into four sections: Section 5.2 elaborates on the idea of the emergence of a 'transparency coalition', providing some evidence in support of this hypothesis. Section 5.3 focuses on the opposition of large companies' and their associations to mandatory disclosure of non-financial information. EU law-makers and regulators is the object of section 5.4 while section 5.5 concludes considering the role of professions – accountants, lawyers and financial analysts – in the development of NFR regulation.

In rather stylised terms, which would need further analyses at the national and global levels, I have identified the emergence and confrontation between two coalitions promoting different visions of the future of CSA regulation in the EU. European managers, backed since 2005 by the Barroso Commission, have been largely defending their 'prerogatives' to freely implement sustainability reporting on a voluntary basis. They are against the introduction of more non-

financial transparency and accounting rules and any further change in the Accounting Directives that goes in this direction. They rather support international voluntary initiatives – such as the GRI and the UN Global Compact. Since 2000, they have been challenged by the rise, of a broad 'transparency coalition' which can count on the financial muscles of a steadily growing number of global institutional investors. This is characterised by the 'objective convergence' of a large number of NGOs and part of the European trade unions (TUs) on the idea of enhancing companies' transparency and accountability. This coalition demands EU regulators to broadening the Accounting Directives' requirements in order to include mandatory disclosure of ESG data in the annual report.

In between the two coalitions, lawyers, accountants and financial analysts are sizing the momentum for shaping the new architecture of corporate accountability in their own ways. In fact, the current explosion of CSA regulation has created a regulatory competition between various initiatives for reporting and verification: standards, guidelines, frameworks, etc. (GRI Sustainability Reporting Guidelines; IIRC integrated reporting; EFFAS KPIs; ISO 26000; etc). Also regulators are under pressure for responding to a crisis of trust in markets' mechanisms of self-regulation. Therefore, EU law-makers have a crucial role to play in shaping the future of CSA regulation. However, they seem turned between a narrower (sustainability accounting) or broader (sustainable companies' accountability) approach. They will play a critical role in determining whether CSA regulation will be developed by public authorities (i.e. German Sustainability Code) or by accountants and financial analysts (i.e. IIRC). In the near future, considering the likely prospective of having more non-financial disclosure EU requirements[178], law-makers will also have to face the issue of regulating the verification of the conformity of companies' reports.

5.2 A 'transparency coalition' for European CSA regulation

Analysing the data that emerged from the empirical study, the findings seem to confirm the hypothesis as regards the emergence of a 'transparency coalition' (Gourevitch and Shinn 2005) led by a growing section of investors together with a network of NGOs engaged against corporate abuses; and parts of the EU trade unions. This original finding suggests the need for further researches in this direction, particularly at the national and global levels. However, the word

[178] In 2011, both the Single Market Act I and the CSR Communication stressed the need to improve transparency of companies' operations, particularly regarding environmental, human rights and sustainable development aspects. This pledge has been confirmed the 12 December 2012 by the Action Plan: European Company Law and Corporate Governance. Finally, on April 2013, the EC has adopted a legislative proposal for the disclosure of non-financial information by large companies.

'coalition' should not deceive the reader and it should not be understood as a formal and formalised 'alliance' (although official contacts, networks and ties exist) between social actors representing different and often conflicting social constituencies, but rather as an 'objective convergence' of interests. In order to properly understand its meaning we should think about the 'corporatist coalition' that emerged in the post-war Europe, which was a convergence of interests between two 'archenemies', large capitalism and organised labour, to build a shared framework of political-economic governance, what Streeck (2011) calls 'democratic capitalism'. Similarly NGOs, trade unions and investors are strange bedfellows, which in fact maintain distinct position on about anything, but that have one important common interest in building an effective EU regime of corporate governance and accountability, which should include also social and environmental aspects. As Gourevitch and Shinn (2005: 221) noted: "Confronted with the pressures for transparency and accountability of shareholder-worker[-civil society] alliance, many managers recall the "closed doors" of the corporatist compromise with some fondness. Public accountability of management exposes practices and agreements that could be challenged by outsiders such as consumers, taxpayers, and minority shareholders. Not surprisingly, managers prefer governance practices that minimise disclosure, independent oversight, and minority shareholders." Because of these characteristics, this coalition might also appeal to 'market-shaping' public authorities, both from the political right and from the left. In the context of complex globalised economies, it provides the state with the kind of oversight and information about cash flows and taxes payment that might be otherwise hard to access when dealing with transnational corporations.

Evidence of this convergence of interests can be found in the interviews I had with NGOs and investors, confirmed by some documents and by other interviews from EU regulators.

For instance, in June 2011, I interviewed Yolaine Delaygues, from the European Coalition for Corporate Justice (ECCJ). "Are you talking with investors?" I have asked her. "Yes, we are in contact with EUROSIF." She explained me that, after the Commission started the consultation on non-financial reporting, in February 2011, they started to have more contacts with the responsible investors' side. So they started to discuss about doing together a press release. "EUROSIF was invited but for strategic reasons they preferred to step aside and do it by their own" and "we did it with ETUC and the GRI[179]. Although, with the GRI we don't agree on everything and eventually they said that they would not go any further, otherwise many of their members [the GRI has many

[179] February the 3th 2011, United call for mandatory company reporting. Joint press release: "The GRI, ECCJ and ETUC call for regulation that must ensure: Mandatory reporting, using clearly defined indicators developed with the involvement of stakeholder groups; Reporting throughout the supply chain; Objective information on whether the company has been involved in, or risks being involved in, violations of international standards for human rights and environmental protection."

corporate managers as members] would not be very happy." The GRI position is more leaning towards a comply-or-explain approach to CSA regulation, which finds both investors and NGOs strenuously adverse. Delaygues stressed that, "EUROSIF, on the contrary, is thinking that a comply-or-explain approach would be like going few years backwards, <u>so sometimes is pretty funny to see how coalitions are working</u>." Then again she elaborated: "Their position is very close to ours, except that what they want is more from the investors' point of view. So in this respect it is different from what we want, because more transparency is not for investors, is to make companies accountable. So, I would say this is the main difference. And also there may be some differences of wording and if you go into technicalities, may be there could be more differences. But from the discussion we had in February, we really kind of agree that reporting should be mandatory on human rights and the environment."

Delaygues alsorevealed that, after the Commission launched the public consultation 'on disclosure of non-financial information by companies', on 22 November 2010, EUROSIF and ECCJ shared each other positions before sending it. As she explained, however it is not a formal collaboration. "You know, for us sometimes already working with Trade Unions is not easy, because we have kind of different perspectives. Sometimes is complicated", so working with investors would add to this more complication. "But with EUROSIF we are just very very very close. Strategically we work together and we are in contact." Crucially, I asked her whether this 'closeness' concerned only transparency. She pondered whether on the other two main issues of ECCJ campaigns – access to justice and directors' liability – there could be any convergence and she concluded that no, there was possibly not other connection than through 'disclosure'. This is consistent with the idea of the 'transparency coalition' as it emerges in Gourevitch and Shinn (2005).

This could be seen as a rather narrow 'objective convergence' between vast groups of social forces over one rather secondary aspect: transparency and disclosure. However, as I have already pointed out (Chapter 2), accounting rules have a 'structuring power' and on this basis it is easy to imagine the emergence of a whole legal framework, the width of which is already illustrated by the enormity and depth of the four main areas that are already at stake in the EU debate on non-financial reporting – environment and climate change; human rights; employees-related matters; corruption and bribery – on which TUs, NGOs and investors might well modulate different positions. As Delaygues stressed, this convergence "is really strategical, I don't see any other reason for that." For the moment, I am leaving a little aside the relation between NGOs and trade unions (ETUC), as it has been already addressed by the existing literature on European CSR mentioned above and it is in practice more visible and established (although not less problematic)

(see Vitols and Kluge 2011). Interestingly enough, from my interviews emerges that, while the convergence between NGOs and TUs is more on issues of human rights and labour conditions and qualitative disclosure, they are less in line on environmental issues. Conversely, the convergence between NGOs and investors is stronger on disclosure of carbon and environmental information, mainly because such information is more quantitative (or at least measurable and comparable)[180]. As regards the involvement of consumers, Delaygues affirmed, “We have been trying to work sometimes with the European Consumer Organization (BEUC) but is not very easy for them, especially because they don’t have one position on non-financial reporting. But we have been working with them on other issues, for instance collective redress.”

One year and half later, in 2012, I interviewed François Passant, the executive director of EUROSIF[181], which represents assets totalling over € 1 trillion through its affiliate membership of institutional investors. By that time, this ‘objective convergence’ had already become more structured. I questioned him about EUROSIF’s affinity with the positions of various big players in the field of CSA regulation[182]. When it came to ECCJ, he stressed that the level of affinity was very high, because they shared the same policy objective of strengthening EU policies on corporate transparency and accountability. “Yes we have a lot of affinity with ECCJ. We actually wrote a letter together to the Internal Market Commissioner, Barnier; together with ETUC [the European trade unions] and BEUC [the European consumers’ organisation]. There are nuances, we are stressing more the materiality of the data, ECCJ might go, may be, a bit further. But there are a lot of communalities.” On 8 November 2012, the whole ‘transparency coalition’ met with Commissioner Michel Barnier (DG Internal Market). The representatives of ECCJ together with ETUC (European Trade Union Confederation), BEUC (The European Consumers’ Organisation) and EUROSIF (The European Sustainable Investment Forum) decided, according to ECCJ websites[183] “to send a strong political message from key stakeholders with regard to the upcoming

[180] As George Soros said as regards carbon emissions trade, “the system can be gamed […] that’s why financial types like me like it, because there are financial opportunities.” (2008) In general, it has been forecasted that it is very likely that most industrial sectors will be affected directly or indirectly by the consequences of climate change itself or by carbon governance policies. Therefore, investors are increasingly in need for reliable GHG information to project what will be consequences of CC on their assets. In particular, in the case of long and medium-term institutional investors – that in Europe are around 80% of the total – carbon disclosure is becoming a vital piece of information (EFFAS 2010).

[181] Interview # 22 (22.01.2013). EUROSIF (the European Sustainable Investment Forum) is a pan-European network whose mission is to develop sustainability through European Financial Markets.

[182] See Chapter 2.5 on research method

[183] According to the press release of ECCJ “Participants expressed their concerns about this reform potentially being a missed opportunity […]. The ECCJ was very pleased to see Commissioner Barnier’s openness and ambitiousness. He showed a great interest in the points raised by the participants and reiterated his support for regulation and accountability, refusing that the crisis is misused in order to deregulate. He

legislative proposal on non-financial reporting which Barnier's DG is currently drafting." EUROSIF newsletter stresses that, "The goal of the meeting was to reiterate our support for an ambitious reform to Non-Financial Reporting (NFR) by EU companies that would ensure the relevance, the materiality and the consistency of NFR by large companies." "Legislation is for me one of the key drivers", Passant (EUROSIF) told me, stressing that national pension's reforms in France and UK had a key role in their leadership as regards responsible investment (SRI). He maintains that EU-level mandatory reporting regulation is moving, but too slowly and if the Commission does not require companies to disclose material and relevant information "we are back to square one" and "we will have to wait another five or ten years" at this pace of development.

"For investors it is very important that we have concrete information, connected with the business, comparable and somewhat measurable". In that sense, there seems to be a convergence with ECCJ about their dissatisfaction with existing international voluntary frameworks, like the GRI and the UN Global Compact, and the request for rules and legal certainty. Furthermore, from investors' perspective, such voluntary frameworks "have not been designed for investors, they have been designed for companies"[184] and do not provide the kind of reliable, relevant and material information that investors need. The real question is "how prescriptive should regulators be? It should be a mix, because if regulation is too prescriptive, it becomes a compliance exercise, ticking the box." Therefore, he maintains that the ideal ESG reporting regulation is "a mix of principles, a bit of KPIs, material, substantial narrative information that is connected to the business strategy and risk and opportunities of a company." [185] If regulators make it only a "compliance exercise", he argues, it would result in an administrative burden for the issuers and a rather useless data for users,

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wants a credible and effective reform. […] He seems ready to fight the battle in the College of Commissioners. However, realistically other DGs and the strong opposition from the business community might water down the text and it will have to leave flexibility to companies on how to report. From what was discussed during the meeting, it is expected that the new legislation will require companies to disclose a statement with regard to environmental, social and employee-related matters, respect of human rights, anti-corruption and bribery aspects. This statement will most likely include a description of policies, results of these policies and risks, and the information will most probably be based on international accepted frameworks (UN Global Compact, OECD Guidelines, ISO 26000, ILO Tripartite Declaration, GRI). The materiality, sanctions and boundary of the reporting obligations will most probably remain key issues since they won't be addressed in the Commission's proposal. The draft proposal was already expected to be released several months ago, however, some delay occurred and it now seems that the final legislation will be due for February 2013." The document can be retrieved at http://www.corporatejustice.org/ECCJ-BEUC-Eurosif-and-ETUC-meet.html

[184] The only existing framework for investors has been designed by EFFAS and it is organised by sectors but it has to be used together with some narrative framework. Ref.

[185] Passant affirms that regulation should be based on principles – timely, material, accurate, etc.; it should specify which topics are to be covered in the reports – i.e. environmental information, human rights, etc. and they should include also 'governance' issues; lastly, it should identify some KPIs (Key Performance Indicators), "very limited, like five KPIs, not fifty, but that apply across the board, like 'waste' for example, and than leave companies decide which KPIs are relevant for their business."

so why not to "do the extra-mile" and make it "good sound risk management". A "useful tool for both *civil society, investors, etc.* and the companies themselves." "We argue that risk should not only include financial risk but also non-financial risk, to the extent that it has an impact on the financial performance. Human rights in your supply chain, for instance." Therefore, according to him, "the only way to make this really relevant for business strategy and the board is to integrate, to ask for an integrated reporting that is connected to the strategy, not just to risks but to business opportunities created by those ESG or CSR factors." It is striking to see how this position is in line with ECCJ press release after the meeting with Commissioner Barnier which states: "if the end result will be a legislation that imposes more burdens to companies, while not providing relevant and comparable information to companies, NGOs, investors, trade unions, consumers. It was emphasized that without meaningful identification and disclosure of social, environmental and human rights risks and impacts, it was impossible for workers, investors, consumers, affected communities, to assert their rights and fulfil their role." (ECCJ 2013)

Further researches I made, confirmed by the interviews, show the existence of national structural ties between NGOs and investors that work as bridges and bonds for dialogue and co-ordination. Although, there may be more that could emerge from a systematic assessment of all the NGOs and investors platforms of the EU, they already represent a strong starting point – at least two case studies– for mapping out this complex transnational and multi-layered 'transparency coalition'. In the Netherland, the Dutch SIFs, the Dutch Association of Investors for Sustainable Development (VBDO) – which is one of the members of the EUROSIF – is also a member of the Dutch MVO Platform – which is one of the most active members of the ECCJ. The existence and relevance of this institutionalised link was confirmed by Delaygues. A second institutional bond between investors and NGOs that I have identified through my empirical research is in France. It emerged from an interview with Prof. Michael Capron[186] – a French scholar and activist, who is currently the President of the French 'Forum Citoyen pour la RSE' (ECCJ French member) and who has also participated, on behalf of ECCJ, to the ESG workshops organised by the EU Commission. He pointed me to the fact that, "In France, there are often meetings between the FIR (the French representative of EUROSIF) and the NGOs. The 'Centre Français d'Information sur les entreprises' works as a link because it is at the same time member of the FIR and member of the Forum Citoyen." [187] Capron seems also to provide stronger evidence to the hypothesis of a multi-

[186] This 'interview' has been the only one that I have done sending by email few questions because it was impossible to agree on a phone interview and Prof Michael Capron is based in Paris while I was in Brussels. He replied in French to my questions and here I translate in English his words.

[187] This is the author's translation from the original text in French, which I have received by email on 02.03.2013: "En France, il y a souvent des rencontres entre le FIR (représentant français d'EUROSIF) et des

levels 'transparency coalition'. Particularly as he told me, "Investors are interested in extra-financial information to the extent that social and environmental risks might affect financial risk. This situation led to an objective alliance with NGOs during the meetings. However, this alliance has not been very 'rooted' – if we exclude socially responsible investors (SRI) – because the objectives are different. They both agree that there should be KPIs, however not about which KPIs."[188] Prof Capron maintains that "this objective alliance has been mostly informal: during the official meetings one could observe the convergence of positions of investors and NGOs. Although, in the halls, there have been attempts to build a 'common front' between NGOs, investors and certain governments (France, Sweden and Denmark) […]. But there have never been formal meetings, […]. This was in 2010, during the meetings of the CSR Multi-Stakeholder Forum"[189]

If the most visible and dynamic facet of the 'transparency coalition' has to be found in the networks of SIFs and Social Forums that are growing across Europe, the financial weight and economic muscles are in the rising interest of large insurers and pension funds in ESG data and in the often covert relation between investors and trade unions/workers. In fact, large institutional investors, during the last decade, have become increasingly interested in the social dimension of investment which is becoming steadily "more a feature of the mainstream, more common."[190] As it emerged from the interviews, it is not a niche market anymore but, at the same time, it has not yet become institutionalised. ESG data are now distributed by Bloomberg on a global scale. There are sustainability indexes, such as MSCI ESG Indices, and global specialists in sustainable investment analysis, such as Sustainalytics. However, there is not a supportive legislative framework that would boost its expansion in the EU, particularly limited by the fiduciary duties of pension found's trustees that, in some context, such as the UK, can be interpreted as not allowing them to invest following SRI criteria. In very general terms, large investors can be divided into two broad categories: asset managers and pension funds. As regards asset managers, there are more and more

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ONG. The Centre Français d'Information sur les entreprises fait le lien car il est à la fois membre du FIR et membre du Forum citoyen. »

[188] This is the author's translation from the original text in French, which I have received by email on 26.02.2013: "Les investisseurs s'intéressent à l'information extra-financière dans la mesure où les risques sociaux et environnementaux peuvent avoir des effets sur les risques financiers. Cela a conduit à une sorte d'alliance objective avec les ONG pendant les réunions. Mais cette alliance ne peut pas être très profonde (sauf peut-être avec les « investisseurs socialement responsables ») parce que les buts ne sont pas les mêmes. Cela se voit lorsqu'on discute des indicateurs-clés (KPI) : tout le monde est d'accord pour des KPI, mais ce ne sont pas les mêmes !

[189] This the author's translation from the original text in French, which I have received by email on 02.03.2013 : « Cette "alliance objective" a surtout été informelle: pendant les réunions officielles, on pouvait constater la convergence des positions des investisseurs et des ONG. Dans les couloirs, il y a eu des tentatives de constituer un "front commun" entre ONG, EUROSIF et certains gouvernements (France, Suède, Danemark) […]. Mais il n'y a jamais eu de rencontres formelles, […]. Cela se passait pendant les réunions du Forum Multistakeholder en 2010. »

[190] Interview # 12 (26.06.2012)

players looking at ESG information and data. However, they are still doing it in a very diverse way. Some of them, like the largest UK insurer Aviva, have been strongly advocating for social responsible investment (SRI) regulation, while many others are not really active on this issue. The situation is similar as regards pension funds. All the largest pension funds in Europe have progressively embraced or are already doing SRI. So they invested money, resources and their critical mass in demanding corporations ESG information and are interested in seeing laws passed that would make companies non-financial disclosure mandatory. Small and medium funds are "not even started looking at this issue"[191].

It is worth to stress that this is a global phenomenon. In effect, as many authors pointed out, investors and financial analysts have showed a growing activism in shaping the sustainability debate (see Newell and Paterson 2010; Richardson 2011). This progressive interested is rooted on the pioneering experience of a small group of US and UK 'responsible institutional investors' (CalPERS; Hermes) that back in the 1990s developed metrics for their investment based on social and environmental criteria and aggressively engaged with corporations on issues such as human rights and pollution. However, the dimension of the current commitment of institutional investors is unprecedented. Considering three major examples. The *UN Principle for Responsible investment* (UN PRI) is an initiative and a set of voluntary guidelines for investors wishing to address environmental, social, and corporate governance (ESG) issues. The initiative has been launched just only in January 2006 and it had only 20 signatories. Nowadays the signatories rise to 870, accounting for a combined $ 25 trillion in assets with a sharp increase starting from 2008. The *Carbon Disclosure Project* is a secretariat for the world's largest institutional investors collaboration launched in 2000 whereby many institutional investors collectively sign a single global request for carbon disclosure that is sent to all the largest corporations in the world. The 2010 request was sent on behalf of 551 institutional investors with a combined $ 72 trillion in assets and it has obtained GHG reports from over 3000 companies. In 2007, for instance, they were 'just' 385 investors with a combined $ 4.5 trillion in assets and they had received little more than 1000 sustainability reports from companies. Lastly, the *Institutional Investors Group on Climate Change* that represents a combined Euros 6 trillion in assets from about 70 among the largest pensions funds and asset managers in Europe. Up to January 2008 the combined assets were Euro 4 trillion and the members 60. At the top of the agenda for all three initiatives is a request to corporations and public authorities for disclosing measurable and consistent ESG information.

The active role that investors, together with trade unions and NGOs have played in pushing for amending EU non-financial regulation is confirmed by the interviews with EU policy-makers.

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[191] Interview # 22 (22.01.2013)

Immediately after the onset of the crisis, they were surprised by the high attention and growing interest coming from the financial sector towards their proposals on non-financial reporting. An EU official summarised the positions of the actors on the field saying, "Business representatives were, since the very first moment, against any move towards mandatory disclosure; NGOs were of course happy to discuss this and investors also were happy to discuss the issue of increase transparency, this was already clear." The EU official further stressed the role of investors: "In a way, the fact that investors are discussing this, for us, we have also considered that one of the key evidence of the fact that *markets were demanding for increase transparency*. So we don't do this for the regulators' sake, we do this because there is a demand which is not met by current supply." As explained by another EU official: "I think if I look at it *objectively*, one of the roles of the investors' interest is to make it no longer a 'black versus white' debate. Because, if you take the investment community out, you have NGOs, sometimes to be honest with quite an anti-business agenda, saying 'we want business accountable!', and you have business, on the other side, saying 'get lost, we don't want more rules and regulation!' Very black and white... But the investment community, who is, by definition, pro-business, who do understand business, understand about the creation of financial value and all those kind of things. Once they set in a room – it doesn't matter if they say 'we want law' or not, that's not the point – but when they say 'we want better non-financial information' or 'the information we got are not good enough for this, this and this reasons'. And, critically, this discussion is not only coming from SRI people [...] but when you got some mainstream analysts saying, 'there is something in here that we need to know more about', and 'the information we get is not good enough.' *Then the debate is, at least, triangular*... and I think, for a policy-maker, it opens up a number of new series of challenges, or questions, if you like. 'Are our financial markets working properly?' May be the lack of credible, reliable non-financial information is meaning they are not working properly or working as well as they could do. *Then it is not simply the NGOs' agenda. It becomes, if I am honest, an easier agenda to sell*."

To conclude on the 'transparency coalition' I should consider also its limits. First of all, although European SRI has been growing rapidly, it is not widespread yet and to reach this 'tipping point' it critically needs a supportive legislative framework in the areas of pensions and investors rules. Furthermore, while the crisis has been a catalyst for changes it has also hurt the financial sector, which is in a phase of major internal restructuration that, without regulatory support, risk to penalise those investors that make an effort towards more ethical and sustainable practices that are still widely seen as a luxury by the others. Thirdly, major differences between the three main components/constituencies that constitute this coalition might lead to the victory of managers.

5.3 Public authorities. The 'law and economic' habitus of regulators

Looking at public authorities using the EU institutions as a laboratory, a point of observation for broader developments, I have been mapping the whole spectrum of institutional relations that can arise. Broadly speaking public authorities are organised on three levels: international/global norm-making; regional (EU); and Member States/local dimensions. The EU has a critical role in this debate and the main body of reporting requirements has to be found in the Fourth Council Directive (24 July 1978) on the annual account of certain types of companies and Seventh Council Directive (13 June 1983) on consolidated account. Therefore, the EU has the right to act in this area, also because the disclosure of non-financial information is already regulated at the EU level[192] and increasingly diverging approaches within the EU suggest the need for a greater level of harmonisation in this field.

First of all, there is the national level and its relation with the EU. As it emerged from several interviews[193] and from the review of relevant documents[194] there is, broadly speaking, a division between 'supporters' of a mandatory approach to non-financial disclosure, led in particular by France, UK and the Scandinavian countries. They have already in place a variety of national disclosure requirements. On the other hand, Germany and the 'Mediterranean' countries (with the exception of Spain) rely on a voluntary approach. According to a broad explanation confirmed by Prof. Chiara Mio's interview[195], this appears as a division based on varieties of capital accumulation's regimes (see Hall and Soskice 2001). Notably, between a 'patient capitalism', where stock markets are relatively underdeveloped and banks are strong, and a more globalised 'fiduciary capitalism', which is increasingly interested in non-financial information[196]. This is particularly confirmed by the fact that from all the interviews emerged that the key player in opposing an EU regulation of CSA has been Germany and the German employers' association (BDA/BDI). However, also within Germany there is an interesting dynamic and tension between

[192] This is regulated currently by art. 46 and 46a of the Fourth Council Directive. See Annex I.
[193] Interview# 12 (26.06.2012) # 13 (23.07.2012) # 18 (08.08.2012) # 26 (05.04.2016)
[194] See in particular: the five European Workshops on Disclosure of Environmental, Social and Governance Information (September 2009 - February 2010) organised by the EU Commission, DG ENTR. See also the minutes of the ad-hoc Expert Group established by the EU Commission on non-financial reporting, which has met four time between July 2011 and January 2012.
[195] Interview # 26 (05.04.2013)
[196] However, within these two broad groups, other factors should consider, such as the role of the state. For instance, in the UK (market-making) or in France (market-shaping), both introduced regulation but on a different basis. Also the traditional attention of Scandinavian countries to sustainability issues plays a role in their approach. Finally, it should be considered the difference between large German undertakings and micro family-owned Mediterranean capitalism.

the financial community and the enterprises' organisation[197]. As it emerged from the fieldwork, this internal debate could be described as a "Frankfurt versus Berlin" strife, meaning that the work of the German Council for Sustainable Development (GCSD) has been opposed by the employers' federation because it has been perceived that "they wanted to work with the capital markets and the investment actors rather than working with or trying to work with the employers' association"[198]. The GCSD, however, managed to involve some large German companies in the development of the German Sustainability Code, which was finally published in 2011 and it has been signed, to date, by a remarkable number of companies[199]. Finally, when it has been publicly stated that the Sustainability Code will be only a voluntary tool for companies, it has been endorsed also by the BDA and the German conservative government of Chancellor Angela Merkel[200]. The strong opposition demonstrated by the largest economy of the Union heavily delayed the development of a pan-European framework, although it is difficult to exactly value its weight. In a different direction, the issue of the relation between the EU and its Member States also emerged around 2000s, as the UK – and the English large institutional investors and insurers' community – were broadly in favour of mandatory disclosure of ESG data, however "they would take a national approach and not accept an EU approach."[201]

Moving up, to the EU-level of analysis, the first issue concerns the question of the internal differences and variety of positions *within* the EU institutions. Most of the analyses refer to the

[197] The former centre-left government led by Gerhard Schroeder has been a supporter of the 'transparency coalition'. During its government he set up the German Council for Sustainable Development that was charged with the task of writing a German Sustainability Code. The Code has been developed together with the German federation of financial analysts and using also the GRI as a reference. It has been issued in October 2011. However, meanwhile the centre-left coalition had been substituted by the conservative government led by Angela Merkel, who has initially showed rather little support for the initiative in line with the openly hostile position of BDA and BDI employers' federation. They feared this would be implemented by law, however this has not been the case. As such it is a voluntary code. However, it has the potential to create in Germany a comply-or-explain regulatory framework.

[198] Interview # 18 (08.08.2012)

[199] At the 16 of April 2013, 43 companies have signed the German Sustainability Code.

[200] The website of the German Council for Sustainable Development underlines that Federal Chancellor Dr. Angela Merkel recognized the Sustainability Code in her speech at the annual conference of the German Council for Sustainable Development on 25 June 2012. It would be a good orientation for sustainable economie: "The Federal Government supports this Code. We advertise that even more companies apply it." Also Peter Clever, member of the executive board of the German Employer Association (BDA) stated "The political value of the German Sustainability Code for large, globally active companies is indisputable. They face considerable effort to meet the very different information requirements of investors. The German Sustainability Code is highly suitable for achieving standardisation. It is good for Germany to be a pioneer in this respect. Small and medium-sized enterprises, for which management systems and predefined report formats are not suited, can nevertheless derive important and helpful inspiration for sustainable management from the approaches of the Sustainability Code." http://www.nachhaltigkeitsrat.de/en/projects/projects-of-the-council/deutscher-nachhaltigkeitskodex/

[201] Interview # 13 (23.07.2012)

struggles between the three 'I'. The institutions that are at the heart of the EU: the Parliament, the Commission and the Council. However, as Georgakis and Weisbern (2010: 96) pointed out, "Considering institutions as a whole leads to overlooking many nuances. For instance, there are often more differences between a director-general of agriculture and a DG of internal market than between the latter and a central banker or a member of the European Central Bank." In my research, it emerged certainly a tension between the Parliament – supporting mandatory CSR meta-regulation – and the Barroso Commission – stressing that CSR has to be 'voluntary'. However, the fieldwork also revealed a tension *within* the Commission. I have attempted to reveal this tension, particular, through a question – almost a game – that I have often asked to the EU officials that I interviewed. '*What if* this policy had been led by DG ENV?' or '*What if* it had been led by DG ENTR?'[202] The answer to the first option typically has been that there would have been "a detailed and rather prescriptive regulatory approach to ESG disclosure" while, in the second case, there would be (possibly) "the idea to do nothing." This result is consistent with the official documents and regulatory output of the two DGs. DG ENTR has been supporting a voluntary approach to non-financial disclosure, broadly based on the recognition of global standards, initiatives and framework (such as the IIRC, the GRI and the UN Global Compact). On the contrary, DG ENV tends to be more critical of business 'self-regulation' and it has developed, in parallel with the non-financial reporting initiative taken by DG MARKT a narrower regulatory initiative on business environmental reporting.[203] Notably, the latter would create a detailed EU framework for business' environmental disclosure, rather than recognizing existing standards, on the basis of the consideration that existing standards are not adequate to achieve the EU policy objectives[204]. This approach goes in the opposite direction of DG MARKT's conclusions. After an assessment of the various regulatory options, it maintained that the EU should not develop its own standard/framework for non-financial disclosure[205]. As it emerged in several interviews at DG ENTR and DG MARKT, the rationale has been that "there is no need to reinvent the wheel"[206]. What interested me is to further investigate why the 'economic' DGs are more 'careful' in proposing 'social and environmental' rules, therefore almost aligning with the anti-regulatory position of business? My conclusion has been that this has to do with the 'law and economics'

[202] DG MARKT is in charge for elaborating amendments to EU Accounting Law

[203] As a response to the crisis, DG ENTR stressed, in the CSR plan 2011-2014 outlined in the 2011 CSR Communication, the adoption of voluntary policies at the global level while DG ENV adopted a very different approach. In particular, this DG is engaged in creating a detailed EU framework for footprint disclosure.

[204] Interview # 21 (03.11.2012)

[205] See the Impact Assessment of the proposal of the EU Commission and the documents of the ad-hoc Expert Group.

[206] Interview # 1 (22.04.2010)

habitus of regulators, meaning the individual and collective disposition to act, of some of the EU policy-makers that have been in charge of writing CSR and sustainability policies (on the habitus of EU regulators see also Georgakakis 2009).

I might well introduce this argument with a little personal experience, which concerns my first days as trainee at DG Internal Market, in March 2012. The standard question for the newcomers was: “are you an economist *or* a lawyer?” This superficial empirical observation is strengthen by more scientific analyses that confirm the dominance of legal and/or economics as the main element of the Commission’s top civil servants’ training. Georgakakis and de Lassale (2008), for instance, demonstrated that lawyers and jurists integrated very early the rankings of the Commission, acquiring a dominant position, particularly between Hallstein and Delors’ Presidencies. However, economists increasingly contested and challenged this domination, starting from the Delors’ era, who was himself an economist. On the basis of this idea, it is possible to argue that, in order to actually transform EU corporate governance and company law policies, as now required by the EU Treaties, more civil servants trained in e.g. environmental studies or economic sociology are needed. In effect, this would explain why social, environmental and sustainability are making the titles of recent initiatives of the EU Commission while they are still absent from their contents. For instance, the 2012 Communication, containing the much anticipated, post-financial crisis, new European corporate governance legal framework, contains the word sustainability *only* in its title, while inside there is no reference at all to human rights and the environmental protection[207]. It is clear that if the personnel working on drafting the Communication and the hierarchies valuing that draft are narrowly specialised in company and securities laws, they will tend to be more comfortable with a traditional law-and-economics approach to corporate governance. However, it should be reported that this instrumental use of sustainability is not in line with the principles and objectives of EU Law. As Law Prof. Beate Sjåfjell (2012) from Oslo University, stressed sustainable development is recognised as one or even *the* overarching principle of the Union and that would clearly include EU company and security laws. This is an aspect that also Jan Cremers, the Dutch trade union leader, sociologist and former MEP, underlined when I interviewed him. He remarked that now, with the enter into force of the Lisbon Treaty, we are in a new phase “because article 3.3[208] states that the internal market is not a goal as such but it is an

[207] ‘Action plan: European and corporate governance - a modern legal framework for more engaged shareholders and **sustainable** companies.’ Released the 12.12.2012 (Commission 2012) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0740:FIN:EN:PDF

[208] Article 3.3 TEU states that the Union “shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.”

instrument to get to a stage of full employment and social progress, sustainability, etc. and that, in my opinion, urges the European institutions to redefine this hierarchy that it has developed in the past when there was a primacy of the internal market."

However, when I refer to the 'law and economic' habitus of the EU regulator, it is not only a question of training and background nor of the fact that, as emerged from many interviews, there is a modest investment of human resources in CSR and sustainability issues.[209]. Habitus, in Bourdieu, has a much broader and deeper meaning that I tried to investigate in my interviews[210]. In particular, in one interview, in my opinion, it emerged more clearly. A top EU official argued that it is difficult to change regulators' mindset because we "are on a bicycle, so it's very difficult to slow down without falling." The official continued, "When you are in power, people think you are in power, you make decisions, but in fact the space to make decisions is very narrow and you are only there to *incarnate the only decision that can be taken*. But, of course, the representation goes otherwise. […] In reality there is a general climax which puts huge pressure on people on the top. So that they have to pretend they have power. But, in fact, *they just are the mouth of what has to be decided*. There is a very huge *constrain*, through the fact that, of course, you need to be re-elected; you need money; you need to campaign. So you need not to hurt some actors and if you do it, you just disappear. There is no way to stay there, if you don't decide *what has to be decided*."

One of the most interesting aspects of this law-and-economics habitus has been to further understand how public authorities arrived to almost dismantle their very function and role in society, which is to regulate. In the 1990s, as an EU official put it, regulation became "a dirty word" and my perception from the fieldwork has been that, even after the crisis, regulators are almost unconsciously self-censuring themselves[211], preventing themselves from "regulate [the market] with

[209] It emerged that the whole European CSR strategy occupies only three officials (one in DG EMPL and two in DG ENTR). Furthermore it emerged that often, although not always, sustainability issue have been seen devolved upon the less experienced members of the staff, such as contract agents. An episode that I have been told is rather revealing. Right after the crisis an inter-services meeting on CSR and, according to my source, the participants were shocked by the fact that all of them were from countries that had just recently accessed the EU.

[210] The habitus is the result of the objectification of social structure at the level of individual subjectivity. It can be seen as counterpoint to the notions of rationality, which characterises the view of agents often expressed in economic and political studies. In Bourdieu it should be understood in relation to the notion of the 'capital' and 'field', which describe the relationship between individual agents and the contextual environment.

[211] As Bourdieu noted, entering the fields of the state and the law means entering a space of symbolic violence of which the first victims are lawyers and law-makers that have to self-limit themselves: "As the quintessential form of legitimized discourse, the law can exercise its specific power only to the extent that it attains recognition, that is, *to the extent that the element of arbitrariness at the heart of its functioning* (which may vary from case to case) *remains unrecognized*. The tacit grant of faith in the juridical order must be ceaselessly reproduced."

the strictness necessary"[212]. An EU official that had worked with Delors acknowledged that, "I think we sort of 'post-Lisbon'. I now feel that we are still seeing that ['free market' approach], but it's more like in a vaccine. We are seeing that but it's not virulent anymore. People are still trying to convince but, even the people that were convinced now keep talking like that, but they are not convinced." From this interview also emerges the difficulty of many policy-makers in overcoming 'thinking-as-usual'. "I always ask my colleagues: 'Why do we speak about the industry as if they were sort of sport people who need our help to be 'competitive'? It's a really strange metaphor! And they just write like this, all their briefings. *They just don't realize it anymore*!"[213]

I identified two aspects in this habitus of the regulator: one concerns the historical development of the EU institutions as progressively based on law-and-economics ideas. The second element is the 'symbolic violence' of 'better regulation'. As for the first element, Jan Cremers provided me with a fascinating historical *mise en perspective* of the evolution of the Commission. "I still remember the time when Internal Market was not a DG but just a task within DG Industry" he told me. "It was a very small group. Later on it became *the* General Directorate and with a very strong neoliberal agenda, they dictated the game together with DG Competition, Enterprise, etc. often pushing DG Social Affair in a corner." Cremers stressed the role of different Presidents of the EU Commission: "I always said that with Delors we did not need the Social Commissioner. Because Delors guaranteed that attention is given to social issues." "At the beginning there was a very idealistic thought as well: we go to harmonise! Then we went from harmonisation, to comparison, to convergence, not even mutual recognition, which would work as a sort of automatism. That was combined quite soon with what became a deregulation agenda. From the mid-1990s", Cremers maintains, "it was more and more about the economic freedom, take out the barriers to the market, etc. and this has been accelerated in the period since Barroso is there."

The second, interrelated, element in regulators' habitus concerns the emerging 'better regulation' EU agenda[214]. This strategy had been initiated in 2003, by Prodi's Commission, which

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[212] Interview # 15 (25.07.2012)
[213] Ibid.

[214] As it appears in the Commission website: "Better Regulation is a broad strategy to improve the regulatory environment in Europe - containing a range of initiatives to consolidate, codify and simplify existing legislation and improve the quality of new legislation by better evaluating its likely economic, social and environmental impacts. Laws and regulations are necessary to ensuring a fair and competitive market place, the effective protection of public health, the environment and the welfare of European citizens. Better Regulation is about doing this in ways that maximise public policy benefits whilst *minimising the costs regulation may impose on our economy*. There is abundant evidence that Better Regulation can boost productivity and employment significantly, thus contributing to Europe's growth and jobs agenda."

intended to modernise the EU law-making mechanism according to the most advanced debate on market regulation. In fact, this is a meta-regulation that sets the key criteria that EU policy-makers should follow to assess their legislative initiatives and, in theory, provide better regulation avoiding unduly administrative burden to business. From a socio-legal point of view, this is a very interesting piece of EU legislation, because it is supposed to make sure that decisions are scientifically sound and that all the possible main legislative options have been objectively assessed. Nonetheless, as one EU official told me “this is the least scientific method for elaborating a legislative proposal”. In effect, the process has become relatively more transparent. Despite the claim of objectivity, decisions are (inevitably) always political. However, a further problem with the ‘better regulation’ agenda is that ‘sound decisions’ must be economically and scientifically based. That means that the regulator is more likely to go *a priori* for ‘soft law’ and avoid ‘unnecessary’ and ‘hard’ regulation. According to Penny Clark, from ETUC, since Barroso is at the head of the Commission, this mechanism has been systematically used to ‘water down’ legislative proposals and to promote an agenda that favour big business instead of the large majority of citizens. “I think [better regulation] is a smoke screen, [aimed] not to deregulate, because they are not de-regulating. If you look at the Single Market Act, there are many proposals that are coming to improve companies’ rights: copy right protection; bankruptcy protection.”

The subtle bias contained in this mechanism can be effectively illustrated looking at the case of non-financial reporting regulation. This approach demands that in order to impose business this onerous requirement, the Commission’s service provides enough evidence of the benefits that it will bring to business and/or society. However, by its nature, immaterial and non-financial aspects are hardly quantifiable and cannot be easily monetised. On the contrary, financial reporting is both ‘material’ and quantifiable. The rather paradoxical result is that ‘better regulation’ criteria force EU officials to find ‘material’ and ‘financial’ arguments for ‘intangible’ and ‘non-financial’ disclosure. This can be also observed focusing on many little references that appear in the interviews with EU officials and that they *almost mechanically* use. For instance, one EU official, talking about the new Danish Law which had introduced a comply-or-explain requirement for the disclosure of non-financials, argued: “of course you cannot establish that scientifically but they must have made sure that the benefits would out rate potential costs of companies having to do it.”[215] It can also be seen rather well in the difference between the documents elaborated during the EU Workshop on ESG reporting, the working document of the Expert Group and, finally, the Impact Assessment of the current EU proposal for non-financial. The rationale and the language for regulating social and environmental reporting are, at each stage, more and more based on eminently law-and-economics

[215] Interview # 19 (08.08.2012)

arguments: “market efficiency”; “regulatory failure”; “insufficient/uneven incentives”; “companies’ performance”.

However, I believe there is an even more subtle and pernicious misconception in the idea of regulation that is implicitly advanced through the ‘better regulation’ agenda. Again, I would use the example of the decision whether introduce binding non-financial reporting. A law-and-economics perspective would typically see in the demand from investors of non-financial information or the growing number of reports from companies the necessary confirm that “business is demanding for such information”[216]. Conversely, the lack of such demand would be seen as showing that it would just be “an imposition” of the EU regulator, forcing economic actors to report on non-financials while there is no demand for such information. It all sound very rational, however this is not the way it actually works. In the real life, things are more ‘irrational’. As one policy-maker told me, “one of the things that fascinate me about this issue is the fact that you might be able to *change the expectations* of mainstream investment analysts by getting companies to put more information in the field, whether or not there is a demand *today* from all mainstream financial analysts. For me that’s critical. Because it is too easy to say that mainstream financial analysts are not interested in that and therefore we don’t need to provide them with this information. As a forward-looking policy-maker you have to ask yourself: if I did put out the information, would they use it? This is why I think that, as policy-makers, *we shouldn’t think just about one dimension*. Yes we should think about the efficiency of capital markets, but then you also need to think about sustainable development and the sustainability of the whole system.”[217] In practice, far from being ‘better’, this regulatory approach risks to be rather short-sight and one-dimensional.

Lastly, I would introduce some preliminary considerations on the relation between the EU regulator and the international/global norm-making dimension. As we have seen in the previous chapter, at the global level several international regulatory initiatives emerged in order to provide generally accepted frameworks and guidelines for reporting non-financial (see also Annex I). However, there is not yet a standard for reporting ESG information. The International Organisation for Standardisation, in dealing with corporate social responsibility, had the ambition of issuing *the* standard: ISO 26000. However, after an unprecedented six-year long debate, ISO only deliberated to issue a guideline that “cannot be certified to unlike some other well-known ISO standards**.** Instead, it helps to clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, globally. It is aimed at all types of organizations regardless of their activity, size or location.” (ISO 26000:

[216] Interview # 18 (30.07.2012)
[217] Interview # 19 (08.08.2012)

2010) The closest thing to a standard is the GRI Guidelines for Sustainability Reporting, which is also the most widely applied international framework and it is based on a so-called stakeholder approach, involving NGOs, trade unions and government in its preparation. In the official documents published by the Commission and the European Parliament, there is a quintet of 'internationally accepted' frameworks for non-financial reporting: the GRI; ISO 26000; the UN Global Compact; the OECD Guidelines for Multinational Enterprises and ILO Tripartite Declaration of Principles (see Annex I). However, according to most of my interviewees, the UN 'Protect, Respect, Remedy' Framework has been "the most influential regulatory initiative". Although it does not focuses on all aspects of corporate non-financial disclosure but only on human rights, there is a general consensus that it has been the initiative that has influenced EU regulators the most. "Very pivotal indeed. Not just for the Commission but also for the Parliament. So the Parliament used it to put pressure on us", said one policy-maker. Another official confirmed: "I think the Ruggie Framework seriously start to redefine corporate social responsibility. Generally what we mean by it and what actors need to promote it."

Nonetheless, in my opinion the most intriguing aspect of the EU relations with the global dimension of corporate responsibility is that, after the financial crisis, this has become an area of struggles between public authorities and markets; between the rationale of European democracy and the global laws dictated by the flows of economic capitals. As Streeck (2011) affirmed: this is a "tug-of-war between markets and voters". It is within this new and unusual dimension that all the positions of the actors and the very meaning of the word 'business responsibility' has been recently changing. An excellent explanation of what are the legal implications for policy-makers has been offered by socio-legal scholar Gunter Teubner (2009). In its sharp analysis of the financial crisis, he outlines two points that are relevant for this analysis. First, he argues that we should be sceptical about the effectiveness of the variety of regulations that have been proposed because "they do have one problem in common: *fatta la legge trovato l'inganno*. No sooner has the law been passed than the loophole appears. The Achilles heel of such regulation is that national and international rules can always be effectively avoided; in the face of such enormous efforts at avoidance, ex-ante regulation is impossible." (2011: 3)[218] This gives a capital importance to serious attempts to implement meta-regulatory mechanisms such as reporting and transparency, as far as they are seen not as an end in themselves but as a means to an end (Manson 2005). Secondly, Teubner argues that

[218] In a similar vein, Doreen McBarnet suggested there is a need for "some further, extra-legal driver not only to secure a commitment in business to socially responsible policies *beyond* the law, but to secure business's responsible compliance *with* the law" (2007: 13) Also critical socio-legal scholars Paddy Ireland (Ireland and Pillay 2010) while calling for the end of neo-liberal corporate self-regulation admits that a simple return to 'harder' law is necessary but might be not sufficient because corporations are very adept at circumventing regulatory control.

in order to understand the recent financial crisis, we should not rely on factor analysis alone but look for its underlying causes that he identify in a 'self-destructive collective addiction to growth'. Drawing on Huber (2009), he shows how this mechanism works: massive creation of money *ex nihilo* by private banks is responsible for the current excesses of the compulsion to growth in the global financial sector. This serves, through advance financing, to compel the real economy to growth to an extent that is socially and environmentally harmful. "At the same time, this private money creation is exploited for an unforeseen increase in self-referential financial speculation." (Teubner 2011: 4)

This collective addiction would explain the paradoxical reaction to the crisis of most governments and markets actors that are seeking to return as soon as possible to 'business as usual'. However, the risks of such a shortcut are highlighted in alarming declarations such as the one by the UN Secretary General arguing that "the world's economic model is environmental suicide" (UN General Secretary, The Guardian Jan 28th 2011). However, Teubner concludes offering also a possible solution to this dilemma recalling that: *"Only Beelzebub can cast out the Devil!"* (Teubner 2011: 12) Meaning, the financial sector is currently so powerful that needs to be forced to change itself. Drawing a parallel with the political system that has gradually "subjected its own expansion to its self-limitation", we need "massive external intervention from politics, law and society" (Teubner 2011) in order to obtain that the financial-corporate nexus limits its own possibilities[219]. It is in this sense that public authorities could possibly see in the 'transparency coalition' outlined above the first expression of financial actors self-limiting themselves. However, it is still uncertain whether they understand what has changed and the *external* position that they are required to take in order to legitimately impose rules to business and rights for people. As the Commission has recently affirmed, "The economic and financial problems of the last two years have contained important lessons for regulatory policy. Most importantly, they have confirmed that markets do not exist in isolation. They exist to serve a purpose which is to deliver sustainable prosperity for all, and they will not always do this on their own."[220] (Commission 2010: 2)

[219] This approach presents similarities with emerging ideas on how we could enforce effective mechanisms of corporate accountability. For instance Peter Utting suggested we should 'ratchet up' voluntarism to such an extent that "the boundary between voluntary and legalistic institutional arrangements becomes a much greyer area where some soft and some hard approaches or instruments coexist and fuse in ways that [are] complementary." (Utting 2008 quoted in Ireland and Pillay 2010: 96)

[220] COM(2010) 543 final Communication 'Better Regulation in the European Union'

5.4 The barrage of European business. From industrialists to global risk managers

Managers have emerged from the reshuffle of European industrial relations that took place between the end of the 1990s and the early 2000s as the 'winners'. However, they soon had to face the growing global scrutiny for the corporate financial, social and environmental sustainability of their businesses. This rise of managers, which progressively took over many companies from block-holders owners, provoked a whole shift in the terrain of European corporate governance, situating 'managerial agency failure' at the centre of the scene. As Gourevitch and Shinn (2005: 237) maintain, "According to the Chandlerian view, managers begin as very junior partners in their alliance with blockholders-owners, and gradually assert their independence on the basis of technical competence and superior "professional" judgement. [...] As firms continue to grow in scale and in international distribution, this trend towards independent managerism has a continual impetus." In effect, if during the late 1990s, Europe had a problem with 'strong block-holders and weak managers' (Becht 1997)[221], bock-holders were progressively weakened implementing company law and corporate governance reforms that were meant to empowered minority shareholders. Furthermore, also the traditional and often underestimated control exerted by organised labour has been dismantled (see Zumbansen 2006). The result has been the ideal situation for managers: neither internal (block-holders and workers) nor external (minority shareholders) forces are strong enough to really control their operations. The breadth of managers' victory can be measured looking at the hubris that characterises their position towards public authorities. They are against any imposed regulation and, specifically, any imposition of rules as regards social responsibilities, which is, according to the long-term Director General of Business Europe, "should continue to be business-driven, focused on practical, company-level solutions which take into account the diversity of company approaches to CSR." (de Buck 2010)

Globalisation gave to large firms the autonomy to exploit both dimensions: the dimension of transnational economic capital flows and the other of European territories, workers and communities. However, it also attracted much more attention and scrutiny from all the other actors: minority shareholders, trade unions, NGOs and, to a certain extent, public authorities to join forces, despite their different and often conflicting interests. As Colin Crouch pointed out "TNCs are not

[221] "In Europe, small owners are potentially exploited by large voting blockholders - and the managers these blockholders appoint to run the companies; in turn, the managers are constrained to devising company strategies that are subject to the non-transparent obligations blockholders impose on them. This situation does not necessarily call for further attempts to move towards a European company law, or for restrictions on the behaviour and investment possibilities of existing and potential blockholders. It does call for major improvements in European mandatory disclosure regulation; to make current arrangements transparent for European investors and to fully preserve the interests of blockholders." (Becht 1997: 4)

the passive price takers and respondents to demand signals envisaged in theory. They shape their markets and have high visibility. Operating across the globe, they are also partly beyond the regulatory reach of national governments. The associated rise in the number of economic issues that cannot be resolved at the level of individual nation states means an increase in those that are governed by individual firms or groups of firms rather than by public authorities. These include standardization and the management of multinational supply chains. Whether or not one calls this globalization, it cannot be claimed to be the operation of *markets tout court*, and it presents interesting questions to formal, national politics and for issues of governance." The conclusion that Crouch reach is that the prominence that this situation accords to giant firms makes them, "whether they want it or not, political actors, vulnerable to criticism." Therefore, it is increasingly difficult for them to respond to accuses of social irresponsibility "by proclaiming that they are only in existence to make money, as this can damage their reputations with important groups of customers, possibly even investors and employees. They therefore find themselves under pressure to develop political sensitivities alongside their financial, marketing, and technical competences." (Crouch 2011: 2)

Despite this shift has pushed some individual large corporations to become gradually more open to corporate accountability mechanisms, the position of European business in general is still largely hostile to the including non-financial information in the annual report. The latter is seen as an additional burden. "What annoys me", told me one EU official, "is that from CEOs and other managers, you get often, not always, much more enlighten discussion and understanding of where their interest lies. And the business federation, they always seem to be defensive. They always seem to be anti-regulatory. And it is frustrating." From the interviews and the documents emerges that regulators fund the complete opposition of employers' organisations, such as BusinessEurope (ref.). In the 1990s, the federations of European employers (UNICE) erected a barrier not only against mandatory sustainability reporting but primarily against any possible regulation. In fact, looking at the motivations that UNICE/BusinessEurope provided against the introduction of mandatory CSA, they could be largely applied to any piece of regulation, a position that cannot be maintained for much longer after the financial crisis. First of all, employers often stressed that each and every business is unique and different. In that sense, there is not 'one size fits all' regulatory solution. They claim that even sector-based standards are not a panacea because many companies within the same sector are very different and comparing them may prove difficult. Furthermore, as it appears in their response to the 2001 Green Paper, attempts to regulate CSR are deemed "counterproductive", because "a prescriptive or regulatory approach or framework-setting could undermine business commitment to CSR." (UNICE 2001) Lastly, there is the question of costs, as reporting and (particularly) auditing can be rather costly for companies. The problem with costs

goes usually together with the request for 'evidence' of the real economic benefits of reporting. This is followed by the conclusion that more debates and evidence is need. However, enterprises also advanced some more specific objections that BusinessEurope adopted specifically against non-financial transparency, starting from the definition of such disclosure. They stress that there is not yet a common terminology, starting from a universally recognised definition of what sustainability/ESG/non-financial disclosure means. As it emerged during the EU Workshop on the disclosure of ESG information dedicated to enterprises: "ESG information is not commensurable, and distracts enterprises from focusing on the considerations that are really important to their long-term performance." Therefore, only 'material' non-financial information should be included in the annual report that can result in "too much data". Furthermore, employers maintain that CSR is about changes in the internal processes of operational and middle-level management. Disclosure is encouraging "bureaucratic window-dressing" and raises "difficult questions of costs, and the need for control and assurance." (EU Workshops 2009a: 5) According to BusinessEurope, if there must really be a regulation, then it should be at the global level (international standards) or, at least, a 'maximum harmonisation' of European standards, in order to avoid the duplication of costs of compliance and create a level regulatory playing field. Conclusion, legislation is not required, it would be counter-productive. The best solution is not to impose it by law but encourage a development that has already emerged on a voluntary basis.

Using this argument, business managed to prevail, in the early 2000, against an rather weak and ill-defined 'transparency coalition' in the making. However, this defensive position is so excessive that, in my opinion, alienated many support to BusinessEurope, even among pro-business EU policy makers, creating the image of a narrow-minded organisation that does not provide any constructive contribution to the debate[222]. One EU policy-maker said: "I think is an ideological opposition to mandatory CSR."[223] Another EU regulator noted: "Industry is [against codifying CSR] because 'no-more-burden'; 'we-do-what-we-want'; 'we deliver jobs: it's good enough'; 'let-us-alone'! They fear 'straight-jacketing'; 'red-tape'; all that… *I think they still would prefer 'the free lunch': that means pretending that they are doing the good thing while they are not doing that.*"[224] When Commissioner Barnier finally announced the proposal for non-financial reporting, the reaction has been "BusienssEurope is disappointed by the European Commission's decision today to propose a legislative initiative on disclosure of non-financial information. The proposed regulatory approach to Corporate Social Responsibility is running the risk of demotivating all companies that have embarked on genuine CSR activities on their own. Instead of applying a

[222] Interview # 18 (30.07.2012)
[223] Interview # 13 (26.06. 2012)
[224] Interview # 17 (27.07.2012)

ticking-the-box approach, the business-driven purpose of CSR - to contribute to business goals by addressing social and environmental challenges over and above what is required by law - must be safeguarded." (BusinessEurope 2013)

According to Prof Chiara Mio it is the autonomy of managers' control what is menaced by disclosure, "They fear disclosure. They say that it would create administrative burden. However, this is a specious argument. Material non-financial information means information that has an impact on the creation of long-term value. Therefore, if an enterprise is well managed, they should be already governing those aspects. Then either they are saying that their firms are badly managed and they do not have adequate mechanisms of governance – and that already is extremely worrying – or this is still a 'robber barons' approach to capitalism. It may be a bit of both."

5.5 Accountants, lawyers, and financial analysts. The architects of a new regime of economic governance

Behind the battle between large social groups to reshape the governance of the economic field, there is a struggle between different 'tribes' (Dezalay 1991) of professional experts for transforming the field of accounting. It is in between these two levels that the new regime of corporate accountability is emerging. In fact, as I have argued throughout this study, the accounting field has developed a historically specific relation of structural homology with the economic field. This is *the* field within which occurs a confrontation over the socially recognised capacity, performed by professional accountants, to render activities, individuals and objects, in possession of the specific attributes that are potentially relevant for the economic field, capable of evaluation, comparison and hence *transformation into economic capital*. It is a major field of symbolic power that accountants administrate: they have been granted by the state the right to translate the 'world' into economically valuable information.

As many early theorists of capitalism already noted (i.e. Weber and Sombart) this is one of the key, if not *the key*, tools that fostered the universalisation and globalisation of economic rationality and capitalism[225] (see Chapter 2). The problem is that economic rationality has become so pervasive and the economic field so ubiquitous that accountants increasingly struggle to perform their fundamental social role. In other words, the 'world-capitalism' in which we currently live made the economic relations so veritable – and large corporations and financial structures so

[225] Accounting made it possible for capitalists to evaluate 'rationally' the consequences of their past decisions. It allowed the entrepreneur to calculate exactly the resources available and the ones that are expected to come in the future. It finally gave investors the information necessary to compare and assess various alternative investments.

unrestricted – that traditional accounting standards and, in particular, the traditional conceptualisation of capital as ‘financial’ capital, are not capable anymore to ‘translate’ the world in ‘economic’ language.

One of the side effects of this huge transformation has been the subject of this research: the emergence of a new area of accounting, corporate sustainability reporting, initially external to the field of mainstream accounting, but now increasingly integrated in companies’ annual reporting. What I am going to consider here is the manner in which accountants are managing the progressive emergence of non-financial disclosure and their relation with two other professional groups that are increasingly expanding the area of ESG reporting, therefore implicitly challenging the ‘monopoly’ of accountants: activist lawyers and financial analysts. Hereafter, I briefly consider the parallel between corporate and financial crises and crises of accounting that I have already considered in the previous chapter. Afterwards I address how the changing relations between the three professional groups are transforming the accounting field and the relation between economy and society.

The financialisation of the global economy, which started in the US during the late 1920s, had a paradoxical effect on ‘financial’ accounting. There are many authors, indeed many of them are accountants, who would agree with the authoritative position of Robert Howell who pointed out on Fortune that “the big three statements – income statement, balance sheet and statement of cash flow – are about as useful as an 80-year-old Los Angeles road map.” (see Gazdar 2007:13) This is nothing really new, it has been said for years that the annual report should be remodelled (see Porter and Denham 1995) to consider intangible assets. However, there has been an understandable resistance from accountants and auditors that see their business thrown into question. It is clear that including intangibles and non-financials would be extremely problematic. It would require change in the framework of accounting that could undermine the monopoly of the accounting profession.

During the last decade, evidence that the accounting system is fundamentally flawed became increasingly significant. The accounting scandals of the early 2000s (Enron and Parmalat) attracted the attention of regulators and seemed to start putting existing standards into question. However, the regulatory outcome was favourable to professional accountants. Traditional accounting was strengthened rather than radically transformed. Furthermore, the decision of the EU Commission that, starting from the year 2005, all EU listed companies had to prepare their financial statement in accordance with IFRS standards gave new, unprecedented autonomy and regulatory power to the profession (Dewing and Russell 2007). However, it was question of time, the pressure for including non-financial aspects was steadily growing, therefore the accounting world started to look at the inevitable merger with the non-financial nebula also as a business opportunity. All the Big Four auditing and accounting global firms – Deloitte, KPMG, Ernst & Young and PwC – created internal

units which were starting to gather knowledge; testing frameworks and pushing on the issue of sustainability reporting. In particular, in 2004, Deloitte published a ground-breaking survey significantly called *In the Dark* that revealed an astonishing 92% of the 250 corporate executives interrogated by them believed that financial indicators were not capturing their own strengths and weaknesses (Deloitte 2004). Even before the eruption of the 2008 financial crisis, there was evidence that accounting needed fundamental changes or it would have soon been wiped out.

The growing acknowledgement of the relevance of ESG data appears clear looking at the document produced by one of the laboratories created by the European Alliance for CSR. Between 2007 and 2009 the largest European companies and the European Federation of Financial Analysts (EFFAS) organised a series of workshops on "Valuing non-financial performance". The final report of the workshops (CSR Europe 2010) provides striking evidence of the actual economic significance of ESG information and of its relation with broader changes in the dominant financial-driven regime of capital accumulation. The report provides evidence that currently 80% of the value of the S&P 500 Index could not be measured in conventional accounting terms. The collective market value of that Index was equivalent to four times the asset value showed in the balance sheets of those companies, indirectly demonstrating that accounting had been the 'victim' of its own success in boosting the financialisation of the economy. Furthermore, it emerged that, during the last 25 years, the explanatory capacity of traditional material and financial accounting has constantly decreased. Annual reports used to account for 80% of the market value of a company in 1980s but this percentage decreased to 55% in 1990 and it has been calculated that today it is below 20% (see Ocean Tomo; Accenture 2004). Considering the value of the global stock markets at US$ 50 trillion (March 2010), 80% represents a US$ 40 trillion gap between tangible and intangible assets. The report argues that this historical trend can be only partly explained by a post-industrial shift from manufacturing to services and the emergence of technology and knowledge-based industry. It maintains that "the real story is the growth of future earnings as the primary determinant of company market value. This is the projection of current or immediate past performances into the future." But the report acknowledges that future earning streams are "by their nature, difficult to quantify and control. The ability to recruit and retain people with skills and knowledge to maintain and develop products and services and drive innovation. The loyalty of customers to brand and their willingness to forsake new or more innovative competitors. The continued supply of resources of the right quality and at the right price. The management and mitigation of risk. Reputation management and avoidance of regulation impingement on licence to operate."

The 2008 financial crisis, which exploded while this laboratory was still running, gave an extraordinary relevance to these data and provided financial analyst (EFFAS) with a strong

arguments to demand enterprises to disclose non-financial information, pushing public authorities to issue binding rules for ESG data disclosure. Suddenly, accountants faced the accusation of being amongst the responsible for the financial disaster. Accounting standards, it was claimed, were based on short-term value of the performance of the firm. They could not provide investors with the kind of long-term and intangible information that explain where economic value comes from and where pension funds and large asset managers could invest on a 20-30 years basis. Management guru Michel Porter suggested the new notion of valuing 'shared value', which gives an idea of how far accounting and accountants were demanded to transform themselves. Significantly, Porter and Kramer (2006) idea of shared value is based on the consideration that in the socially embedded capitalism in which we live, creating material social benefits and creating profits has to coincide. He affirms that the new mantra is not anymore 'what is good for business is good for society' but 'what is good for society is good for business'. The rationale is that we operate in such a resources-constrained economy that social and environmental aspects cannot be anymore externalised to society and kept isolated from financial companies have become so large that in order to create economic 'value' they cannot avoid to get involved in 'social and environmental' issues. Therefore, according to Porter and accounting has to move away from narrow and one-dimensional assessment of what is 'material', it needs to expand to create a more comprehensive picture of companies' activities.

However, this managerial account is still rather narrow. It overlooks the 'political' dimension of this transformation. It takes for granted that this is a private question that should be managed between shareholders, as the owners of the company and managers, their agents. However, as Prof Maclean and Crouch (2011: 2) pointed out, "Corporations and firms have been and continue to be exhorted to 'behave responsibly'. Indeed, many corporations do now accept that they have social and environmental responsibilities that go beyond their market role(s); but for politics and political science, this is just the beginning of the story of what it means to accept corporations as political actors." To start with markets are operating – at least in Europe – within democratic states, where the power belongs to the people. Then, the issue of 'non-financial' disclosure and the creation of 'shared value' becomes a completely different matter, one that concerns the 'right to know' about the impact of transnational corporations on society and the environment. Clearly, the two visions might overlap (and this is the common basis for the current emergence of a 'transparency coalition') however this is not necessarily the case. I should therefore introduce a new professional group that stepped into the debate: activist-lawyers. In order to understand the position of the different professional groups on the field and their approach, I have systematically analysed the available secondary sources concerning the activities of these three

groups of professional experts immediately after the onset of the financial crisis, until the 2011Commission's announcement to issue a legislative proposal on non financial reporting (Single Market Act I) (see Annex II). The aim of this method has been to triangulate this material with the interviews and the EC official documents in order "to break up the 'officialised story' into its many overlapping and even opposing texts and identify its many co-writers" (Madsen 2006: 114) This analysis allowed me to map changes in the field of research and unveil the existence of conflicting narratives that ultimately reflect the many stakes and the central conflicts that characterise the emergence of CSA regulation. In particular, it emerges the attempt of lawyers-activists and financial analysts, two professions previously external to the field of accounting, to reshape it. Each force is the 'advocate' of the different approach to mandatory non-financial disclosure. Despite having to concede profound changes that finally will open the door to the integration of non-financial aspects in the accounting standards, the study shows also the ability of accounting profession to maintain their control. However, the game is still on.

In order to understand the key difference between the ideas of non-financial which is projected by financial analysts and the one proposed by activist lawyers, one should look at the difference between transparency and materiality in ESG disclosure. As it emerged by the documents of the first EU Workshop on the disclosure ESG information (2009: 4), "Although they are not mutually exclusive, transparency and materiality correspond to different stakeholders with different constituencies and agendas, each legitimate in its own right, and they can sometimes be conflicting. Transparency values the disclosure of data for its own sake, sometimes as a question of principle. Materiality seeks to define which data is actually important in terms of influencing the decisions of the intended recipients of the information." In my analysis, stressing transparency means bringing accounting standard-setting bodies into a universal legal domain. In other words, it is a first step towards the construction of a new regime of '*corporate accountability'*. On the contrary, stressing materiality means advocating for a futher commodification of social reality, creating a new market-based technical standard that better captures economic value and serves to affirm the power of what Soederberg (2010) calls the 'corporate-financial nexus' over all aspects of our lives. This approach advocates the integration of ESG data into the annual report as the first step towards the creation of a global corporate regime of '*sustainability accounting'*. However, it is the role of politics and public authorities to find a middle ground between the two positions. It is clear that any equilibrium between the two principles will be the outcome of struggles about the autonomy of the economic field from external – social and political control. At the two extreme of the accounting 'battlefield' there are financial analysts and activists-lawyers that, for the moment, were united in demanding for

mandatory disclosure of ESG information but that have a radically different ideas about what should be the content of such reports.

Looking at the EU-level debate on CSA regulation, some of the feature of this struggle already appear considering the growing role of ECCJ (activist-lawyers) and EFFAS (financial analysts) in the 'sustainability accounting debate'.

Starting from **financial analysts**, the key preliminary point is that financial markets in Europe developed slower as compared to the US. This fact influenced also the development of SRI and CSA. Therefore, European financial analysts only started very recently to look at non-financial aspects of companies' performance. However, they have been able to develop a strong argument for the materiality of such information, linking it to the need for long-term growth and risk management in addiction to business social responsibility and environmental accountability. As one of the EU officials who have been working on CSR reporting in the early 2000s told me, back then the argument of the Commission was already that "investors need to know not just about economic performance but also social and environmental performance", "they need to know that there is a risk or there is an opportunity"[226]. However, this argument was true for the UK but rather specious as regards all the other European countries. In fact, "Financial markets, 10 years ago, they did exist in the UK, and it was about it. In relative terms, even French or Germany stock markets were relatively small."[227] In sum, most of Europe lacked of the minimum financial infrastructures even for traditional large-scale financial trading: SRI was, therefore, considered as a "luxury" and a very small niche of the market.

However, as I argued in the previous chapter, this has radically changed during the 2000s and the financial crisis provided a window of opportunity for further expand this expansion. It is perhaps because of this challenge of the financial sector in establishing itself in Continental European countries traditionally dominated by large banks and stakeholder capitalism that most of financial analysts' initiatives on ESG reporting came from Germany (DVFA).

On December 2008, financial analysts stepped in the European debate on non-financial reporting, when the DVFA, the German Society of Investment Professionals, designed a set of KPIs for ESG disclosure. This is a set of indicators applicable to any individual company, ensuring materiality by limiting the number of indicators[228]. The KPIs were soon endorsed by EFFAS and proposed, at the EU level, as the first major framework for ESG reporting tailored to the needs of

[226] "Likewise for consumers that need information on the product and that justifies eco-labels and social-labels." Interview #13 (23.07.2012)
[227] Ibid.
[228] http://www.effas-esg.com/?m=200812

investors and not designed thinking about the companies that are issuing the report. [229] This potentially set EFFAS in competition with both accountants and the big players in the sustainability reporting area – such as the GRI, CDP and ISO 26000.

On September 2009, EFFAS held its second Conference on ESG disclosure significantly titled 'ESG Mainstreaming: Looking for something that has already found us?' One of the most intriguing arguments that emerge from the Conference is that, after years looking for evidence of the relevance of ESG information, following the crisis, this became so universally evident that there was suddenly no need for more proofs. "Demanding proof for the effects of good ESG performance on the bottom line of corporates has been a volkssport in capital markets for many years. Many of us have been eager to produce this sort of proof. Taking ESG into Account 2009 goes one step further: *we simply assume (or for agnostics: pretend) that a corporate managing, measuring and disclosing ESG is the default*. And we likewise simply presuppose that taking risk factors (and thus accordingly ESG factors) into account is the default for recognizing fiduciary duties in making asset management decisions, and consequently the default of an industry delivering service for asset managers."[230]

Drawing on Bourdieu, this belief and presumption appears as the necessary foundation for a new 'illusio', a new vision of the economic field through the field of accounting, able to overcome the traditional divide 'financial/non-financial'. It seems to confirm Bourdieu's sociological approach that capital is a relational concept that is socially and historically created on the basis of categories and categorizations and, particularly, by struggles for imposing certain categories instead of others. The key argument of financial analysts is that more non-financial disclosure is critical but complete transparency may be counterproductive, it might result in too much data and irrelevant information. Disclosure must be 'material' and it is on the definition of what is material that the exercise of symbolic violence is taking place. The materiality, in fact, is not objectively but subjectively determined. It is the answer to the most important question of all, the one that is usually taken for granted, to whom the information should be material? Should they include stakeholder groups such as employees, governments, local communities, NGOs or only shareholders?

However EFFAS soon decided not to continue developing its own standard but to join a global alliance of all the economic stakeholders interested in developing a framework for integrated reporting. In fact, in December 2009, a meeting was held in London hosted by The Prince of Wales'

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[229] http://www.effas-esg.com/?m=200901 The laboratory on 'valuing non-financials' organized by the European Alliance for CSR gave a cross-reference for the new KPIs and they became available as an XBRL taxonomy within the WICI framework.

[230] The document can be retrieved at: http://www.effas-esg.com/?m=200906 Emphasis added.

organisation Accounting for Sustainability Project (A4S), to which intervened some of the key financial and non-financial standard-setting organisations. The ambitious plan was to establish what was still called an International Connected Reporting Committee, the first embryo of the future International Integrated Reporting Council[231] (see Annex I). The latter is possibly – although it is too early to make any conclusion – the body which is going to write the first widely accepted standard for accounting which integrates financial and non-financial information. The European Parliament has recently voted to support the objective of the IIRC "of making 'integrating report' the global norm within a decade" (European Parliament 2013: 6).

On the other hand of the 'battlefield' for shaping sustainability accounting, one could find the **lawyers** that have been assisting the platform of European NGOs successfully supporting the inclusion of human rights and anti-bribery and corruption policies in the requirements of EU Accounting Law. One might be surprise about ECCJ's (European Coalition for Corporate Justice) amount of policy proposals and their quality, considering its tiny office in Rue d'Edimburg, not far from the European Parliament in Brussels, where they can barely fit the four members of its staff. CSR Europe alone can count on, at least, 25 staff members[232]. Their 'secret' has been that, despite the very limited economic resources, they can count on a competitive level of social, human and, especially, legal resources. As Vaclav Havel said, this is the 'power of the powerless'. The 'weapons' of this organisation are legal and the network is filled with lawyers specialized in human rights and environmental law. *The whole strategy of ECCJ can be summarized in re-radicalising CSR bringing it into a universal legal domain*. This aim can be easily recognized looking at the name of its campaign 'right for people, rules for business'[233] and by considering the three broad chapters in which it has been organised: "better access to justice"; "direct liabilities of directors and companies in Europe"; and "mandatory transparency and disclosure".

As it emerged from my interviews, ECCJ provided important resources and relevant information to the Commission's services, in particular, contact with the main academics in the field[234]. This was possible thanks to the legal and academic resources that are provided by its

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[231] In January 2010, at the EU Workshops on ESG disclosure, EFFAS together with EUROSIF and few players of the RSI and sustainability scene, already presented the new collaborative initiative stating "the time has come to unite the efforts of the scattered European initiatives on ESG disclosure and reporting, and to support the efforts of the proposed International Connected Reporting Committee." (p. 6)

[232] CSR Europe website

[233] See http://www.corporatejustice.org/Rights-for-people-Sign-the.html. "We call on you to hold companies operating in the EU legally accountable for any harm they cause to people and the environment around the world. They must disclose accurate information about their activities. Victims should face no barriers in accessing justice in the EU." This has been an astonishingly successful campaign that rise Europe-wide participation and reached and surpassed its targets, collecting 80 000 signatures that were presented to the EU Commission.

[234] Interview # 18 (30.07.2012)

network. “We are a coalition using the strengths of our member. For instance, our Czech member [ELS[235]] is an environmental law service, it is an organisation composed of 30 lawyers. So, basically, the legal proposal has been developed by them.” Furthermore “we have as a member FIDH, the International Federation of Human Rights[236]. Other proposals have been developed by the French platform called Sherpa[237], which is a lawyers’ organisation.”[238] During my research I carefully reconstructed the actors’ role in the CSA regulatory debate at the EU-level and it emerged a key role of ECCJ in pushing for a *legal approach* to corporate accountability, framing it within a legal structure of human rights protection and directors’ liabilities. “Information is essential to uphold human rights because it helps to prevent abuses, hold companies to account and seek remedies. ‘Abuses always happen in the dark’. Disclosure can also prevent abuses by enhancing the participation of people whose rights might be affected. *The right to know is also a human right*. Courts need information in order to function, and in this way ESG disclosure is linked to provision of remedies.” (EC ESG Workshop 3: 2 ‘Civil society view on ESG disclosure’) They are perhaps the group of actors recurring more to a legal argumentation and rationale (SOMO 2013; CORE 2011). The aim, in my opinion, is to use the symbolic power of law to re-construct the dominant vision of the field of corporate accountability, which has been organised around the division between financial and non-financial capital. However, as the result, NGOs are entering in a field that is not merely legal and which is the territory of accounting profession, with whom ECCJ did not have any relations[239].

One intriguing aspect is that NGOs and financial accounting have been traditionally distant social universes and mindsets. However, after the financial crisis, they increasingly became, perhaps for the first time, much closer because of the issue of ESG reporting. As Yolaine Delaygues (ECCJ) noted, DG MARKT had “to introduce non-financial reporting/corporate accountability into something that is pure accounting.”[240] The polycentric and dynamic organisational structure and the ‘patrimony’ of intangible human and legal capital allow ECCJ to be ready if a “political opportunity” for a new regulation in a certain area of EU Law arises. This has been the result of a re-thinking in their strategy from one that demanded “one directive gathering all this” to a more

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[235] http://en.eps.cz/ In particular, the key legal expert that actively participated in the EU meeting on non-financial reporting is Filip Gregor, the Head of the Responsible Companies Division.

[236] http://www.fidh.org/-FIDH-s-Role- The International Federation for Human Rights (FIDH) is a non-governmental federation for human rights organizations. Founded in 1922, FIDH is the oldest international human rights organisation worldwide and today brings together 164 member organisations in over 100 countries.

[237] http://www.asso-sherpa.org/association/organisation The website is mostly in French.

[238] Interview # 12 (17.06.2011) with Yolaine Delaygues (ECCJ)

[239] Ibid.

[240] Interview # 12 (17.06.2011)

flexible approach that size windows of legislative opportunities[241]. This capacity appears very clearly in ECCJ readiness to engage with the Commission after the financial crisis on issues on non-financial reporting and transparency on which was starting to emerge a certain regulatory momentum (see Annex II).

Professional accountants have been able to place themselves right at the centre of the scene. The Federation of European Accountants (FEE), soon after the onset of the financial crisis, issued (December 2008) a discussion paper on 'Sustainability Information in annual reports – Building on the Modernisation Directive'. An analysis of the document shows that it was aimed to send out three messages. First of all, that sustainability reporting was a matter of *accounting standards* and EU Accounting Law, as this requirement had been already introduced by the 2003 Modernisation Directive and implemented by all EU Member States. Secondly, despite the message might look similar to ECCJ – the need for strengthen the existing Accounting Law requirements – the request was for 'guidance' from public authorities, *not yet regulation*, on this issue and it mentioned the existence of international accounting standards (IAS) which were already able to address the problem. Thirdly, as regards the content, references to the environment and human rights are almost accidental, while the key problem is identified in the lack of 'materiality' and 'relevance' of existing sustainability reporting. [242] Crucially, while ECCJ reference were on the 'right to know', the FEE stresses that non-financial is aimed to meet the growing demand of *shareholders and investors*.

On 29 April 2009 FEE together with EUROSIF organised a successful roundtable hosted by the European Parliament, which was later used as a model by DG ENTR for the EU Workshops on ESG disclosure that the Commission hosted between 2009 and 2010. After the Conference the two organisation released a joint 'call for action', "In the current climate of financial and economic

[241] For instance on the reform of Brussels I regulation on jurisdiction and recognition and enforcement of judgements on civil and commercial matters. http://ec.europa.eu/justice/index_en.htm

[242] The document can be retrieved at the following link. Here there is a short simple, the emphasis has been added to highlight the use of a language that is not legal but it come from the accounting tradition: "In identifying the type of non-financial information, in particular on sustainability, that can be included in the annual report the concepts of relevance and materiality play an important role. Materiality is considered in the context of the other qualitative characteristics of information, especially relevance and faithful representation. Materiality judgements are made in the context of the nature and the amount of an item, as well as the entity's situation. Materiality has a different connotation in a sustainability and financial reporting context. For sustainability information to be included in annual reports additional guidance would be helpful in deciding what constitutes relevant information and how to select any performance indicators, especially when an increasing number of entities combine their sustainability information with their financial information. FEE therefore welcomes further guidance on including sustainability information in the annual report. Exchange of good practice can play an important role. Guidance that has already been developed within some European countries can be a basis for further guidance, both at national and European level. http://www.fee.be/images/publications/sustainability/DP_Sustainability_Information_in_Annual_Reports_08125122008561444.pdf

crisis, FEE and Eurosif wish to raise the strategic importance of sustainability disclosures in order to provide financial information in a more comprehensive and meaningful way. Greater transparency can play a role in helping to restore trust in business.” (FEE/EUROSIF 2009)

At the global level, the publication, on December 2010, of the IFRS “Practice statement on management commentaries”, was widely seen as the confirm that IASB would have thrown its weight to support the IIRC initiative proposed by investors and financial analysts, under the auspices of the British Crown and the Prince of Wales Foundation.

In 2011, financial analysts and accountants gathered all the private financial and non-financial standard-setters into the IIRC, with the aim of “developing an International Integrated Reporting Framework that facilitate the development of reporting over the coming decades. The objective of the Framework is to guide organisations on communicating the broad set of information needed by investors and other stakeholders to assess the organisation’s long-term prospect in a clear, concise, connected and comparable format.” (IIRC 2011: 8) Paul Druckman, former Chairman of the FEE Sustainability Policy Group and the ‘architect’ who worked to bring together all economic stakeholders became the CEO of the IIRC. As we mentioned above, the initiative is truly impressive as it has been able to include: some of the largest companies, the GRI, the accounting profession, investors, standard-setting bodies, policy-makers, regulators, assurance providers and academics. However, it significantly excludes – or includes only marginally – all the social stakeholders, NGOs, trade unions, consumers, etc. This fact might look surprising considering that for many years the model has been the GRI – based on an inclusive stakeholder approach to corporate sustainability reporting which was composed of both social and economic stakeholders. However, in my opinion, this is the sign that the sustainability reporting movement has become more mature and mainstream, or mainstream enough, to allow already an internal dialectic between the two instances of transparency and materiality. It seems that we are moving towards a clearer and articulated global regime of corporate accountability.

6. Conclusions: Beyond Transparency

Not everything that can be counted counts, and not everything that counts can be counted.

William Bruce Cameron, Informal Sociology. *A Casual Introduction to Sociological Thinking*, 1963.

6.1 Introduction

The study has explored the issue of the struggles for regulating the corporate practice of sustainability accounting (CSA) in Europe, as a lens for analysing broader changes in the field of corporate governance regulation (CGR); corporate sustainability and corporate social responsibility (CSR).

At the most general level, the key element that defines this study, and what most clearly differentiates this work from the burgeoning literature on 'business regulation and corporate social accountability', is that it takes CSA regulation as its main *explanandum*, without taking it for granted, as an independent variable – as it is the case in many managerial and law-and-economics studies – but equally differing from those studies that – stressing the role of agency and politics – tend to treat law as a dependent variable, the mere outcome of power relations and conflicts. The study applies a Bourdieusian approach to Sociology of Law, placing this analysis in between these two extremes. Law, its institutions and agents are seen in a broader context of interrelations with other social fields and social forces; nonetheless, attributing a historically specific position and relative autonomy to this field (see Chapter 2). This is an important point, because it helped me to focus on how the relation between law and accountancy has changed over time. The starting point of my analysis has been the striking recognition that financial and non-financial accounting are conventionally treated as completely isolated from each other, as different realities that have, in practice, little or none contacts. The academic debates are separated; the standards are different and they are crucially treated as separated by law-makers that considered the former as a matter of company law and corporate governance and the latter as a voluntary practice that should be left to the willingness of managers to take extra-financial aspects of corporate performance into consideration. This *distinction* is widely taken for granted and seen as 'natural'. However, I have argued, this is a historically constructed and arbitrary division that has been socially accepted and taken for granted but that actually hides a form of unconscious imposition – what Bourdieu calls

symbolic violence – that excludes from the annual report all the information that are not strictly relevant to shareholders and investors. Therefore, it has played a crucial role in empowering them *vis à vis* other stakeholders and in strengthening their interests and control over corporate resources and activities (see Chapter 3). Seen that way, the 'natural' exclusion of non-financial information is closely related to questions of corporate governance regulation: Who controls the modern corporation, how is it 'governed' and for what purpose? The objective of the study has been to re-assess how CSA regulation has been socially constructed over time in relation with broader changes in the regulation of European accounting and corporate governance.

This attempt to 'objectivise the research object', "establishing the object of enquiry beyond these stakes and interests, yet in a way that allows them to be taken seriously as part of the object of enquiry [...]" (Dezelay and Madsen 2012: 437) is necessary to fully understand recent changes in accounting regulation. In fact, during the last decade, this distinction has been increasingly challenged. Social and political pressures have arisen for introducing *mandatory* social and environmental disclosure (see Annex I). Several European Member States and the European Union have introduced some requirements for disclosing environmental, social and governance (ESG) information. At the same time, the number of companies voluntarily disclosing non-financial information has multiply each year and CSA disclosure had become 'the norm' amongst large companies (KPMG 2008). Private and hybrid regulatory frameworks for sustainability reporting have been successfully launched – such as the GRI, CDP, UN Global Compact – and several stock exchanges around the globe have introduced some forms of disclosure requirements. In 2011, all the major financial and non-financial accounting standard-setting bodies have joined forces with large investment funds in creating the International Integrated Reporting Council (IIRC). This transnational private entity, strongly supported by the EU and some European countries, has the ambition to create a worldwide standard for accounting that integrates both financial and non-financial disclosure. Finally, in April 2013, the EU Commission has adopted a much anticipated legislative proposal for a directive enhancing the transparency of certain large companies on social and environmental matters[243]. It concerns all companies having more than 500 employees that will need to disclose information on policies, risks and results as regards *environmental* matters, *social and employee*-related aspects, respect for *human rights*, *anti-corruption and bribery* issues, and *diversity on the boards of directors*. The main question that this study has addressed, therefore, has been:

[243] The proposal amends the Fourth and Seventh Accounting Directives on Annual and Consolidated Accounts, 78/660/EEC and 83/349/EEC, respectively. Its objective is to increase EU companies' transparency and performance on environmental and social matters, and, therefore, to contribute effectively to long-term economic growth and employment.

What explains the emergence of Corporate Sustainability Accounting (CSA) within the EU regulatory arena, at different levels of regulation and through varying modes of governance?

The broad research framework deployed by the study to investigate this subject area has been based on a Bourdieusian reflexive socio-legal approach. More specifically, it has benefited from Prof. Mikael Rask Madsen's outline of a *reflexive sociology of the internationalization of law* and attempted to further develop it (Bourdieu 1986; Madsen and Dezalay 2002; Madsen 2006; Madsen 2011). Although this 'reflexive' approach does not provide 'ready-made' solutions, it supplies a set of open-ended 'analytical tools' (nomos; habitus; field; capitals; symbolic power; symbolic violence; illusio; etc) that I have used as an over-arching research strategy in conjunction with existing studies of Corporate Governance Regulation (CGR); Corporate Sustainability and Corporate Social Responsibility (CSR) (in particular Gourevitch and Shinn 2005; Crouch 2006, 2009 and 2011; Graz 2006; Streeck 2011; Paterson 2009; Koch 2011)[244]. Although, given the novelty of this development, the nature of this study was necessarily exploratory, its ultimate goal has been explanatory as regards regulatory changes over time. I sought in particular to originally contribute to the debate offering a socio-legal contribution which attempts to integrate the two parallel universes of corporate governance regulation (CGR) and corporate social responsibility (CSR) studies. In order to do so, I have designed a reflexive sociological research strategy based on the method of '*double historicisation'* of both the research object – the regulation of CSA in Europe – and the academic construction of this object – integrating the parallel fields of financial disclosure (CGR) and non-financial disclosure (corporate social accountability) (Chapter 3). This reflexive approach allowed me to reveal the relation between changes in accounting regulation and in the economic field (CGR), therefore contextualising the cyclical emergence of non-financial reporting regulation.

This research has been based on three main sources of data: documents analysis; literature review; in depth interviews (26) with key informants. It has also been strengthened by a participant observation of 5 months at the EU Commission collaborating to the legal drafting and Impact Assessment of the new EU directive[245] (see sections 2.6 and 4.1). As explained in section 2.6, the criteria for designing the fieldwork have been based on the idea of mapping the position of the six groups of actors interested in shaping the emergence of CSA regulation in the European arena. The groups of actors that I have considered are: managers of large *corporations;* organised labour and

[244] This is consistent with Bourdieu's own idea that his contribution should not been perceived as a 'grand sociological theory' but adapted, modified and practically employed for empirical sociological enquires.

[245] As regards the participant observation, for technical reasons, the actual impact of this experience on the Thesis has been limited. In fact the proposal has been published too late to be included in this work (the 16th of April 2013) and the empirical research had to be limited up to 2011. However, as I have already discussed, this experience has enriched the analysis and my understanding of the field of research.

trade unions (TUs); civil society and *non-governmental organisations* (NGOs); *institutional investors*; *public authorities*; and *professional experts* (accountants; financial analysts; lawyers). The literature review has been used, in particular to provide the macro-level of analysis and examine the academic construction of the research object. The documents' analysis and regulatory review have been useful to prepare and validate the interviews and to analyse the chronological emergence and social construction of CSA regulation. Chapter 1 contains a preliminary conceptualisation of the field of research and the research questions. Chapter 2 has been focused on the critical review of the literature and of existing explanations of the emergence of CSA regulation. Furthermore, it presents the socio-legal reflexive methodological and epistemological approach that has been adopted to explain the emergence of this new multi-level regulatory framework. A summary of the long-term development of non-financial reporting during over four decades has been provided in Chapter 3 while Chapters 4 and 5 narrowed down the empirical research, focusing on a more limited periodisation (mid-1990s to 2011) and on the case study of the struggles for shaping a EU-level regulatory framework for non-financial reporting. The aim of Chapter 4 and 5 has been to empirically strengthen the broader analysis outlined in Chapter 3, on the basis of the data collected during the fieldwork.

6.2 Research findings: The changing *content* and *mode* of European CSA regulation

Chapters 3 and 4 have been dedicated to assess the social and historical construction of European non-financial reporting (NFR) regulation over time. In practice, the study has addressed in a unitary analysis the parallel stories of financial and non-financial reporting regulation in Europe. It broadly identified four periods in this development and it has shown that the distinction between financial and non-financial, rather than a 'matter of fact', has to be located in a precise historical and social context, at the end of the 1970s, which marked an identical process of autonomisation and internationalisation of the economic field and of the accounting field.

Linking the historical development of NFR regulation with broader changes in the academic and regulatory debate on corporate governance, Chapter 3 reveals a robust relation between them. The analysis showed that the emergence over time of a distinction between financial/non-financial has corresponded with the key turning points in what the corporate governance literature calls changes in the regimes of capital accumulation. Here I briefly consider this periodisation and the key argument:

A) The first shift took place in the 1980s and coincided with the emergence in the US and the UK of 'fiduciary capitalism' and of a new theory of corporate governance stressing shareholder primacy and fiduciary duties. At that time, *accounting standards were underdeveloped*. Only the US and UK, due to their reliance on stock markets, had developed them and were considered as the benchmark in this area of regulation. This phase marked the abandonment of the European *regulatory debate about 'social accounting'* and the alignment of national and EU laws to the international trend towards financial-only reporting. During the 1980s and 1990s accounting became *only a matter of financial disclosure* and the accounting profession started to develop *private financial accounting standards* aimed to create one accounting standard globally recognised (IFRS).

B) The second major shift took place at the end of the 1990s, when we are witnessing the emergence a first nucleus of global *extra-legal* norms, guidelines and frameworks for reporting *extra-financial* information. During the same period the EU decided to foster the global *harmonisation of financial accounting* rules adopting (from 2005) the *privately* developed standards (IFRS) created by the accounting profession. Looking at broader changes in corporate governance, I have argued that this development coincided with the exhaustion of the European 'corporatist compromise' between labour and capital. Corporate governance reforms that strengthen fiduciary duties and minority shareholder rights were introduced also in Europe, contributing to a *shift from a 'productive' concept of control to a 'money' concept of control*. Colin Crouch (2011) recently called this phase 'Privatised Keynesianism' because the role of the State to ensure full employment and welfare was privatised and individual and firms were offered unprecedented access to debt, further expanding the financialisation of the economy.

C) Finally, the third turning point that I have identified took place in 2008, when 'Privatised Keynesianism' was overturned by the global *financial crisis*. The crisis was preceded by smaller financial shocks (national and regional financial crises and corporate scandals). The crisis worked as a major catalyst for changes. It showed that the dominant model of economic governance is fundamentally flawed and, as regards the field of accounting, is leading to a complex process of 1. *integration of financial and extra-financial information*. 2. *inclusion of extra-legal NFR in Company Law*.

Rather than linear and progressive, as it has been conventionally pictured, Chapter 3 showed that the development of non-financial accounting regulation has been cyclical and recursive: the regulatory debate was more developed in the 1970s than in the 1990s and it finally re-emerged only

in the 2000s. Furthermore, the research process of 'double historicisation' revealed that both financials and non-financials are related with changes in corporate governance and capital accumulation, in that sense they are not mutually exclusive. The mix of financial/non-financial is not given, it depends from struggles amongst different groups of actors claiming a socially accepted definition of what has 'value' in an ever changing economic field. In particular, this is a function that public authorities have gradually left to professional accountants. The study suggests that considering financial/non-financial together might be helpful in strengthening corporate governance both as a body of knowledge and as a regulatory framework. The search for sustainable development would require a more balanced approach to accounting regulation.

Chapter 4 and 5 narrowed down this broad field of research to scale, focusing on the empirical analysis of the EU regulatory debate on non-financial reporting regulation. The fieldwork allowed me to collect more data on the turning points of the late 1990s and 2008. Similarly to the previous chapter, the aim of this section has been to map the emerging field of European CSA regulation and to challenge the conventional wisdom that picture non-financial reporting in isolation from CGR debates. However, while Chapter 3 was more focused on long-term changes in the structure and content of NFR, this chapter has attempted to better understand the conflicts and struggles that have shaped those changes. Therefore, it has mapped out the position of the six main groups of actors mentioned above in the construction of the field of CSA regulation, from the mid-1990s until 2011.

Chapter 5 has empirically confirmed that the debate on CSA regulation in Europe is strongly related with the turning points identified in Chapter 3. Drawing on Gourevitch and Shinn's (2005) analysis of corporate governance coalitions, I have argued that CSR policies in Europe represented a political response, supported by EU and national public authorities, to overcome the crisis of the 'corporatist coalition' between labour and capital, which had dominated European industrial relations until the mid-1990s. Starting from the Delors' Commission and more intensely after the launch of the Lisbon Agenda, the EU intended to build a new regime of meta-regulation of corporate governance, based on greater transparency and accountability of large undertakings. In fact, I have argued that, in the late 1990s, European managers and blockholders progressively abandoned the 'corporatist compromise' with trade unions that had emerged all over Europe after the WWII, exploiting the possibilities of expanded globalising markets. This freedom, however, was soon challenged by the emergence of a '*transparency coalition'* led by large institutional investors, NGOs and part of the trade unions. In my interviews and in the empirical study I found evidence of the emergence of this 'objective convergence' of interest amongst the three groups of

actors to limit managers' power and to obtain more corporate transparency and accountability. It also emerges the fierce opposition of managers to mandatory non-financial disclosure.

I have argued that both corporate governance reforms and corporate non-financial disclosure of the 2000s have been driven by this new coalition, although, managers were able to temporarily halt the latter, claiming that this practice was "over and above the law". The 2008 financial crisis has further shifted the debate. This new phase has seen a regulatory competition amongst different private standards-setters for re-defining financial and non-financial reporting boundaries. However, it also gave a more prominent regulatory role to public authorities to 'interfere' in the semi-autonomous governance of the economic field. We are witnessing a stronger activism of the state in its regulatory role, expanding market regulation *beyond transparency* in new areas such as sustainable public procurement; green investments; social business. Although this expansion has been moderated by still powerful 'law-and-economic' approaches to corporate governance and company law. The specific variety that CSA regulation will take in Europe, therefore, is still uncertain and under construction. It will depend from the crucial role of public authorities and law-makers in bringing standard-setting bodies into a *universal legal domain*. It will also depend from the success of accountants, auditors and financial analysts that are working on a *globally recognised, market-based, private standard* for 'integrated reporting'. Possibly, the new corporate governance regime will emerge from the growing tension between those two poles of 'economic accounting' and 'corporate accountability' (McBarnet 2007; Picciotto 2011; Streeck 2011).

6.3 The analysis in brief: Law, accounting and corporate control

What explains changes in the regulation of CSA? What accounts for the symmetric development of economic crises and the turning points in non-financial accounting regulation? How it can be justified the arbitrary distinction between financial and non-financial accounting and its current overcoming? Finally, what explains the long exclusion of extra-financials as extra-legal and its current integration in Company Law and accounting standards?

In the socio-legal analysis of the research findings, I have relied on many of the 'analytical tools' developed by Pierre Bourdieu in its outline of a theory of practice. I have tried to summarise here the three key tentative analytical arguments that I have outlined and developed during the Thesis. 1. The field of accounting has developed a historically specific relation of **structural homology** with the economic field. 2. Internationally recognised **financial accounting** standards contributed to create a universally accepted definition of the economic value and capital. This greatly **contributed to make economic rationality and the economic field ubiquitous** (*symbolic*

violence) **and** at the same time **invisible** (*illusio*). 3. Because of this enormous expansion of the economic field and of the concept of economic capital, the division between financial and non-financial, **the *nomos* of the accounting field, has become increasingly inadequate** and had to be broadened to include non-financial information.

Starting from the first point, my explanation of the parallel development of the accounting field and the economic field, which emerged from the '*double historicisation'* analysis presented in Chapters 3 and 4 can be explained assuming that the field of accounting practices has developed a historically specific relation with the economic field: there is structural *homology* between the two fields. That means, in Bourdieu's terms, that there has been an identical structuration of two social spaces over time producing specific effects that he notably called '*imposture légitime'*, legitimate imposture. More specifically, this structuration marked an identical process of autonomisation and internationalisation of the economic field and the accounting field, starting from the 1970s. The four phases in this development of CSA in Europe, identified by the study, show this relation of homology. In the 1970s in Europe there used to be a lively regulatory debate about 'social accounting' at the same time the economy was dominated by ideas of industrial democracy and by industrial relations based on the 'social bargain' between capital and labour. Starting from the 1980s, as the result of markets' globalisation, the economic sphere became increasingly autonomous from social and political control. A symmetrical development interested the accounting field: financial accounting standards were progressively privatised and internationally harmonised, accounting became a transnational, semi-autonomous, field of practice. Starting from the late 1990s, however, the seemingly inexorable growth of financial markets showed its limits. Financial crises and corporate scandals undermined public trust in both accounting and financial capitalism. The crises of financial accounting led to a renewed attention towards non-financial aspects that exploded after the 2008 financial crisis made clear that the autonomy of the economic field was thrown into question. Once again, we can see a symmetric development of the accounting and the economic field in the current emergence of mandatory sustainability reporting *and* growing debates about a more 'long-term'; 'green'; 'sustainable' economy. The first element of analysis, therefore, that I have highlighted is the question of CSA regulation being closely related with changes in the model of capital accumulation (from 'Fordism' to 'financial capitalism' to 'sustainable capitalism'). Therefore, the developments of financial and non-financial disclosure, far from being isolated, are actually intertwined. However, this is still a rather descriptive analysis which has been broadened using Bourdieu's 'thinking tools' in conjunction with the literature.

The second analytical point, in fact, further inquires this historically specific relation of structural *homology* between the accounting fields and the economic fields. I have maintained –

supported by a strand of critical accounting studies (such as Burchell et al. 1980; Hopwood 1983; Hines 1988; Miller 1994) – that the conventional wisdom that pictures accounting as a decision-making aid, a technical device which reflects changes in the economy, is rather misleading. The homology between accounting and the economic field should be understood in a much more dialectic way: not as the economy changing accounting but, on the contrary, as the accounting contributing to define what economic rationality is and what has 'value'. This approach reveals the special 'symbolic power' of accounting, performed by professional accountants, often invisible because taken for granted. This professional group has the socially recognised capacity to render activities, individuals and objects, in possession of the specific attributes that are potentially relevant for the economic field, capable of evaluation, comparison and hence *transformation into economic capital* (see Miller 1994). The very distinction between financial and non-financial, written in accounting standards and enforced by law, imposes a 'vision of the world'. This appears clear from the historical analysis presented above of the distinction financial/non-financial. The very concept of shareholder value maximisation, which has been key in *structuring* contemporary corporate governance, driving economic financialisation and corporate globalisation, *presupposes* the distinction between financial/non-financial set by financial accounting standards.

The summary historical analysis of the development of the accounting field in Europe (Chapter 3) suggested that European law-makers, with the aim of achieving a greater markets' harmonisation and following the example of the US and the UK, gradually granted the accounting profession an exceptional level of autonomy to exert this symbolic power. While this happened on the basis of accountants' higher technical expertise, they overlooked the political and social impact of this 'disinvestiture' of regulatory sovereignty and symbolic power. This is what I have called the 'law-and-economics' *habitus* of EU regulators (Chapter 5), the acceptance of the autonomy of the economy from legal and political control. Given this relation of homology, the division financial/non-financial became the basis for excluding anything that was non-financial from corporate governance and from the legitimate concerns of managers. The increasingly autonomous and international accounting and economic fields have based their growth on this *nomos*, this principle of vision and di-vision, this 'law', which defined what 'good' business is and what is not: the distinction financial/non-financial. This distinction has been consecrated by the legal field affirming that financial is mandatory and non-financial is voluntary. Therefore, the current revision of accounting law to include non-financial aspects should not be easily dismissed, as most of the literature does, as a 'legitimising' move, I have contended that it concerns a profound change in the process of economic capital accumulation (see Chapter 3). Although, this shift does not means a necessary move towards sustainable capitalism either. I maintain that sustainability reporting

regulation will come from tensions and conflicts: it is not simply ‘an idea whose time has come’. This leads me to the third point that concerns accumulation of capital in a “world-capitalism” regime (Shamir 2011).

Finally, a third key analytical argument that emerged from the research process concerns profound changes in the accumulation of capital and creation of value. This is a fascinating aspect that is however still little understood and developed. Drawing on Bourdieu, my starting point has been that economic capital is only one form of capital, although one of the most important, it is a social power that is determined by what has value in the economic field (see Chapter 2). However the globalisation of the economy, fostered by accounting transformative power, created a “world capitalism”. As Colin Crouch (2006) pointed out, there is no such a thing as ‘global polity’ or a ‘global society’ but there is something very close to a global economy. Therefore, the economic field has become so ubiquitous and autonomous from external (political, social, religious, etc.) control that economic rationality is universally and pervasively applied and economic capital has become synonymous, even in the common sense, with capital *tout court*. We increasingly tend to think in economic terms and act on the basis of economic rationality. However, as Bourdieu (1997) explained, this is a ‘well founded illusio’ and the homo oeconomicus, actually is an ‘economic *habitus*’. As regards accounting, I developed the argument that, paradoxically, this ubiquity and pervasivity of economic life has made the task of professional accountants to finding the difference between financial/non-financial an impossible venture (see Chapter 3). As emerged from recent researches, a striking 80% of the market value of large listed companies cannot be explained by traditional accounting standards. This percentage has steadily risen during the last 30 years, during the period of markets globalisation and financialisation. Obviously this has been a strong argument for investors to join NGOs and trade unions in demanding for mandatory non-financial disclosure and integrating reporting. However, it shows also the ‘symbolic violence’ of economic financialisation that today presents itself both as ‘the problem’ and ‘the solution’ (see Chapter 5). The fieldwork showed that this loss of trust in the capacity of financial reports to explain value creation is reshaping the whole economic field and the relation amongst the actors. It represented for accountants and auditors a major challenge as they have to ‘change their game’ and broaden their view of what value is. Financial analysts and lawyers are competing with them for the monopoly of this crucial symbolic power. This process is also closely interesting giant corporations, that are looking for new ways to manage their ‘value’ creation chain and large investors, that have claim the role of ‘universal owners’ that control entire sections of the world economy, overseeing political stability and macro-economic performances. This is still a global regulatory field in the making and it is still difficult to understand how it will evolve. A vague idea of what this major

change means is emerging from the first draft of the IIRC reporting framework, which is working on a new standard for integrated financial and non-financial reporting (see Chapter 3). The IIRC (2011; 2013) identified six types of capitals – including 'social'; 'human' and 'intellectual' 'environmental capital' – that will replace traditional 'financial capital'. The document presents striking similarities with Bourdieu's idea of capital(s): the latter are defined by IIRC as "*social relations*". As I have pointed out, recognising the 'value' of non-financial is only the starting point of the discussion, the real questions will concern how this value creation is 'governed' and whether it is disclosed only for shareholders' needs or for the 'right to know' about business impact on society and the environment. It is a problem of governance that, as it emerged from this study (Chapter 3), was already discussed in the 1930s and 1970s: every time that the economy goes through a major crisis. I share Colin Crouch argument that large corporations have become so powerful that they are not 'market actors' anymore and cannot avoid political attention (Crouch 2006: 1538). In my opinion, the IIRC project is encouraging, however it is too narrowly focused on investors' needs and the standardisation process is privately held and controlled by professionals. This suggests a vision world in which everything is subsumed to economic rationality and to the judgement of investors and shareholders: it is a too narrow and unsatisfactory way of structuring the sustainability reporting debates. As noted by Mitchell and Sikka: "Corporations dominate all aspects of our lives. Their power affects the quality of life, food, water, gas, electricity, seas, rivers, environment, schools, hospitals, medicine, news, entertainment, transports, communications and even the lives of unborn babies… Unaccountable corporate power is damaging the fabric of society, the structure of families, the quality of life and even the very future of the planet." (2005: 2).

Certainly, the question of *what is non-financial* is still open and more problematic than ever. In a 'world-capitalism', nothing is external to the economic field: everything is (potentially) financially relevant. In this sense, not surprisingly, after several decades of debates non-financial information is still ill-defined. However, I would conclude that non-financial could also be understood and defined in a different way. It invites to search within the economy for different normative grounds: political, religious, human, artistic, natural, democratic values. This is a form of reasonable 'positive deviance' (Parker 2010) against the *nomos* 'business is *just* business', to re-affirm that business is *also* social and social relations are valuable *per se*.

6.4 Limitations and research perspectives

The study has attempted to explore the field of European CSA regulation and explain its emergence while, despite decades of debate, it was still in its infancy. When I have started the PhD

research, in 2009, the field of research was completely different. For instance, the idea of integrating financial and non-financial reporting was ‘not at issue’. The EU Commission was still maintaining that CSR (reporting) should be kept as a “voluntary” and business-driven practice. The rapid development of CSA regulation in Europe and elsewhere has made this research project exciting, although, at the same time, extremely difficult. In this sense, the fact of going back so much in history, looking for the origins of non-financial reporting regulation, in the 1970s, helped me to look at present developments within a broader perspective. Nonetheless, this broad historical exploration has been necessarily patchy and the attempt of giving a broad picture has necessarily also created the need for further and deeper researches.

A further limitation lies in the empirical research. This has been using a snowball sampling and interviews research strategy. While the latter allowed me to explore the field more freely, following developments that emerged step-by-step, in the future a more systematic approach might provide further insights. Also, the number of interviews completed can be extended, particularly to attempt covering the global and national levels in more details. This limitation has been partly obviated looking at documents and publications of the main actors. However, future research avenues could build on this exploratory experience to further verify some of the key findings. A clear option is to follow the implementation of the NFR Directive, once approved by the EU Parliament, by Member States, its relation with existing frameworks, standards and guidelines and its implementation.

Lastly another limitation of this study has been that it has been focused only on certain type of reporting – disclosing social, environmental and economic (ESG) non-financial information. There is a strong need for expanding this analysis towards other forms of corporate disclosure (such as eco-labelling and carbon emission disclosure) and to better include new forms of non-financial reporting, concerning intangible assets – human capital; intellectual capital; etc.

One of the most interesting findings of the study, concerning the emergence of a ‘transparency coalition’, has been so far only sketched but there is potential for further investigations, particularly on the relation between investors and civil society and between pension schemes; TUs and sustainability reporting. This enquire, however might need a dedicated study that could benefit from this exploratory research. This rationale might apply, in a way, to all the main blocs of social actors that I have considered.

Furthermore, an extremely promising research avenue concerns the relation between private sustainability reporting and public authorities’ disclosure and requirements. That would include the issue of public procurement regulation but also emerging initiatives e,g. the OECD for the

development of alternative measures of well-being. Another possibility is to work on the synergies between NGOs or governments' reporting.

Another future research strand concerns the application of Bourdieusian reflexive 'thinking tools' to non-financial reporting and corporate governance sustainability. As I have mentioned in the literature review, this is the first study applying this approach to the issue of accounting for non-financials and sustainability reporting. In particular Bourdieu analysis of 'capitals' is potentially illuminating. This reflexive approach should be improved and broadened, but its holistic application has to be maintained in order to fully exploit its potential.

Finally, a major contribution of this study has been to start looking at CSR and corporate governance not as separated or competing strands of research but as complementary and necessarily completing views. This approach could offer unlimited material for a fascinating review and integration of the two areas of corporate regulation that respond to a idea of the firm that has changed. This integrated research framework has proved extremely useful but it has been barely developed: there is need for further studies that would systematically consider how the actors shape a certain regulatory outcome and to anchor sustainability in the debate on corporate governance regulation and company law.

The scope of this enquire should be extended to include issues such as the regulation of managers remuneration and the definition of their bonuses and targets; the fiduciary duties of pension trustees; employees representation and control over companies' value creation process; etc. This method has the potential for giving rise to a interdisciplinary field of "governance of corporate sustainability" (Krose and Lundbergh 2010 and Vitols and Kluge 2011).

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ANNEXES

ANNEX 1: Review of selected legislation, codes, standards and guidelines

ANNEX 2: The development of CSA regulation and policy in the EU regulatory arena.

ANNEX 3: All interviews (2010-2013)

Annex I: Review of selected legislation, codes, standards and guidelines

During the last decade and, particularly, after the onset of the 2008 financial crisis, we are witnessing a shift towards the *codification* of ESG disclosure (see KPMG *et al*. 2010 and 2013). Disclosure can be mandated by government legislation, accounting standards or securities regulation. In general, international instruments are voluntary while national ones present a mix of voluntary and mandatory standards, codes and guidelines. As it has been pointed out, this trend had made corporate responsibility reporting *de facto* law for large business undertakings (KPMG 2011).

What follows is a very brief review of some of the most significant developments that have emerged at different levels of regulation and through varying modes of governance. For reasons of space, it has been impossible to refer to all important regulatory developments. Descriptive and analytical studies that present an overview of social and environmental disclosure and its regulation already exist[246] and this review has been largely based on them. The aim of the review is to provide the reader with an introduction to benchmark national and regional regulation and to some of the most influential international regulatory frameworks. In particular, the review focuses on those national and international frameworks that have been more frequently mentioned during the debate at the EU-level.

The global-level: key standards, codes and guidelines

United Nation Global Compact (UN GC)

The GC has been launched in 2000 as both a policy platform and a practical framework and is the world's largest voluntary corporate citizenship initiative (www.unglobalcompact.org). It is a multistakeholder initiative, which seeks to align business operations and strategies in support of broader UN goals – ten principles – in the areas of human rights, labour, the environment and anti-corruption.

[246] See Van Wensen and others (2011), *The State of Play of Sustainability Reporting in the European Union*; KPMG et al. (2010), *Carrots and Sticks – Promoting Transparency and Sustainability*; KPMG et al. (2013), *Carrots and Sticks. Sustainability reporting policies worldwide – taday's best practice, tomorrow's trends*;

Source: United Nations Global Compact — Communication on Progress 2012

Namely, the ten principles derived from other material including:

- The Universal Declaration of Human Rights
- The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

By 2011 it had more than 10 000 business participants, of which approximately 50% were companies with more than 250 employees. This UN Programme is one of the most influential examples of the voluntary approach to corporate accountability regulation that has dominated the first half of the 2000s. UN Global Compact participants are required to issue a Communication on Progress (COP), a public disclosure to stakeholders (employees, consumers, governments, etc.) that must contain the following elements: a statement by the CEO expressing continued support for the UN Global Compact, a description of practical actions the company has taken to implement the principles, and a measurement of outcomes. It may vary from a two-pages statement to a real

sustainability report. Practical guidance is available on how to use the GRI Reporting Framework in this process. The GRI level C template, with an additional "statement of continued support for the Global Compact", is also accepted as a COP[247]. In 2010, a Differentiation Framework has been introduced in order to test different levels on the basis of companies' sizes and experiences. Failure to issue a COP can eventually lead to expulsion.

According to the GC website, over 25% of European business participants do not respect the deadlines for issuing their COP and over 4000 business partners have been expelled since its establishment. In general, UN GC's voluntary approach has been increasingly contested as a public relations corporate instrument for 'bluewash'[248]. In fact, it has been highlighted that this framework lack of mechanisms to sanction the participants that fail to comply. Furthermore, the continued participation of business does not imply any progress.

Global Reporting Initiative (GRI)

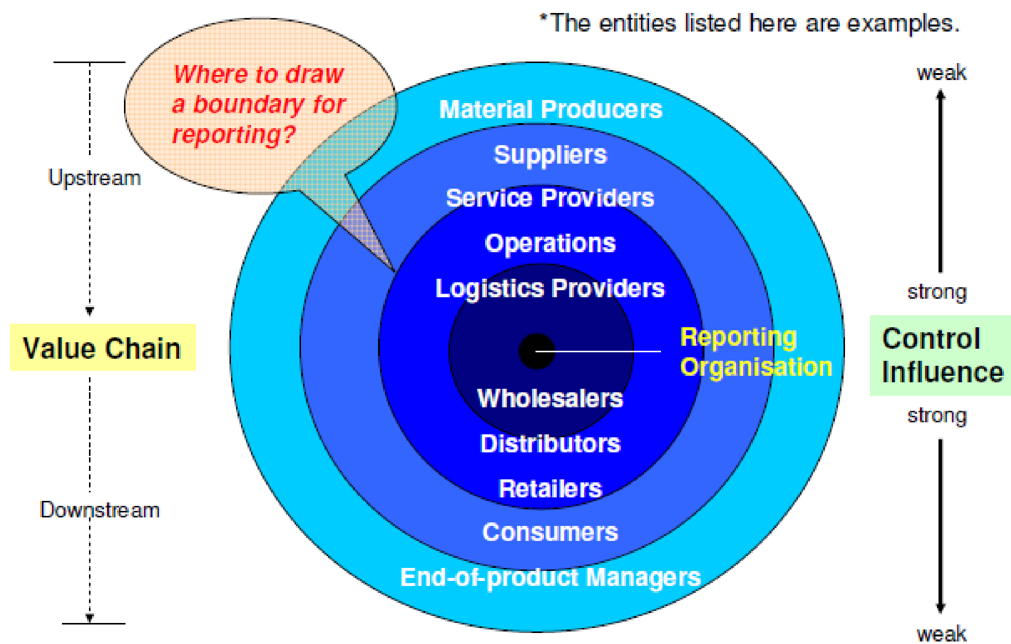
It would be hard to overestimate the role that the GRI has played in shaping corporate social and environmental disclosure (www.globalreporting.org). This global regulatory network provides the most recognised global standard for sustainability reporting. It has been attentively studied (Isaksson and Steimle 2009; Brown *et al.* 2009; Levy *et al.* 2009) and criticised (Dingwerth and Eichinger 2010).

The GRI framework sets out the principles and indicators used by the overwhelming majority of the organisation that issue sustainability report[249]. The cornerstone of this framework – the Sustainability Reporting Guidelines – is continuously re-developed by the network through a multi-stakeholder consensus seeking process to which anyone can contribute. The third version of the Guidelines – known as the G3 Guidelines – was published in 2006. A G4 version has been recently published in 2013 and is a free public good[250]. Other components of the framework include Sector Supplements and National Annexes. Sector specific supplements provide, amongst other

[247] In June 2010 a formal collaboration has been signed between the two organisations, the aim is to build 'a universal framework for corporate sustainability performance and disclosure', aiming to focus on their respective strengths.
[248] See Gregoratti (forthcoming 2013), *The Rethinking the Un Global Compact: Alternative Voices*. See also Georg Kell and Bart Slob (2008), *UN Global Compact – Is the Compact raising corporate responsibility standards?*
[249] According to the KPMG Survey (2011: 20) 80% of the G250 and 60% of the N100 companies that are reporting on sustainability adhere to GRI Guidelines.
[250] https://www.globalreporting.org/resourcelibrary/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf

things, sustainability indicators specific to the needs of sectors such as tourism, finance, telecommunications, mining, logistics, apparel and the public service. As of now, three sector supplements have been finalised, the Financial Services Sector Supplement (FSSS), the Electric Utilities Sector Supplement (EUSS), and the Mining and Metals Sector Supplement (MMSS), but a number of others are available as Pilot versions. National Annexes include unique country specific or regional sustainability issues (KPMG *et al.* 2010: 18).

Where to draw a boundary for reporting?



Source: The GRI Boundary Protocol (GRI 2005: 3)

A significant contribution of the GRI to the debate has been the development of a GRI Boundary Protocol, which explains the 'boundaries' of reporting[251] (see figure above). As the GRI Boundary Protocol (GRI 2005) states: "In preparing a sustainability report, a reporting organisation needs to set a "boundary" that defines which entities are included in a report, and which are excluded".

After a decade of tremendous success during the 2000s, in which the GRI almost single-handedly defined what sustainability reporting means, this organization appears today at the

[251] According to the G3.1 Guidelines (GRI 2011: 14), 'boundary' refers to "the range of entities (e.g., subsidiaries, joint ventures, sub-contractors, etc.) whose performance is represented by the report. In setting the boundary for its report, an organization must consider the range of entities over which it exercises control (often referred to as the 'organizational boundary', and usually linked to definitions used in financial reporting) and over which it exercises influence (often called the 'operational boundary'). In assessing influence, the organization will need to consider its ability to influence entities upstream (e.g., in its supply chain) as well as entities downstream (e.g., distributors and users of its products and services). The boundary may vary based on the specific Aspect or type of information being reported."

crossroads. While most stakeholders regard GRI schemes as a valuable tool to improve the quality and comparability of reporting, others argue that the GRI Guidelines are too complicated for SMEs (see van Wensen 2011: 48). Furthermore, it is still unsure whether the GRI will be able to adequately respond to the challenges of a rapidly changing landscape of CSA and keep its leadership[252].

OECD Guidelines for Multinational Enterprises

The Organisation for Economic Co-operation and Development (OECD) Guidelines (www.oecdguidelines.nl) were drawn up in the 1970s and adopted by all Organisations' Member States, plus other 10 states. They provide voluntary principles and standards for responsible business conduct in areas such as: respect for labour standards; contribution to sustainable development; respect for human rights; environment (precautionary principle); bribery and corruption; whistleblower protection. Section III on "Disclosure" encourages timely, regular, reliable and relevant disclosure on financial and non-financial performance, including 'high quality standards' for environmental and social issues (OECD 2011: 27)[253]. Guidelines can neither impose sanctions nor offer compensation, however they are at present one of the few international legal mechanisms available for holding large corporations to account. Therefore, in 2003 a network of NGOs has founded the OECD Watch (www.oecdwatch.org) in order to monitor and test the effectiveness of the Guidelines. On 25 May 2011, the OECD introduced important new provisions on human rights, workers and wages, and climate change[254].

The OECD Principles of Corporate Governance, first introduced in 1999 and revised in 2004, also require timely and accurate disclosure but only limited to 'material information' (OECD 2004: 22). During the 2000s, in line with a context dominated by a narrow approach to CGR, the OECD had a major role in establishing an imbalanced global regime for accounting standards characterised by the distinction financial/non-financial disclosure. For instance, in 2006 the OECD maintained that government should "avoid them [sustainability reports] becoming an unnecessary

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[252] Namely, this organization will have to manage: the shift towards a more active role of law-makers in this area; the emergence of other frameworks (ISO 26000; CDP); the rise of integrated reporting; the challenge of communicating ESG and extra-financial information to mainstream investors and financial analysts (Sullivan 2011; ACCA 2008).

[253] http://www.oecd.org/daf/inv/mne/48004323.pdf

[254] In particular, the inclusion of human rights in the Guidelines mirrors the parallel development of the UN Guidelines on Business and Human Right. While the latter represents an historical step forth, OECD Watch's 'Statement on the update of the Guidelines' concludes that procedural shortcomings remain, and therefore the Guidelines potential to become an effective and credible instrument for corporate accountability remains in question. (OECDWatch 2011) http://oecdwatch.org/publications-en/Publication_3675

burden on companies and limiting the information that it provided in annual reports as far as possible to what is relevant for the financial position of companies" (OECD 2006: 28/29). After the financial crisis, the OECD had to admit that existing standards failed to provide the checks and balances that companies need in order to cultivate sound business practices. Nonetheless, the proposed improvements seem to maintain financial and non-financial issues largely isolated[255].

International Organisation for Standardisation (ISO)

The ISO (www.iso.org) is the world largest developer and publisher of standards. It is a non-governmental network comprised of, mainly private, national standard institutes from 162 developing and developed countries. While the organisation is well known for developing standards that deal with technical subjects across a large spectrum of sectors, more recently it has started to address organisational and managerial aspects. The ISO 9000 series, for instance, deals with quality management; ISO 31000 focuses on risk management; ISO 24510 standards concern water supply and treatment services; etc. In the field of environmental management ISO has developed since 1996 its ISO 14000 series (Clapp 1998; Chastka and Balzarova 2008). Those standards are procedural and do not make in-principle statements on environmental protection and reporting. However other tools, such as the UN GC and the ILO core conventions could be used in conjunction with the standards.

In 2004, ISO decided to develop a series on social responsibility, called ISO 26000, seizing the opportunity of entering a 'market' in which there were no important competitors (McKinley 2010). Despite ISO's experience and resources, the task proved being harder than expected. Only in late 2010 the working group produced a rather vague "guidance document" – not for certification, regulatory or contractual purposes – of over 100 pages[256]. ISO 26000 identified six core subjects and issues of corporate social responsibility (see page below) and recommends undertaking internal and external communication. One interesting element in the development of ISO 26000 is the fact that the final version complements all the major existing frameworks, paying particular attention to not replacing them. That might signal that the space for new regulatory frameworks is becoming narrower and regulators have to take into consideration what already exists.

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[255] As the OECD admitted, the financial crisis revealed severe shortcomings in corporate governance. In 2010, the OECD published a set an action plan for improvements in four priority areas: remuneration, risk management, board practices and the exercise of shareholder rights.

[256] Possibly, it was the foreseeable outcome of a boundless consultation process that lasted for over five years and involved 450 experts and 210 observers from 99 member states and 42 liaisons organisations. For more details see http://www.iso.org/iso/iso_26000_project_overview.pdf

Social responsibility: 7 core subjects

* The figures denote the corresponding clause numbers in ISO 26000.

Source: ISO website. ISO 26000 – Social Responsibility [257]

UN ‘Protect, Respect and Remedy’ Framework

On 24th March 2011, Special Representative Prof. John Ruggie issued ‘Guiding Principles on Business and Human Rights’[258], the result of a patient work that started in 2005[259]. The Principles had been endorsed by the UN Human Right Council (UN HRC) on 16 June 2011. They

[257] http://www.iso.org/iso/sr_7_core_subjects.pdf
[258] http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework
[259] An excellent overview of the issue can be found in Radu Mares [Ed.] (2011): *Business and human Rights at Crossroads: The legacy of John Ruggie*.

are based on the state duty to protect, the corporate responsibility to respect and the access to remedies (see Ruggie 2008 and 2009; Mares 2011; Cata Backer 2012)[260]. The EU has strongly supported Ruggie's Framework and there has been a European campaign, organised by the European Coalition for Corporate Justice (ECCJ), asking the EU to fully implement the Principles in its legislation[261].

The framework rests on three pillars:

- The state duty to protect against human rights abuses by third parties, including business;
- The corporate responsibility to respect human rights; and
- Greater access by victims to effective remedy, both judicial and non-judicial.

More specifically, as regards corporate disclosure, a crucial role in operationalising the Framework is played by questions of communication, transparency and reporting. In particular, Principle 3 (UN HRC 2011: 4) states[262] that:

> "In meeting their duty to protect, States should [...] (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts."

Furthermore, Principle 21(UN HRC 2011: 23), as regards the responsibilities of companies, states that:

> *"Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail."*[263]

[260] As maintained by L. C. Backer, this framework is extremely innovative as it "both recognizes and operationalizes emerging governance regimes by combining the traditional focus on the law systems of and between states with the social-systems of non-state actors and the governance effects of policy." (2012: 102) However the Principles have been also criticized by several NGOs for relying too much on voluntary corporate initiatives rather than state regulation http://www.fian.org/news/press-releases/CSOs-respond-to-ruggies-guiding-principles-regarding-human-rights-and-transnational-corporations/pdf
[261] http://www.corporatejustice.org/right-for-people-rules-for.html?lang=en
[262] See also Commentaries to Principle 3 (RHC 2011: 4) on the State's duty to Protect.
[263] In November 2011, the Office of the UN High Commissioner for Human Rights issued the Interpretative Guide to the Guiding Principles in which it is better clarified when and why companies should publish a formal report including information of HR. Notably, the Guide underlines that: "Formal reports may be self-

The publication of the Guidelines Principles on Business and Human Rights is having a relevant impact on the CSR debate, particularly within the EU regulatory arena[264].

United Nation Principles for Responsible Investment (UN PRI)

The PRI is a network of institutional investors backed by the UNEP Finance Initiative and the UN Global Compact (www.unpri.org). It is a set of six voluntary best practice principles aimed to assist investors in integrating environmental, social and corporate governance (ESG) issues into their investment processes. While the PRI is voluntary, all signatories annually have to fill an online questionnaire, the annual Reporting & Assessment survey. Principle 6, in particular, asks each signatory to "report on their activities and progress towards implementing the Principles"[265]. Principle 3 demands signatories to encourage the entities in which they invest to disclose ESG information.

By any means, the growth of this organisation has been impressive signalling that also mainstream investors are now looking at ESG information. Launched by former UN Secretary-General Kofi Annan in 2005, the PRI started with 20 signatories, they became over 640 by 2009 and at the end of 2011 are about 951. In 2009 it represented just over US$20 trillion in assets, in 2011 it reached US$30 trillion in assets. In 2011, the PRI announced that will develop a "comprehensive new reporting framework that addresses the full range and diversity of investor organisations while remaining manageable for signatories to complete." (UN PRI 2011: 1) On 18 October 2011, the EU has announced that the PRI would be a joint recipient, with the International Corporate Governance Network (ICGN) and the European Federation of Financial Analysts (EFFAS), of an EU grant to lead a new programme aimed to build the capacity of investors to integrate ESG information in their investment decisions[266].

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standing reports on the enterprise's human rights performance alone, part of a wider report on non-financial performance covering social and environmental issues or part of an integrated report on both financial and non-financial performance. If the enterprise is able to integrate reporting on human rights into its financial reports, with appropriate metrics, this can start to demonstrate that respecting rights is understood as truly integral to the business and relevant to its bottom line. Reports may be in hard copy, in electronic form or both (and these choices should reflect an awareness of the report's accessibility to its intended readers). They may be produced periodically (annually or more frequently) or when a particular impact arises or both." (UN HRC 2012).

[264] At the EU-level, for instance, as part of the EU CSR Strategy 2011-2014 three business sectors have been selected for the development of human rights guidance. http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/

[265] http://www.unpri.org/principles/

[266] http://www.unpri.org/news/2011_10_18-EC-press-release-FINAL.pdf

The Greenhouse Gas Protocol (GHG Protocol)

The GHG Protocol (http://www.ghgprotocol.org/) is the most widely used international accounting tool for governments and business leaders to understand, quantify, and manage greenhouse gas emissions. The Protocol has been the result of a decade-long partnership between the World Resources Institute (WRI) and the World Business Council for Sustainable Development (WBCSD). It has been developed working with businesses, governments, and environmental groups around the world to build a new generation of credible and effective programs for tackling climate change.

The standard provides an accounting framework for the disclosure of all six GHG covered by the Kyoto Protocol on carbon emissions, The module builds on the experience and knowledge of over 350 leading experts drawn from businesses, NGOs, governments and accounting associations. It has been road-tested by over 30 companies in nine countries. The GHG Protocol Initiative's vision is to harmonize GHG accounting and reporting standards internationally to ensure that different trading schemes and other climate related initiatives adopt consistent approaches to GHG accounting.

Carbon Disclosure Project (CDP) and the Climate Disclosure Standard Board (CDSB)

The Carbon Disclosure Project (CDP) is a global reporting scheme launched in 2000 (www.cdproject.net) with the aim of accelerating solutions for climate change putting relevant climate information at the heart of business, policy and investors decisions.

This network, based in London, currently represents over 7000 institutional investors (they were 551 in 2011 and 1500 in 2008), with a combined US$87 trillion under management[267]. That is more than half of the world's invested capital. It operates in over 60 countries across six continents and actively engages with governments and regulators globally. As the result of CDP engagement, over 4100 organisations – including 80% of the world largest TNCs – started to use CDP to disclose information about their impact on the environment and use of natural resources. CDP and GRI have published a document explaining the similarities and differences between the GRI's Reporting Guidelines and CDP's 2010 Questionnaire, including the Supplier Module. The document outlines

[267] The source of the data is CDP website. Accessed last time on 18 June 2013.

how reporting companies can efficiently use or adapt the same data in both reporting processes (van Wensen *et al.* 2011).

A special project of CDP, the Climate Disclosure Standards Board[268] (CDSB) (http://www.cdsb.net/) is committed to the integration of climate change-related information into corporation's mainstream financial reporting. According to the CDSB website, this project is about linking financial and climate change-related reporting to provide policy-makers and investors with clear, reliable information for robust decision making. Namely, the CDSB developed a global climate change reporting framework that is intended for use by companies making disclosures in, or linked to, their mainstream financial reports. The framework adopts existing standards and practices including the Greenhouse Gas Protocol and International Financial Reporting Standards as well as reflecting developments in regulatory and voluntary reporting and carbon trading rules. It is 'standard-ready' for adoption by regulators contemplating the introduction or development of climate change disclosure practices. Potentially, this framework could be applied to other non-financial issues other than carbon disclosure. At 2013, it covers information about the risks and opportunities that climate change presents to their strategy and seeks to filter out what is of most value to investors in understanding how climate change affects a company's financial performance and condition.

ILO Tri-partite Declaration of Principles concerning Multinational Enterprises and Social Policies

As we have seen in this Thesis, in the 1960s and 1970s, the activities of large enterprises operating across different jurisdictions started provoking intense discussions. One of the most significant attempts to provide a 'corporatist response' to this rising issue had been ILO's Tri-partite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

The ILO Principles outlined in this universal instrument have been first adopted by the Governing Body of the International Labour Office in 1977 and afterward amended in November 2000 and March 2006. They offer guidelines to governments; employers' and workers' organisations

[268] CDSB and CDP are complementary. The former provides an important focus for formalising and advancing the significant progress CDP has made by bringing it into mainstream financial reporting. CDP act as secretariat to the CDSB, advancing CDP's work programme in association with accounting, business, standard setting and regulatory professions.

in areas such as employment, decent conditions of work and life, and impact of the industrial activities[269]. Their provisions are reinforced by international labour Conventions and Recommendations that social partners are urged to apply, to the greatest extent possible, to their strategies and organisations.

There are a large number of other initiatives including those by the World Bank Group and accountancy bodies and standard setters. For example, IFAC (the International Federation of Accountants) has published a sustainability framework. There are also efforts to integrate the various guidelines.

International Integrating Reporting Council (IIRC)

Originally created in 2010 as International Integrating Reporting Committee, the Council is chaired by Prof Mervyn King, charismatic Chairman of the GRI and the key architect of ground-breaking South African CG codes.[270] According to its website, this is "a powerful, international cross section of leaders from the corporate, investment, accounting, securities, regulatory, academic and standard-setting sectors as well as civil society."[271] In effect, the IIRC has created a broad coalition that includes some of the key actors in the world of financial and non-financial reporting[272] The Council has been able to size the momentum for going beyond traditional financial accounting that has emerged after the 2008 global financial crisis.

The IIRC's stated objective is to develop an internationally accepted integrated reporting framework by 2014 to create the foundations for a new reporting model to enable organisations to provide concise communications of how they create value over time. The IIRC refers to this process as "Integrated Reporting". The latter shall be concise, clear, comprehensive and comparable, structured around the organisation's strategic objectives, its governance and business model and integrating both material financial and non-financial information[273].

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[269] http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm

[270] The Committee was originally chaired by Professor Mervyn King. Membership included Hans Hoogervorst (IASB Chairman), Leslie Seidman (FASB Chairperson), Maria Helena Santana, (Chairperson, IOSCO Executive Committee), Göran Tidström (IFAC President), Jim Quigley (former global Chief Executive Officer of Deloitte), and many others. Paul Druckman was appointed IIRC's CEO.

[271] http://www.theiirc.org/about/making-happen/

[272] From 2011 until the end of 2013, the IIRC will be supported by a strengthened secretariat operating through a not-for-profit company established for the purpose under the same name. The company's board gives a fair idea of the leverage of the IIRC in the field of accounting. A part from Professor Mervyn King as Chairman, it sees Leslie Ferrar (Treasurer, Household of the Prince of Wales and the Duchess of Cornwall) and Christy Wood (Chairman of the Board of Governors, International Corporate Governance Network) as Deputy Chairs, together with Ian Ball (Chief Executive, International Federation of Accountants), Ernst Ligteringen (Chief Executive, Global Reporting Initiative), Jessica Fries (Director, The Prince's Accounting for Sustainability Project). Paul Druckman is IIRC's CEO.

[273] http://www.theiirc.org/

The new international framework is meant to bring together financial, environmental he objectives of the IIRC[274] are:

- support the information needs of long-term investors, by showing the broader and longer-term consequences of decision-making
- reflect the interconnections between environmental, social, governance and financial factors in decisions that affect long-term performance and condition, making clear the link between sustainability and economic value
- provide the necessary framework for environmental and social factors to be taken into account systematically in reporting and decision-making
- rebalance performance metrics away from an undue emphasis on short term financial performance
- bring reporting closer to the information used by management to run the business on a day-to-day basis.

Over 90 global businesses and 50 institutional investors are currently directly involved in the IIRC's Pilot Programme[275]. On April 16 2013, a Draft of the International IR Framework has been made publicly available for a consultation period of 90 days.

[274] http://www.theiirc.org/about/

[275] This includes some of the world's largest TNCs, such as Coca-Cola, Clorox, Microsoft, Hyundai, Tata, Unilever, Marks and Spencer, SAP and National Australia Bank.

EU regulation: Between global norm-making and national lawmaking

At the beginning of the 2000s, a series of corporate scandals (Parmalat, Enron, Worldcom) worked as a catalyst for a twofold strand of EU regulation particularly concerned with greater transparency and information provisions on capital and control structures[276] (see Chapter 4). On the one side, transparency became the key element of a string of CG reforms that strengthened minority shareholders' rights; board independence and accountability to shareholders (Vander Bauwhede and Willekens 2008; Horn 2011; Overbeek et al. 2007; Enriques and Volpin 2007). On the other side, non-financial reporting and auditing gradually but steadily emerged as the cornerstone of the EU strategy to promote corporate social and environmental responsibility (Ungericht and Hirt 2010; Lozano *et al.* 2007: 51; van Wensen *et al.* 2011). As I have argued in this study, those parallel strands of regulation are increasingly converging, supported by the emergence of a 'transparency coalition'. They might or not result, in the near future, in the emergence of a more sustainable approach to corporate governance, promoting long-term economic growth and social and environmental accountability (see Sjåfjell 2009; Kruse and Lundbergh 2010; Vitols and Kluge 2011).

Focusing on ESG reporting regulation, a decade of intense debates at the EU level have produced two Green Papers, three Communications, a EU Multi-Stakeholder Forum on CSR and an Alliance with industry and relevant stakeholders[277]. Despite years of struggles and hesitations, several regulatory instruments regarding reporting on sustainability information have been adopted by the EU with implications for all Member States, such as: the Accounts Modernisation Directive; the European Pollutant Release and Transfer Register (PRTR); the Integrated Pollution Prevention and Control Directive (IPPC); the EU Eco-Management and Audit Scheme (EMAS) and the EU Emission Trading System (ETS), which is unique with regard to comparability and transparency. Given the complexity of the matter, several Directorate-Generals (DGs) have been involved in shaping non-financial disclosure policies, principally DG ENV; DG EMPL; DG ENTR; DG MARKT.

In particular, after the onset of the 2008 financial crisis calls for a more comprehensive corporate accountability strategy have gained momentum. As the result, the Commission in its Europe 2020 strategy stressed the need for 'a new agenda that puts people and responsibility first.'

[276] See recommendations made in the final report of the High Level Group of Company Law experts of the European Union (EU) (The "Jaap Winter Report") and in the 2003 EU Action Plan.
[277] http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm

With respect to existing mandatory instruments regarding reporting on sustainability information, European Law makes the following requirements on companies:

Relevant provisions of the Accounting Directives

The Directive 2003/51/EC amended the Accounting Directives[278], introducing in EU Accounting Law an obligation to disclose non-financial information, starting from the reporting year 2005. Namely, Article 46 of the Fourth Accounting Directive states:

> *1.(b) To the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters.* [279]

However, Member States' governments could choose whether to except SMEs from this requirement. Furthermore, in 2006, the Accounting Directives were amended to introduce an obligation for all European listed companies to include a corporate governance statement in their annual report on a comply-or-explain basis (see Article 46a of the Fourth Accounting Directive).
The two regulatory interventions contributed to attract governments and stakeholders attentions to the importance of non-financial disclosure. In effect, many EU Member States developed national policy initiatives that went beyond EU requirements, creating a fragmented regulatory landscape and suggesting the need for further harmonisation at the EU-level. Furthermore, according to the assessment made by the EC services and to a public consultation held by DG MARKT in 2011[280], the current EU regime still fails to deliver high-quality non-financial information (Commission 2013. Therefore, the EC has made a commitment to "present a legislative proposal on transparency of the social and environmental information provided by companies in all sectors" (Commission 2011a).

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[278] Art. 46 of the Directive 78/660/EEC (Fourth Accounting Directive) on the annual accounts of certain types of companies; Art. 36 of the Directive 83/349/EEC on consolidated accounts (Seventh Directive).

[279] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:178:0016:0022:en:PDF

[280] "Several respondents considered that this leads to difficulties in benchmarking between companies. Half of the respondents describe the current regime applicable in their respective jurisdiction as poor or very poor. For many, the current EU legislative framework lacks transparency. Several respondents think this translates into a lack of balance and cohesion of reporting by companies, making it difficult for shareholders and investors to make a reasonable assessment of the extent to which companies take account of CSR in their activities." (EC 2011: 2) http://ec.europa.eu/internal_market/consultations/docs/2010/non-financial_reporting/summary_report_en.pdf

In April 2013, MARKT Commissioner, Michel Barnier, presented a much anticipated legislative proposal for a Directive amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups. According to the EC legislative proposal on non-financial reporting, all European companies with more than 500 employees will have to disclose a statement in their Annual Report including material information relating to, at least, environmental, social, and employee-related matters, respect of human rights, anti-corruption and bribery aspects. Within these areas, the statement will include (i) a description of its policies, (ii) results and (iii) risk-related aspects[281]. A company that does not apply a specific policy in one or more of these areas will be required to explain why this is the case. It is estimated that, on this basis, the new requirement would cover around 18.000 companies in the EU, marking a significant increase in the number of companies reporting.

Furthermore, also in April 2013, the EU Parliament found an agreement on the so-called 'country by country reporting' (CBCR). The latter will require the disclosure of payments to governments on a country and project basis by listed and large non-listed companies with activities in the extractive industry (oil, gas and mining) and loggers of primary forests. As Accounting Professor Prem Sikka (2013) pointed out: "The EU proposals mark the beginning, but CbC is a much broader idea. It supplements the traditional model of publishing profit and loss account, balance sheet and a cash flow statement. These statements relate to the company as a single economic entity and do not provide any disaggregated information. So these statements do not reveal the taxes a company may have paid in each country, or the profits and losses made there."

The European Pollutant Release and Transfer Register (PRTR)

The PRTR Regulation 166/2006/EC, which came into force in February 2006, incorporates the United Nation Economic Commission for Europe (UN-ECE) Protocol on Pollutants Release and Transfer Register under the Aarthus Convention. The Convention, adopted in Kiev during the Ministerial Conference 'Environment for Europe' in 2003 (Council Decision 2006/61/EC), requires operators of facilities specified in Annex I to report on carbon emissions and other specific substances[282]. The E-PRTR is the European-wide register of industrial and non-industrial releases

[281] The EC specified that, in providing this information, may rely on national, EU-based or international frameworks, such as the UN Global Compact, the Guiding Principles on Business and Human Rights implementing the UN "Protect, Respect and Remedy" Framework, the OECD Guidelines for Multinational Enterprises, ISO 26000, the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy, and the Global Reporting Initiative, and disclose which framework they have relied upon.

[282] http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_033/l_03320060204en00010017.pdf

into air, water and land, as well as off-site transfers of waste water and waste including information from point and diffuse sources. This Regulation obliges the European Commission to make this data publicly accessible and to organise it in a way to allow users to search for and identify releases of pollutants. Facility-level data is based on the consent of companies[283].

The Integrated Pollution and Prevention and Control Directive (IPPC)

The 1996 IPPC Directive requires Member States to lay down permit conditions for operators to control, monitor and report emissions from IPPC installations. States also have to provide data on implementation to the Commission. All industrial and agricultural activities with high pollution potential are required to have a permit[284]. Data reported under the IPPC flows into the E-PRTR database.

The European Emission Trading System (ETS)

Launched in 2005 (following Directive 2003/87/EC), the ETS is the first and the largest international scheme for trading of greenhouse gas allowances as it covers some 11 000 power and industrial plants in 30 countries (the EU State Members plus Iceland, Liechtenstein and Norway)[285]. Installations covered range from factories to power stations and combustion plans. In 2012 airlines joined the scheme and other industries are expected to join in 2013 when the scheme will enter its third trading period.

The system has been widely discussed and criticised (see Newell 2008; Newell and Paterson 2010). It is based on a 'cap and trade' principle, meaning that the number of allowances will be reduced over time, in order to gradually reduce emissions. The EU hopes that this scheme will be joined by similar regional initiatives in order to create a global carbon market. Article 14 of the Directive requires the EC to adopt guidelines for the monitoring and reporting of CO2 emissions under the ETS. Reports must be issued in accordance with legally binding Monitoring and Reporting Guidelines (MRG). Firstly MRG were established by the Commission Decision of 29

[283] http://prtr.ec.europa.eu/

[284] When requesting a permit the following information have to be submitted: A description of the installation and the nature and scale of its activities as well as its site conditions; The materials, substances and energy used or generated; The sources of emissions from the installation, and the nature and qualities of foreseeable emissions into each medium, as well as their effects on the environment; The proposed technology and other techniques for preventing or reducing emissions from the installation; Measures the prevention and recovery of waste; Measures planned to monitor emissions; Possible alternative solutions.

[285] http://ec.europa.eu/clima/policies/ets/index_en.htm

January 2004 and then revised in on 18 July 2007 for the second trading period[286]. As it has been pointed out, "It is notable that only companies covered by the ETS are obliged to report on greenhouse emissions. There is currently no EU wide obligation for all enterprises to measure and report greenhouse gas emissions." (EC Workshop n. 5 on ESG disclosure 2010: 5)

On a voluntary basis, the **EU Eco-Management and Audit Scheme (EMAS)** is a management tool that has been established in 1995 and is aimed to help organisations to make a more effective use of resources and optimise their production strategies. It was recently revised[287] and, starting from January 2010, rules on reporting through KPIs were strengthened. Article 18 of the revised regulation (EC No. 1221/2009 of the European Parliament) recommends that "in order to ensure relevance and comparability of information, reporting on environmental performances should be based on generic and sector-specific KPIs, which should include: energy efficiency; water; waste; biodiversity and emissions.

On 10 April 2013, the EC has adopted the Single Market for Green Products package. As part of this package, DG ENV has developed, together with the EC's Join Research Centre, the **Organization Environmental Footprint (OEF)**[288]. This is a methodology for calculating the environmental performance of an organisation that can be used for corporate assessing, reporting, benchmarking. As stated in the Communication *Building the Single Market for Green Products* and the Commission Recommendation on the use of the Product Environmental Footprint (PEF) and OEF methods, the EC promotes the voluntary application of this framework in policies and by private actors, including companies.

CSA regulatory profile of key selected countries

Governments played a key role in the corporate accountability debate and in the development of sustainability reporting (Lozano *et al.* 2008; Albareda *et al.* 2007). However, their regulatory engagement has been cyclical rather than progressive, with a more active role in the 1970s and the 2000s than in the 1980s and 1990s (see Ireland and Pillay 2010 and Chapter 3). Even during the last decade, the re-emergence of an EU policy debate on extra-financial disclosure has been a recursive

[286] The revised Guidelines have been aligned to common industrial practices regarding monitoring and reporting and made more cost effective (especially for smaller emitters < 25.000 tonnes CO2). Furthermore they have been aligned with reports made by Member States. Lastly, verification procedures of monitoring and reporting have been strengthened.
[287] http://ec.europa.eu/environment/emas/documents/legislative_en.htm
[288] http://ec.europa.eu/environment/eussd/smgp/organisation_footprint.htm

rather than linear. In particular, around 2005-2006, some EU governments loosened their requirements on sustainability reporting, on the basis of the widespread credo that such obligations could represent the imposition of an unnecessary burden on companies – hampering their competitiveness – and that a 'voluntary' approach would have been more appropriate[289]. However, over the last years, after the onset of the global financial crisis, a trend is becoming visible towards more governments starting to make sustainability reporting mandatory.

The role of governments is not confined to the introduction of regulation and legislation, crucially they are promoting cooperation internally, with different stakeholders groups, and externally, advancing policy coherence between various reporting and disclosure initiatives. They also are developing guidance on best practices to their business community and creating instrument to recognise and promote benchmark (Dutch Transparency Benchmark) and are partners in the development of initiatives such as the GRI (van Wensel et al. 2011).

France

Traditionally, the French system of CGR is characterised by little dispersion of ownership and a powerful role of the state in the economy, termed *dirigisme*. Even listed companies are under state influence, in particular financial institutions, banks and insurance companies, are either state-owned or controlled. Overall, the system is clearly closer to the insider, rather than the outsider model of CG (Solomon 2007: 204). In 1989, 57 people accounted for one-quarter of all the board seats of the largest 100 listed companies (Monks and Minow 2001), a clear indication of strong managerial control.

In line with this background, the French approach to corporate social and environmental accountability has always been a foremost example of legislation-driven regulation (see Harribey 2009). As we already mentioned in Chapter 3, the first law on social reporting appeared in France in 1977 when the President of the Republic requested a Parliamentary vote on obliging all firms with more than 300 employees to issue a social review[290] (*bilan social*) based on over 100 performance

[289] See UN GC *The importance of Voluntarism*; see also OECD 2006: 28/29

[290] The French *bilan social* is often used as the translation for the English 'sustainability reporting'. However, the word 'social' has a different meaning in the two languages and this difference has not only lexical consequences (see Harribey 2009: 38). The French 'social' has a restricted meaning compared to the same English word and concerns only the social dimension of sustainability. It is closely related with the social welfare in general and in particular with issues of employment relations. This created further problems to French TUs to accept the very notion of voluntary CSR, seen as detrimental for workers' rights. A similar remark might also be relevant for the Italian case, in which social and environmental reporting is generally translated as *bilancio sociale*.

indicators[291] (Gond and Igalens 2012). However, it was mainly after 2000 that a substantial body of CSR legislation emerged. In 2001, with Article 116 of the "Loi sur les Nouvelle Régulations Economiques" (NRE), France was the first European country to adopt mandatory non-financial disclosure for publicly-listed companies[292]. Companies have to report against a set list of 40 social and sustainability indicators, largely inspired by the GRI KPIs. The indicators include those related to human resources, community issues and engagement, labour standards and key health and safety and environmental issues[293].

The NER was enlarged a first time through the Grenelle I Act (Article 53, 9 August 2009[294]), a law primarily aimed to respond to climate change and new ecologic challenges. Companies with more than 500 employees in high-emitting sectors have to publish their amount of carbon emissions by 1st January 2011 at the latest, with an update at least every five years. Article 83 of the Grenelle II Act (12 July 2010[295]) further enlarged the NER. All companies of 500 employees and more have to present a social and environmental report (around 2500 companies). Subsidiaries controlled by parent companies are also required to disclose information. The Law does not specify the extent or quality of the information to be published, and no enforcement mechanism is currently active when companies do not comply, which makes it a soft law (van Wensen *et al.* 2011: 59). Provisions for the implementation of these laws were adopted only in 2012, after a long *iter*. Notably the implementation decree increases the amount of information required – taking into account global and international developments (e.g. ISO 26000; UN Guiding Principles on Business and Human Rights). It also introduces a 'comply or explain' approach. Lastly, the decree foresees that the report must be verified by an accredited independent third party. France host also a number of voluntary initiatives such as the ADEME Carbon footprint

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[291] Décret d'application de la loi 77-769 sur le bilan social du 12 July 1977.

[292] Loi n° 2001-420 15 May 2001relative aux nouvelles régulations économiques.

[293] The text specifying the content, clauses and methods of disclosure turned out very demanding, was subjected to 10 months of consultations between TUs, corporate representatives and NGOs. Finally, it was made public in February 2002 but was initially generally negatively perceived by companies (KPMG 2010: 79). In 2003 the French government instructed a critical review of how companies were applying the Article 116 of the NER (ORSE 2004). The assessment, based on reports of the 40 largest companies, concluded that companies and their stakeholders had accepted the new law. Nearly half of the companies disclosed in a separated report and the other half adopted an integrated report. The definition of report boundaries (in particular concerning the disclosure on their international operations) proved to be one of the major difficulties. Very few companies provided information on their suppliers and, when they do, it mostly relate only to health and safety issues. Some stakeholders complained that the law was too limited in its application and impact. However, more recent studies already showed that reporting obligations is being increasingly respected and appears more professional (Alpha Etudes 2006). In January 2010 a new evaluation of the NER (ORSE 2010) affirmed that the 2001 law had functioned as a catalyst for companies integrating environmental, social and economic issues and driven the creation of CSR and sustainability expertise.

[294] http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020949548

[295] http:// www.senat.fr/leg/pjl08-553.htlm

methodology, issued in 2002 by the Environment and Energy Conservation Agency and which is compliant with the ISO 14064 standard and related to the EU ETS[296].

Overall, the French regime of sustainability disclosure is one of the most structured and developed and, according to a recent survey (KPMG 2011) it is greatly improving, jumping in three years from 59 to 94 percent of companies reporting. However, the country is experiencing both the advantages and disadvantages of this top-down approach. This accounting practice is well-established, based on a detailed and legislative-driven approach and it is included in a substantive body of corporate social and environmental regulation. This regime supported the early emergence of what is nowadays one of the strongest European markets for SRI (see Vigeo 2011) and an innovative and lively system of sustainability rating and assurance. Reporting is the norm in France. However, the worldwide trend is towards a more light-touch, bottom-up approach based on general principles and France risks to be isolated in its prescriptive approach. Furthermore, most French companies take responsibility and sustainability into account "simply because they have no choice." (Harribey 2009: 48) In other words, it could be argued that corporations have at length perceived sustainability reporting more as an obligation than as an opportunity to be embraced. Nowadays, France strongly supports the emergence of a mandatory European framework for social and environmental indicators that would harmonise national differences[297].

Denmark

During the last few years, the Danish CGR model has been under pressure for promoting shareholder value and further integration of international capital markets, likewise many other countries in Scandinavia and Continental Europe. As described by Rose and Mejer (2003), the Danish CG model, embodied in the Corporate Act 1973, explicitly protects the rights of a broad group of stakeholders, including employees, creditors and the community as a whole. Foundations, run on a non-profit basis, are the traditional cornerstones of this model and control a substantial portion of the Copenhagen Stock Exchange (Solomon 2007: 202). Danish companies present typical elements of the 'stakeholder model': a dual voting rights system and a supervisory board, a third of which, in large entities, is elected by employees. However, on the basis of OECD Principles for Corporate Governance and under the pressure of bodies such as the Danish Corporate

[296] See www.ademe.fr

[297] 5th EC Workshop on ESG disclosure. 29 January 2010

Governance Network, recent CG reforms have pushed the system further towards the outsider-oriented model (Norby Committee Report 2001).

During the last years Denmark has been at the forefront in the emerging regulation of sustainability disclosure, in particular after formulating its 2009 law on CSR reporting. Actually, the Danish Government first introduced mandatory information on environmental disclosure in 1995 (Green Accounting Act). Thereafter, Denmark was one of the first European countries to include part of the EC's recommendations on reporting into legislation. The legal provision was included in the Financial Statement Act with the aim of making Danish business internationally renewed for its leadership in sustainable growth. Lastly, in 2009, Section 99a was added to the Act: companies have to provide information on their policies for CSR and SRI[298].

In Section 99 of the Financial Statement Act, the Danish Government explicitly attempted to adopt a 'smart' regulatory approach, in order to overcome the voluntary versus mandatory debate that characterised non-financial disclosure debates.

Firstly, it tried to conciliate a voluntary approach to CSR with the wish to promote ESG disclosure by legislation, opting for a comply-or-explain approach. CSR as such does not become mandatory; it is only mandatory to be transparent about the choices an enterprise makes in this regard. However, business without policies in this respect is now obliged to explain this position.

Secondly, it adopted a principle-based approach, which does not set out detailed requirements but only focuses on the basic, fundamental principles. Namely: what is the company policy? Does it respect international principles? How is the policy implemented and what are the results?

Thirdly, Denmark opted for not developing its own standards but to refer to and encourage the use of existing international ones such as the UN Global Compact (UNGC) or the GRI.

Since 2010, this comply-or-explain requirement applies to approximately 1.100 large companies with assets of more than 19 million Euro; revenues of more than Euros 38 million and more than 250 employees. Furthermore, it applies to all listed companies and state-owned companies. Moreover it applies to institutional investors, investment associations and listed financial companies following an executive order issued by the Danish Financial Supervisory Authority (FSA).

Sustainability reporting is only one element of a broader CSR action plan that includes guidance for SMEs, encouraging companies to sign up to the UNGC or the Climate Compass. Most

[298] According to a recent impact assessment carried out by the Danish Commerce and Company Agency (2010) the regulation succeeded in increasing sustainability reporting. The number of Danish signatories of the UNGC has increased from 30 to 160 in two years; 97% of the companies provide information on their website; 43% of companies had never accounted for sustainability information before in their annual report.

of the tools and instruments are web-based or have been elaborated in collaboration with stakeholder groups. While the Danish regulation has been generally met with interest and seen as innovative, the 'comply-or-explain' mechanism has been criticized by social stakeholders, such as NGOs and TUs, because reporting stay voluntary and companies are not obliged to publish certain information. Amnesty International, for instance, has pointed out that companies are not required to report on thorough due diligence or on improvement potential related to their CSR policies[299].

United Kingdom

The UK is generally acknowledged as one of the world leaders in CG policies. In part as a reaction to corporate scandals, such as the Maxwell case in 1991 (Stiles and Taylor 1993), and in part "as a result of introspection by boards and shareholders following economic decline in the early 1990s" (Solomon 2007: 50), a growing interest in CG issues emerged within the boardroom, among institutional investors and in the government. A first remarkable result of this attention has been the publication of the Cadbury Report (1992), a ground-breaking code that produced a far-reaching agenda for reforms not only in the UK but all over the world. This report formalised, for the first time, CG best practice in a written document, making explicit what was implicit in many UK company practice. As the British economy is characterised by strong ownership dispersion and expanding institutional investors' control ('money concept of control'), the reforms have been largely centred on the agency problem of aligning managers' interests with those of their shareholders. Therefore UK CG codes stress the importance of transparency and disclosure to investors and shareholders. However, during the last decade, attempts have been undertaken to discharge a broader corporate accountability agenda, in particular through environmental and social disclosure.

As already mentioned in Chapter 3, during the 1970s workers' rights were recognised as needing government attention, as a consequence during this period a number of laws were passed aimed at strengthening employees' protection (Idowu and Towler 2004). During the Thatcher era, however, emerged a modest approach to CSR and proposals of mandatory social reporting regulation lost momentum (Ireland and Pillay 2010). The historical victory obtained by Labour Party in 1997 created great expectations for fundamental reforms that would take into consideration broader corporate responsibilities. In effect in 2000 the first drafts of the Modern Company Law Review (Modern Company Law 2000; Modernising Company Law 2002) appeared to extend

[299] Amnesty International. Email of 5 July 2010 from Amnesty International-Danish Section/Sanne Borges. In Van Wensen et al. (2011: 163).

company law to tackle social, ethical and environmental issues broadening directors' responsibilities. However, in the final draft of the Review (see UK Parliament 2002, Section 3.3) any references to stakeholders accountability was subordinated to a materiality constraint. Managers would not be liable for managing or disclosing social and environmental information unless they consider them as 'material' and, as pointed out by Jill Solomon, "materiality is such an intangible, abstract notion that it would in practice be extremely difficult to prosecute a director on a point of social and environmental materiality." (2007: 233) The final draft, however, recommended the introduction of mandatory social and environmental disclosure through the form of a Operating and Financial Review (OFR), a narrative, non-financial section of the company annual report (see Villiers 2006). After over three years of public debates, the bill was withdrawn at the very last moment by Chancellor Gordon Brown, on the ground of avoiding corporate red tape burden (Grant 2006: 1), and replaced with a more modest Business Review, which met only the minimum European requirements[300]. Eventually a mandatory OFR was introduced for government entities only[301].

After the onset of the financial crises, the role of business in society, in particular of the financial sector, was thrown once again into question (see Turner et al. 2009; Inmann 2009). New pressures for corporate social and environmental accountability led to a number of regulatory initiatives, particularly in the areas of corporate governance and climate change. In particular, the government has reviewed the UK Corporate Governance Code, for listed companies, (formerly the Combined Code) and the UK Stewardship Code, for institutional investors[302]. The two Codes are complementary and are both based on 'comply-or-explain' regulatory approach, although there have been discussion whether to move towards mandatory requirements. Furthermore, in August 2010, the UK Government started a consultation[303] on narrative reporting to identify ways to reinstate the OFR and further improving corporate accountability and transparency. As the result, a draft regulation, which is due to come into force on the 1st October 2013, was issued. This would simplify existing reporting requirements and mandate listed companies to issue, a strategic report,

[300] Grant, P. (2006) "OFR Revival Hopes Sparked by International Standard", *AccountancyAge*, 12 January, p.1. http://webarchive.nationalarchives.gov.uk/+/berr.gov.uk/policies/business-law/accounting-auditing-reporting/business-review

[301] The British Company Act 2006

[302] On July 2010, the Financial Reporting Council (FRC) issued the Stewardship Code, longer-term investment strategies. The UK CG Code aimed to encourage board's effectiveness, remuneration, accountability and shareholders' relations. Some of the provision (summarised in Schedule B) require companies to disclose in order to comply with the Code. A new edition of the Code has been issued on September 2012.

[303] http://www.bis.gov.uk/assets/biscore/business-law/docs/n/10-1057-future-narrative-reporting-consultation

introducing the disclosure of information on human rights policies[304]. Furthermore, in the area of corporate governance reporting, it has also been proposed a new draft legislation that would revise the requirements for reporting on executives' remuneration. The latter has been designed to strengthen shareholders' control and corporate accountability. It shall contain two areas: a policy report – setting out companies' remuneration policies – and an annual report – on how the policy was implemented[305].

The UK is also increasingly committed to support carbon (GHG) disclosure. The CRC Energy Efficiency Scheme issued in 2010 by the UK Environment Agency requires companies that use more than 6 000 MWh per annum, to measure and report on an annual basis all emissions related to energy use and purchase allowances[306]. This requirement is likely to concern about 5000 medium and large undertakings, many of them lacking any experience in non-financial reporting. The UK is also hosting a number of voluntary regulatory initiatives that would be impossible to summarise in the context of this review. For instance, the Department for Environmental, Food & Rural Affairs (DEFRA) issued in 2006 its Environmental Reporting Guidelines, designed to assist companies with new narrative reporting requirements relating to environmental matters.

Overall, the debate on social and environmental disclosure in the UK has been, somehow, a model for many other countries, particularly in Europe. On the one hand, it shows the difficulties of reconciling shareholder value maximisation with broader social and environmental commitments. Despite the prominence of CSR policies and debates, recent corporate and financial scandals seem to confirm that there is a fundamental contradiction between absolute shareholder value maximisation and the creation of 'shared value'. More specifically, according to the information emerged at the 2010 EC Workshop on ESG disclosure, the quality of non-financial disclosure under the current UK regulatory regime is still poor (see also Adams and Evans 2004 and Solomon 2006). From my interviews, it also emerged a growing isolation of the UK government from Continental Europe debates on CSR[307]. On the other hand, it is in the UK that extremely successful initiatives (CDP, A4S, Forum for the Future, AccountAbility) have emerged and the country still exerts an extraordinary influence on the rest of the world. Namely, the UK seems to anticipate new regulatory trends concerning institutional investors (Stewardship Code); remuneration and carbon disclosure (CRC Energy Efficiency Scheme).

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[304] http://www.bis.gov.uk/assets/BISCore/business-law/docs/F/12-979-future-of-narrative-reporting-new-structure.pdf
[305] http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/Consultations/directors-pay-revised-remuneration-reporting-regulations?cat=closedawaitingresponse
[306] http://www.decc.gov.uk/en/content/cms/emissions/crc_efficiency/crc_efficiency.aspx
[307] Interview # 18 (08.08.2012)

Other European countries

The policy adopted by the **Netherlands** on social and environmental disclosure legally ensures compliance with the European Accounts Modernisation Directive by the 2007 Financial Supervision Act, therefore all Dutch listed companies and institutional investors are required to publicly report, or explain why they do not. The Dutch approach also relies on the instrument of dynamic reference to national "Transparency Benchmark" scheme maintained[308]. The benchmark is run by the government but endorsed and kept up to date by consulted stakeholders, investors and companies, to ensure broad support and compliance. It publicly compares and rates the transparency performance of participating companies on a yearly basis. Furthermore, the scheme is kept updated to take account of new issues, and enables participating companies and stakeholders to make national and international comparisons between companies, showing in which areas transparency can be improved. Overall, the Dutch Accounting Standards Board (DASB) provides national guidance for reporting and the Dutch Institute for Registered Accountants (NIVRA) provides guidance for assurance[309].

In **Germany**, the European Modernisation Directive was transposed through the 2005 Accounting Law Reform (BilReG), which led to amendments of the German Commercial Code's §§ 289 and 315. The requirements are substantiated in the German Accounting Standard No. 15, published by the German Accounting Standard Board. The standard requires all German parent companies to publish a group management report in accordance with § 315. According to a recent survey, almost all German 100 largest companies publish a management report that includes non-financial KPIs in their annual report (KPMG *et al.* 2010: 47). In recent years, the Committee on non-financial of the German Society of Investment Professionals (DVFA) has been instrumental in mainstreaming ESG disclosure elaborating a very influent list of KPIs for ESG disclosure[310] that has been endorsed by the European Federation of Financial Analysts (see EFFAS 2010). In 2011, the German Council for Sustainable Development has published the German Sustainability Code[311] and recommended that political and business leaders use it extensively as a voluntary instrument. The Code was sent to all the EC Commissioners involved in the creation of new legislative proposal

[308] http://www.transparantiebenchmark.nl/
[309] http://www.reportingcsr.org/_the_netherlands-p-48.html
[310] http://www.dvfa.de/files/die_dvfa/kommissionen/non_financials/application/pdf/KPIs_for_ESG_Exposure_Draft.pdf
[311] http://www.nachhaltigkeitsrat.de/en/projects/projects-of-the-council/deutscher-nachhaltigkeitskodex/

on non-financial disclosure and presented as "a specific German contribution to the ongoing shaping of opinions in the EU Commission"[312].

In **Spain** the public debate on social and environmental began in 2002, when the Socialist Party (PSOE), at the time at the opposition, proposed a draft law on CSR. The Spanish case shares some similarities with the UK's. In fact once the PSOE won the elections, in 2004, there were great expectations for radical reforms of company law introducing CSR requirements. Only in 2011, after a long consultation process, the Sustainable Economic Law (LES) was approved. Article 36 encourages listed companies to disclose non-financial reports and specifies that they should always state whether information have been audited or not. However, the outcome has been criticised as too modest compared to what had been proposed by the PSOE in 2002 (Archel *et al.* 2011).

In 2007, **Sweden** introduced, as the first country in the world, a law that mandates state-owned companies to publish sustainability reports. The regulation is on a 'comply-or-explain' basis, meaning that companies can still deviate from reporting if a clear explanation is provided. The quality of sustainability reports has to be independently assured and companies have to report in accordance with the GRI Framework. According to a number of surveys (Borglund *et al.* 2010) following the introduction of this requirement, the percentage of sustainability reports raised sharply not only for state-owned companies (93% in 2009) but also private listed companies.

Other non-European countries

In part due to its apartheid history, in which a major role was played by international initiatives of transparency and disinvestment[313], **South Africa** had, from an early stage, a lively debate on corporate accountability. There are a number of legal provisions that are related with disclosure and assurance of non-financial information. For instance, the Employment Equity Act (1998); National Black Economic Empowerment Act (2003); Municipal Finance Management Act (2003); Mineral Resources and Petroleum Bill (2009) and the Consumer Protection Bill (2009) are examples of this trend. However, the South African approach to sustainability disclosure has been shaped in particular through an ongoing process of non-legislative CG reforms. Prof. Mervyn E. King, Chairman of both the GRI and the IIRC, has been the architect of three codes of good CG that have profoundly innovated and influenced the field. The second King Code on Corporate Governance (2002), in particular, formalises CG requirements and states that "every company should report at least annually on the nature and extent of its social, transformation, ethical, safety,

[312] http://www.nachhaltigkeitsrat.de/uploads/media/RNE_Recommendation_German_Sustainability_Code.pdf

[313] Sullivan Principles in the US; disinvestment in South African mines companies

health and environmental management policies and practices". The third King Code of Governance Principles for South Africa (King III), which became effective on 1 March 2010, emphasises the importance of integrated reporting[314] and highlights areas such as sustainability, risk management and IT governance. Another important regulatory mechanism that has been implemented in South Africa is the Johannesburg Stock Exchange (JSE) Socially Responsible Investment Index (SRI Index). This SRI Index, introduced in 2004, was the first one in an emerging market and the first ever to be launched by a security exchange. It encourages companies to report publicly on sustainability-related issues.

The **United States** have a long tradition of advocacy for non-financial reports that dates back to the 1950s and 1960s. The US has developed an 'explicit', shareholder-oriented approach to CSR based on the expansion of fiduciary duties, that differs from the 'implicit', stakeholder European tradition (Matten and Moon 2008; Marens 2011). NFR started to be regulated in the late 1980s with the so called 'right-to-know' legislation. There are three important bodies that have shaped the field: the Coalition for Environmentally Responsible Economies (CERES), founded in 1988 by the Social Investment Forum together with a number of environmental lobby groups; the Security and Exchange Commission (SEC) authorized by US security law to require the disclosure of information that is "necessary or appropriated in the public interest or for the protection of investors" (Securities Act, Section 2b); the Environmental Protection Agency (EPA) responsible for a number of non-financial reporting requirements. Generally, it can be stated that the SEC disclosure requirements concern all material information (information that investors would regard as significant when buying shares), and can also apply to information that is financially insignificant (see KPMG et al. 2010: 71). The two most important disclosure requirements are the SEC Regulations (republished in 2008), and the Sarbanes-Oxley Act of 2002. The former has created an extensive and highly integrated set of regulations, instructions, interpretative and explanatory releases. The latter emerged after several corporate scandals, integrating requirements for CG into disclosure requirements. It has been integrated into the SEC regulations and applies to all listed companies, including foreign ones. The EPA has developed a rule on Mandatory Greenhouse Gas reporting which still needs to be enacted[315]. The proposed rule would cause carbon intensive industries in the US to measure and report on the carbon dioxide emissions inherent in

[314] "Sustainability reporting and disclosure should be integrated with the company's financial reporting… [t]he board should ensure that the positive and negative impact of the company's operations and plans to improve the positives and eradicate or ameliorate the negative in the financial year ahead are conveyed in the integrated report (King III, section 9.2: 49). The report can be retrieved at http://www.library.up.ac.za/law/docs/king111report.pdf

[315] http://www.epa.gov/climatechange/emissions/ghgrulemaking.html

their operations. However, there are many US States that are currently suing EPA to stop it from issuing rules controlling greenhouse gas emissions until it re-examines whether the pollution harms human health (Gardner 2010). Relevant developments in sustainability disclosure include the 2009 shift of the SEC to integrate information on the financial risks associated with environmental, human rights and other social issues facing companies. It also includes the release, at the beginning of 2010, of interpretative guidance on how to disclose climate change risks (van Wensen *et al.* 2011). The Dodd Frank Act, passed in 2010, is still at the rulemaking stage but it is likely to produce relevant decision as regards transparency[316]. In addition, The White House Executive Order 13514 requires all US public agencies and department to prepare a report on their sustainability performance and progress.

India has emerged as an economic giant and, over the last five years, large Indian companies are gradually recognising the significance of respecting voluntary international reporting standards. For almost all of them, the GRI guidelines are the reference point against which report. (KPMG *et al.* 2010: 80) Although starting from a very low point, transparency and disclosure is slowly improving and there are a number of organisations active for promoting SRI and reporting, such as the Confederation of Indian Industry (CII) or the IFC Sustainable Investment (EMDP 2009). Many important initiatives have contributed to mobilise energies for non-financial disclosure (KPMG et al. 2013). For instance, in 2009, the Ministry of Corporate Affairs (MCA) released a 'Voluntary Corporate Social Responsibility Guidelines'. In 2011, they were revised and strengthened when the MCA launched the National Voluntary Guidelines (NVG) on Social, Environmental and Economical responsibilities of Business. In December 2012[317], the Parliament has passed a new Company Bill – the first of this kind – that mandates companies to design and implement CSR policies and to spend 2 percent of the previous three years' average net profit on CSR projects and activities. In 2013, new guidelines for public-owned companies were developed to internalise the practice of sustainability reporting. in 2008, Standard and Poor's CRISIL and KLD Research & Analytics launched the S&P ESG India Index, which is incorporating listed companies that have a string commitment to meeting ESG standards Of the 500-strong list of companies of the National Stock Exchange, 50 met some ESG criteria and were drawn in the new financial scheme. More recently, the SIBI (Securities and Exchange Board of India) mandated that,

[316] The rules of the Dodd Frank Act feature specialized disclosure provisions, including Section 1502, requiring (some) annual report issuers to disclose their connections with conflict minerals, and to disclose whether their minerals originated from DRC (Democratic Republic of Congo) or adjoining countries. The rule requires also a report that includes a description of the measures taken to exercise due diligence on the source and 'chain of custody' of the minerals. The latter has to be independently audited and certified.
[317] Bill No. 121-C of 2011 2012. New Delhi: Lok Sabha.

starting from March 2012, the top 100 listed companies had to submit a Business Responsibility Report (BRRs) as part of their annual reports.

In 2004, in **China** were published only six non-financial reports, in 2009 their number raised to over 600 (KPMG *et al.* 2010: 78). The rapid economic development of the country has come at significant environmental cost and has produced social tensions over wealth redistribution. Therefore, when in 2005 Jiao Bao announced that creating a 'harmonious society' should be one of the three guiding principle of Chinese development, the government started to explore what conducted CSR. Reporting was recognised as having a major role in stimulating the development of socially and environmentally responsible management strategies. In 2008, the SASAC (State-owned Assets Supervision and Administration Commission of the State Council) mandated all companies under central government control to commit themselves to sustainable development and fulfil their corporate social responsibilities. CSR information reporting was one of a number of aspects of this comprehensive directive that influenced also the non-state owned companies. Furthermore, the sharp increase in the number of companies reporting has been significantly driven by changes in the listing requirements of the Shanghai Stock Exchange[318], at least partly stimulated by the Environmental Information Disclosure Act 2007[319]. Overall, "China represents nowadays one of the most dynamic countries in the world for sustainability reporting with many companies using it as an entry point for starting an internal process of professionalising and systematising their sustainability management system." (KPMG *et al.* 2010: 79)

[318] Guidelines on Environmental Information Disclosure by Companies Listed on the Shanghai Stock Exchange (2008) http://www.sse.com.cn/sseportal/ps/zhs/ssnss/dqbgpl.shtml
[319] www.sepa.gov.cn

Annex II: The development of CSA regulation and policy in the EU regulatory arena.

[1993 – 2001] Managing change. The collapse of the European 'corporatist coalition'

1993

- June. EC President Delors' appeal to business to address Europe's structural problems of unemployment, restructuration and social exclusion.

1994

- Some pioneering companies respond to the Delors' appeal (Glaverbel, Levis, BP, Accor, Philips, Bayer, BT, the London Enterprise Agency, the Manifeste Français des Entreprises contre l'Exclusion and Uniapac). Venturini and Noterdaeme (DG EMPL) coordinate and define principles, areas of action and examples for business involvement against social exclusion in Europe.

1995

- January. 20 business leaders and Jacques Delors adopt and announce the Business Declaration against Social Exclusion.

1996

- March. The European Business Network for Social Cohesion is established, with the financial support of the EC. [It will become CSR Europe in 2000].

1998

- DG EMPL report on "Social Labels: Tools for Ethical Trade?" by Simon Zadek
- October. The EBNSC together with President Santer launches the European online research centre on CSR.

1999

- December. The Helsinki European Council. The European Commission is invited to draft a long-term sustainable development strategy.
- At the European Day - "Business & Government Joining Forces for Employment and Social Cohesion", the forthcoming Portuguese EU Presidency invites Etienne Davignon (CSR Europe) and the Copenhagen Centre for CSR to provide input into the Lisbon European Summit to be held in March 2000. [President of the EC Prodi (centre-left) and EMPL Commissioner Diamantopoulou (centre-left) provide strong backing for this Portuguese invitation].

2000

- 8 March. Etienne Davignon and some top business leaders meeting with Portuguese Prime Minister Guterres (centre-left). They present plans for promoting CSR signed by twenty CEOs addressing all EU Heads of State and Governments.

- 23-24 March. The Lisbon European Council puts CSR at the heart of the Lisbon Agenda and 15 Heads of States make an appeal to business' sense of corporate responsibility.

[2001 – 2008] 'Voluntary' CSR, corporate governance reforms and the emergence of a European 'transparency coalition'

2001

- Belgian EU Presidency Conference on CSR. In the closing debate of the Belgian EU Presidency Conference on CSR. Etienne Davignon responds to ETUC's request to negotiate a European Directive on CSR Transparency with the proposal to set up a EMSF on CSR.
- May. COM(2001) 264 final, 'A sustainable Europe for a better world: a European Union strategy for sustainable development'.
- 15 May. France. The NRE Act introduces mandatory social and environmental reporting.
- June. The Göteborg European Council agreed on a strategy for sustainable development and added an environmental dimension to the Lisbon process.
- July. COM(2001) 366 final, Green Paper 'Promoting a European framework for corporate social responsibility'. [For the first time the word CSR enters EU-level policies discourse]
- November. RTI issues a position paper on CSR in response to the EU Green Paper
- 31 December – deadline for CSR Green Paper Consultation papers.
- The German Government appoints the Council for Sustainable Development.

2002

- July. COM(2002) 347 final, 'Communication from the Commission concerning corporate social responsibility: a business contribution to sustainable development'.
- October. European Multi-Stakeholder Forum (EMSF) on CSR is launched.
- Launch of the European Academy of Business in Society by CSR Europe and The Copenhagen Centre [since 2010 it becomes EABIS - The Academy of Business in Society].
- October. Begins of the EMSF on CSR, hosted by the European Commission.
- Viscount Etienne Davignon, Mads Ovlisen (Chair TCC and Novo Nordisk) and European Commissioner Philippe Busquin (centre-left) set the ground for new European support for CSR research through the European Research Framework Programme.

2003

- June. The Modernisation Directive [Directive 2003/51/EC] introduces social and environmental reporting in EU Law.
- The Sub-Commission of the UN Commission on Human Rights approves the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (UN Norms).
- December. COM(2003) 829 final, 'The World Summit on Sustainable Development one year on: implementing our commitments'.

2004

- The UN Norms are blocked. Some states and the business community insist for a voluntary approach to CSR.
- June. The EMSF on CSR, deeply divided between voluntary and mandatory approach to CSR, produces its final report. This is a modest document which will never signed by the NGOs.
- After the end of the EMSF, there's a stalemate. DG ENTR and DG EMPL have the draft of the new Communication ready. However, they decide to wait until the new Commission comes into office.
- August 2004. Public consultation on sustainable development policy.
- November. The Barroso Commission takes office.

2005

- February. COM(2005) 37 final, 'The 2005 review of the EU Sustainable Development Strategy: initial stocktaking and future orientations'.
- The new Cabinet of the EC rejects the draft CSR Communication prepared by DG EMPL and DG ENTR.
- 3-4 March. CSR Europe celebrates its 10th anniversary. At this occasion, the Chair of the Board of CSR Europe presents the document *A European Roadmap for Businesses - Towards a Competitive and Sustainable Enterprise*. As a response, the new EC President, José Manuel Barroso, offers businesses a new partnership.
- Commissioners Günter Verheugen (ENTR) and Vladimir Spidla (EMPL) invite Etienne Davignon and CSR Europe's member companies to elaborate on this partnership.
- June. COM(2005) 218 final, European Commission 'Draft declaration on guiding principles for sustainable development'.
- The UN Norms are finally abandoned. Harvard Professor John Ruggie is appointed as the UN Special Representative for Business and Human Rights
- June. European Council adopts a set of guiding principles for sustainable development.
- November. Gordon Brown announces the UK OFR would be withdrawn.
- December. COM(2005) 658 final, 'On the review of the Sustainable Development Strategy. A platform for action'.

2006

- March. COM(2006) 136 final, 'Implementing the partnership for growth and jobs: making Europe a pole of excellence on corporate social responsibility'.
- March. Launch of the European Alliance for CSR, led by CSR Europe.

- 31 May. Publication of the Gartner Business Value Model, which highlights the measurement gap between book and market value.
- June. Directive 2006/46/EC, amending the Accounting Directives, requires that listed companies publish an annual corporate governance statement
- June. Renewed sustainable development strategy adopted by European Council.
- December. European Parliament (Employment and Social Affairs Committee) drafts and tables a non-legislative report on CSR.

2007

- 7 February. First high level meeting of the Alliance for CSR
- 17 March. EU Parliament Resolution on CSR: a new partnership. Rapporteur MEP Richard Howitt.
- June 2007 – Nov 2008: Laboratory meetings on "CSR and Market valuation of financial and non-financial performance" between managers and investors as part of as part of the European Alliance for CSR
- October. First Progress Report and Staff Working Paper on sustainable development.
- October. In Vienna, the EFFAS Commission on ESG is founded.
- 7 November. The World Intellectual Capital Initiative (WICI) is formed. The EU Commission is an observer since May 2008.
- December. Council Conclusions on sustainable development.

[2008 – 2013] "Footprints on the beach". From 'voluntary' and 'non-financial' accounting to corporate social accountability?

2008

- February. The UK is forced to nationalize Northern Rock, a medium-sized British bank.
- 4 March. Second high level meeting of the EU Alliance for CSR (discussing 2007 progress review)
- 17 April. 1st meeting ECCJ and Commission.
- 24 April. ECCJ sends three legislative proposals to Commissioners Verheugen and Spidla.
- 29 May. ECCJ Conference on 'Justice possible for victims of EU companies'.
- October 2008. Several major business institutions fail, are acquired under duress or subject to government takeover. These included: Lehman Brothers, Merrill Lynch, Fannie Mae, Freddie Mac, Washington Mutual, Wachovia, Citigroup, and AIG.
- December. FEE Discussion Paper "Sustainability Information in annual reports – Building on the Modernisation Directive"
- 2 December. DVFA The German Society of Investment Professionals designs a set of KPIs for ESG.
- 16 December. The Danish Parliament adopted a bill making mandatory for about 1.100 of the largest businesses, listed companies and state-owned plc to report on CSR in their annual report on a comply-or-explain basis.

2009

- January. FEE Policy Statement on 'Sustainability'.
- COM(2009) 0400 final, 'Review of the EU Sustainable Development Strategy'.
- 14 January. EC inter-services group meeting on CSR. DG MARKT starts "listening carefully and taking note of the rising importance of CSR", however it excludes changes in NFR regulation (source: interviews).
- 29 January. 2nd meeting between ECCJ and the Commission.
- 10 February. At the EMSF Plenary DG ENTR Commissioner's speech in which there is an important reference to transparency. ECCJ wrote that the COM study regulation on reporting.
- 6 March. EC inter-services group meeting on CSR, "first point on the agenda: 'transparency'." (sources: interviews)
- 19 March. Crucial GRI's 'Amsterdam Declaration on Transparency and reporting'. The organization move away from voluntary approach and it affirms that it's time for governments to mandate ESG disclosure and integrating reporting: the crisis could have been moderated by more ESG transparency.
- 1 April. G20 in London. A crucial event in the eye of the global financial crisis. According to the press, the real big players are China and the US, while the EU arrives divided between Continental (FR-GER) and the UK. The two main issues at stake are the financial crisis and climate change. Key discussions were btw a (green) financial stimulus and more financial regulation. Despite huge pressure there is no money for a 'green stimulus'. Call from sustainable investors and broad consensus on regulate the financial sector.
- 14 April. EUROSIF Public Policy Position which demands the adoption of three proposals to increase transparency and sustainable investments.
- 16 April. UN Special Representative on business and HR, John Ruggie, public hearings at the EU Parliament on business and Human rights
- 29 April. FEE/EUROSIF Roundtable hosted by the European Parliament [it will be used as a model for the EC workshops on ESG disclosure].
- September. Final proposal laboratory on 'valuing non-financial performance' of the EU CSR Alliance
- 8 September. EFFAS 2nd Conference Taking ESG into consideration. Title: "ESG Mainstreaming: Looking for something that has already found us?"
- Sept 2009 – Feb 2010. A series of ESG Workshops hosted by the EC (NGOs came back; key role of investors).
- Publication on CSR from DG for Research
- 10-11 November. Protect, Respect, Remedy Conference – Making the EU take the lead in promoting CSR. Stockholm organized by the Swedish Presidency of the EU and the incoming Spanish Presidency.
- 17 November. ECCJ seminar exploring the issue of business and labour rights hosted by the European Parliament.

2010

- 27 January. SEC issues interpretative guidance on climate change risk disclosure.
- February. ERT position paper on the crisis. This is European business' position on key issues such as regulation; climate change; and financial sustainability.
- 9 May. Monti's Report 'A new strategy for the single market' [the base for the SMA].
- 20 May. Parliament Resolution, 'Delivering a Single Market for Consumers and Citizens'.

- August. The International Integrated Reporting Council (IIRC) (previously the International Integrated Reporting Committee) is formed.
- 11 November. EC Communication, Towards a Single Market Act.
- 29-30 November. EMSF Plenary.
- Nov 2010 – Feb 2011. Public consultation on the EC Communication 'Towards a Single Market Act'.
- Final vote on 'ISO 26000. Guidance on social responsibility'.
- December. IFRS published a 'Practice statement on management commentaries' in which it states that narrative reports generate more meaningful information.

2011

- April. COM(2011) 206 final. 'Single Market Act. Twelve levers to boost growth and strengthen confidence. 'Working together to create new growth'' announces EC legislative proposal on non-financial reporting.
- 25 May. Updated OECD Guidelines for MNEs.
- June, the United Nations Human Rights Council unanimously endorsed the 'Guiding Principles for Business and Human Rights', designed by Prof. Ruggie and widely supported by business, states and civil society.
- October. The German Council for Sustainable Development passes the German Sustainability Code.
- October. COM(2011) 681final. 'A renewed EU strategy 2011-14 for Corporate Social Responsibility'

2012

- April. France. Implementation decree Grenelle II Law.
- June. German Chacellor Dr. Angela Merkel publicly supports the German Sustainability Code.
- 22 June. RIO+20's outcome document 'The Future We Want' explicit reference to sustainability reporting (Paragraph 47). A formal group of governments supporting NFR regulation is founded. This includes Brazil, France, Norway, Denmark, Colombia and South Africa.
- October. Draft UK law on narrative reporting.

2013

- February. The EP adopts two resolutions acknowledging the importance of corporate non-financial transparency.
- 10 April. EC adopts the Single Market for Green Products package. As part of this package, the use of the Organization Environmental Footprint (OEF) methodology.
- 16 April. EC adopted a proposal for a directive amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups

Annex III: All interviews (2010-2013)

#	NAME	ORGANISATION	DATE	DIRECT PART. EU CSR POLICY
1	EU official *	EU Commission	22/04/2010	X
2	EU official**	EU Commission	30/04/2010	X
3	Bertazzi Pietro	Global Reporting Initiative	08/04/2011	X
4	Slob Bart	SOMO (NGO)	15/04/2011	
5	Verheul Marion	Independent Investors Consultant	19/04/2011	
6	Iansen-Rogers Jennifer	KPMG Sustainability, The Netherlands	28/04/2011	
7	Walkate Harald	Aegon Asset Management (VP)	02/06/2011	
8	Claudia Kruse (phone)	APG /financial analysts/ICGN	06/06/2011	X
9	Vitols Sigurt	European Trade Union Institute	08/06/2011	X
10	Cremers, Jan	European Trade Union Confederation	15/06/2011	
11	Delaygues Yolaine	ECCJ (NGO)	17/06/2011	X
12	EU official	EU Commission	26/06/2012	X
13	EU official *	EU Commission	23/07/2012	X
14	EU official	EU Commission	25/07/2012	X
15	EU official	EU Commission	25/07/2012	
16	EU official	EU Commission	27/07/2012	X
17	EU official	EU Commission	30/07/2012	X
18	EU official**	EU Commission	08/08/2012	X
19	Mortier Gaetan	SRI expert (former MSCI)	07/09/2012	
20	Clark Penny	European Trade Union Confederation	02/11/2012	X
21	EU official	EU Commission	03/11/2012	
22	Passant François	EUROSIF	22/01/2013	
23	Dolan Carl (phone)	Transparency International (NGO)	24/01/2013	X
24	Norberg Claes (phone)	BusinessEurope/Accountant	30/01/2013	
25	Michel Capron (email)	Paris University/ECCJ/Lawyer	01/03/2013	X
26	Mio Chiara (phone)	Venice University/FEE/Accountant	05/04/2013	X

*/** Out of the 26 in-depth, semi-structured élite interviews, two EC officers (# 1; # 2) have been interviewed twice (also # 13; # 18) because of the relevance of their role. The first two

interviews have take place in 2010 and the second in 2012. As discussed in section 2.6, this allowed me to better assess changes over time in the perception of CSA regulation within the EC. It also allowed me to better verify their information on the light of the data I have collected and the knowledge of the field that I have progressively developed.

In four cases it has been impossible to arrange a meeting for an interview in person. Therefore, this problem has been overcome reaching the interviewee by phone. In only one case (interview # 25 with Prof. Michel Capron), the questions/answers have been exchanged by email.

The last three interviews made in 2013, have been focused on subjects that Madsen (2006: 113-114) called agents with *multiple identities*. These interviews helped me to verify the explanatory framework proposed in the research. Using their "multiple points of entrance to the field", they enormously improved my understanding of the many overlapping and even opposing strategies that the actors employed to shape this emerging, multi-layered, field of regulation.