CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY: A TYPOLOGY OF OECD COUNTRIES

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Abstract

This article investigates the relationships between corporate governance and Corporate Social Responsibility (CSR). The underlying intuition is that governance factors are major determinants of CSR policies and extra-financial performance. More precisely, we identify three main factors that determine the strength of CSR engagement at the firm level: the structure of equity ownership (identity of shareholders), the composition and structure of board of directors, and the regulatory framework on corporate governance and CSR. We show how evolutions regarding corporate governance over the three previous decades have paved the way and shaped the rise of CSR. In addition, we elaborate a typology of CSR and governance structures that characterize OECD countries depending on whether the CSR reporting regime is stringent versus non-stringent, and on whether the corporate governance model is based on the shareholder, stakeholder or hybrid regime.

Keywords: Corporate Governance, Corporate Social Responsibility

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1. INTRODUCTION

Europe is often considered the leading region for social and environmental responsibility, with the highest environmental standards in the world. For instance, in the 2012 Environmental performance index computed by Yale and Columbia Universities, 18 out of the top 20 countries are in Europe.

This phenomenon reflects the overall combination of efforts by States, consumers, NGOs, investors, and (private) firms. Whereas government were the leading actors in the 20th century, with the development of emission norms in the 60s and 70s and of environmental taxes and tradable permits in the 80s and 90s, the 21th century empowered firms through the development of so called 'Corporate Social Responsibility' (CSR). Firms now struggle to become, or at least to appear as, socially responsible. Overall, almost two thirds of the biggest firms in industrialized countries have published a report on CSR or on sustainable development policies in 2010 (KPMG, 2011). In two decades, disclosure of extra-financial information has become the main engine for CSR. National discrepancies, however, can be observed: whereas more than 90 of the 100 largest British companies are reporting on CSR, the figure falls to 40% in western Europe in 2010 (Visser and Tolhurst, 2010). Also, comparing for instance France and Germany yields striking differences, with a much more stringent regulatory framework in the former country.

This movement does not operate in a vacuum: the rise of CSR in all OECD countries and the peculiar form and intensity of this movement in each countries show that CSR is deeply connected with corporate governance institutions and practices, at the micro and macro levels. Dramatic evolution regarding corporate governance occurred over the last three decades, with important consequences for CSR. The rising power of institutional investors in western stock markets has put emphasis on disclosure (reporting) as a powerful mechanism to enhance managerial accountability; in turn, it has paved the way for disclosure-induced CSR. In addition, transformations at the board level have played an important role: in particular, the recruitment of open-minded directors, more sensitive to the externalities of economic activities than traditional insider board members, may have fuelled the CSR momentum. If those movements are global, national institutions regarding corporate governance remain strong, explaining part of the CSR pattern in OECD countries.

In this article, we review both the academic literature and the national legislative contexts in a number of OECD countries, regarding corporate governance and CSR reporting. Our contribution is two-fold.

First, we identify three main factors that determine the strength of CSR engagement at the firm level: the structure of equity ownership (identity of shareholders), the composition and

structure of board of directors, and the regulatory framework on corporate governance and CSR, as defined by corporate law and stock market law. By so doing, we answer the following questions: does the increase in institutional investors holdings favor CSR? What role can the board of directors play in terms of CSR? Is there an ideal, optimal board composition to address the social and environmental externalities of economic activities? How is CSR engagement shaped by the regulatory framework?

Second, we elaborate a typology of CSR and governance structures that characterize the countries under review depending on whether the CSR reporting regime is stringent versus non-stringent, and on whether the corporate governance model is based on the shareholder, stakeholder or hybrid regime.

We primarily focus on listed companies, whose shares are traded on regulated (stock) market, for at least two reasons. First, in all OECD countries, listed companies are by far the main economic actor, whether in terms of value added or employed workforce. Second, they are directly concerned by the evolution in corporate governance and CSR over the last two decades, mainly driven by stock market pressures and regulation.

The remainder of this article is organized as follows. Section 2 outlines the main features of corporate governance models in OECD countries, and their recent evolution. Section 3 is devoted to CSR and its relationships with corporate governance. In particular, we highlight the relations between equity ownership, board composition and CSR. Section 4 describes in a synthetic way the regulatory framework for CSR in OECD countries and offers an original typology of these countries. Section 5 concludes by stressing the potential for convergence regarding corporate governance and CSR.

2. CORPORATE GOVERNANCE AND THE CONVERGENCE OF GOVERNANCE STRUCTURES

2.1. Models of Corporate Governance (CG): A First Classification

Broadly defined, corporate governance refers to the set of (formal and informal) rules and structures that shape managerial decision and accountability. This raises the following two fundamental questions: what interests should the company serve? And how are top executives monitored? Over the last three decades, two alternative models, providing different answers to these questions, have been developed: the shareholder model and the stakeholder model of governance (Charreau and Desbrières, 2001).

According to the shareholder model (sometimes called the 'financial' or 'outsider-based' model), the company should be run in the sole interests of its shareholders (or owners). In this context, the notion of corporate governance lies intrinsically in the separation between owners (of capital) and managers and the conflict of interest between them. The conflict of interests between managers and shareholders is higher the larger the informational asymmetries between both parties, the more difficult it is to observed managerial decisions (due to moral hazard and/or adverse selection) and the more dispersed is the shareholding structure. Corporate governance hence relates to the rules allowing shareholders to be sure that the firms they invest in are managed in compliance with their own interest, especially for publicly traded firms. As stated by Shleifer and Vishny (1997) corporate governance may be defined as concerned with 'the ways in which the suppliers of finance to corporations assure themselves of getting a return on their investments' (p.737).

The generic problem of corporate governance in turn is the control of executives' decisions in large listed firms, in the interest of minority shareholders. In the shareholder model, the control structure is mainly based on external (stock market-based) pressures. Capital needs are satisfied by dispersed (minority) shareholders, while managers are disciplined by market-based forces (in particular takeover bids threats and the use of incentive-remuneration devices such as executive stock options). Clearly, then, this 'outsider', market-based model of corporate governance relies for its effective realisation upon the functioning of a liquid stock market. However, crucial in this market-based model of governance is the board of directors, which should act as an 'internal' point of surveillance over managers in the absence of direct shareholder monitoring (Easterbrook and Fischel, 1991).

By contrast, the stakeholder model relies on the idea that if the firm should respect the interests of its shareholders, it also represents broader social interests that must be taken into account as much as those of capital providers. In particular, managers are depicted as mediating and balancing the interests of shareholders (minority and blockholders) and the interests of labour. Indeed, among the many constituencies having a stake in the firm, workers are usually considered as playing a crucial role. Contrary to consumers or local communities for example, they invest at risk their human capital in the company. In the stakeholder model, the control mechanism is based on internal pressures: the capital needs are satisfied by concentrated shareholders in countries with less developed (historically) financial markets, in which managers are disciplined by large blockholders as well as workforce representatives (Aglietta and Reberioux, 2005). Therefore, most stakeholder model proponents advocate board level representation for workers, with voting rights just like shareholder representatives (so called 'co-determination').

The characteristics of the shareholder versus stakeholder models of governance are summarized in Table 1.

Table 1. The shareholder and stakeholder models of corporate governance

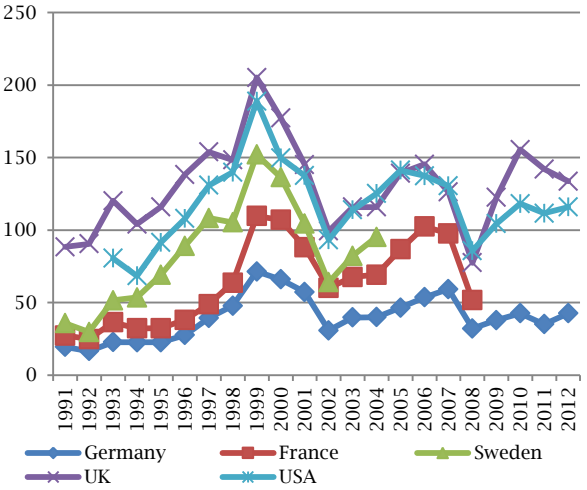
Model	*Shareholder*	*Stakeholder*
Objective	Shareholder value	Stakeholder value
Financial Markets	Very active	Limited
Shareholding	Dispersed	Concentrated, blockholders
Discipline device and control	External Market-based (eg. takeover bids threats)	Internal Monitoring (eg. audit)
Incentives and horizon	Short term (objectives based on stock prices) High powered financial incentives	Long term (objectives based on strategic management) Low powered financial incentives
Boards	Represent shareholders interests	Dominated by stakeholders

Overall, corporate governance debates support the need for an institution between CEOs and shareholders to efficiently discipline CEOs, represent shareholders, and eventually represent other stakeholders: the board of directors (or supervisory board). Accordingly, and as it will be clear later on, this amounts to allocate a key role to boards of directors in the elaboration and conduct of CSR strategies responding to stakeholders' demands.

The comparative literature on corporate governance has, since the mid-1990s, proposed a simple classification of countries following the pattern of stock market activity, ownership concentration and the identity of main owners. Anglo-Saxon countries are characterized by vibrant financial markets and highly dispersed ownership, mainly held by institutional investors such as pension funds or mutual funds. As such, Anglo-Saxon countries are easily depicted as representative of the shareholder model of corporate governance. Coherent with this model, board representation is strictly reserved to shareholder representatives. By contrast, Continental Europe (northern and southern), with rather narrow stock markets and concentrated ownership in the hand of non-financial companies, are described as representative of a stakeholder model. In addition, co-determination (that is the presence of worker representatives at the board level) is provided for by company law in a large number of non-southern European continental countries (Austria, Czech Republic, Denmark, Finland, Germany, Hungary, Luxembourg, the Netherlands, Romania, Slovak Republic, Slovenia, Sweden – and, since 2013, France), reinforcing the stakeholder orientation of the governance model.

In the rest of this section, we detail the corporate governance regime in each country, by making use of different types of information. In figure 2, we plot the level of stock market capitalization in percentage of Gross Domestic Product (GDP), as a measure of stock market activity or liquidity. As it is apparent, over the last two decades, stock markets are more important in Anglo-Saxon countries, as compared to Germany and France. Southern countries (Italy or Spain) are similar to France and Germany. Northern countries present contrasting patterns: while Finland and Sweden lies between the two groups (see the case of Sweden in Figure 1), Denmark and Norway are much closer to the German level of stock market capitalization.

Figure 1. Stock market capitalization in GDP %, 1991-2010



Source: Eurostat

Figures 2 and 3 report the percentage of listed companies under majority control and with a blocking minority of at least 25% (Martynova and Renneboog, 2013). From these figures we observe that the stakeholder regime would tend to prevail in most continental Europe countries, where we observe majority or near-majority holdings of stock held by one shareholder or a small group of investors, whereas the shareholder model would tend to prevail in Anglo-Saxon countries. For northern Europe countries, we would have a rather hybrid model, as they have the lowest percentage in Europe of companies controlled by a majority blockholder.

Figure 2. Percentage of listed companies under majority control

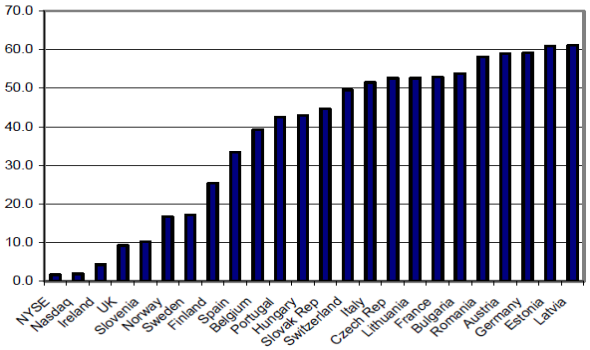
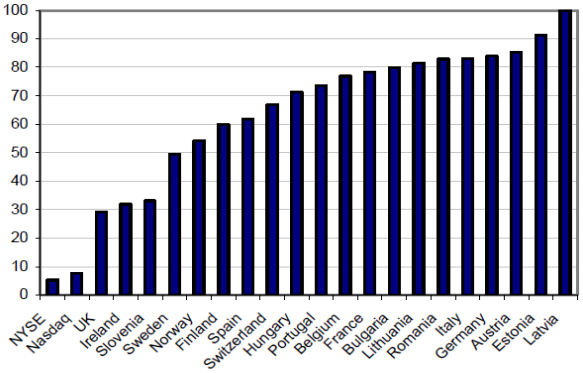


Figure 3. Percentage of listed companies with a blocking minority of at least 25%



Source: Martynova and Reneboog (2013). Data: Faccio and Lang (2002) for European countries with law of English, German, French, and Scandinavian origin, Barca and Becht (2001) for the US, and the ECGI project "Corporate Governance & Disclosure in the Accession Process"(2001) for the EU accession countries.

The identity of typical owners is also distinctive, as shown in table 2 for the mid-1990s. Institutional investors are the major players in the equity market in the USA (together with households) and in the UK (along with insurance companies). In France and Germany, non-financial enterprises have the biggest stakes.

Finally, the previous classification is supported by the shareholder rights protection (SRP) indice in 2005 established by Martynova and Renneboog (2013) on the basis of a comprehensive comparative analysis of corporate governance regulatory systems and their evolution over the last 15 years in 30 European countries and the U.S.A. The SRP indice indicates how the law in each country addresses various potential agency conflicts between shareholders and managers, between majority and minority shareholders, and between shareholders and bondholders. A high number would indicate a shareholder regime, protective of the interests of minority stockholders, and a lower number would indicate a stakeholder regime.

Table 2. Ownership identity for listed companies (% of outstanding corporate equity held by sectors), mid 1990s

	USA	*UK*	*Germany*	*France*
Banks	6%	1%	10%	7%
Insurance companies and pension funds	28%	50%	12%	9%
Investment funds and other financial institutions	13%	17%	8%	14%
Non-financial firms	-	1%	42%	19%
Households	49%	21%	15%	23%
Non residents	5%	9%	9%	25%

Source: OECD

In turn, Table 3 offers a simple classification of corporate governance models across OECD countries, distinguishing a shareholder model, a stakeholder model and a hybrid (middle range model). The classification is mainly based on three synthetic indicators: stock market activity (column 1), the SRP indice (column 2) and the presence of codetermination rights for the workforce (column 3). This classification will be of a primary importance in our final typology (see section 4).

2.2. The evolution of corporate Governance models: towards convergence?

The previous section has identified two main models of corporate governance among OECD countries. Both have yet been subject to important institutional change in the past decade, together with shifts in ownership structure and in the relationship between industry and finance. The result has been to see a trend towards convergence of governance structure across countries over four main dimensions: ownership structure, disclosure requirement, board composition, and increasing concerns for stakeholders and sustainable development.

Table 3. Corporate governance models across OECD countries

	Stock market activity	*SRP indice 2005*	*Codetermination rights*	*CG model*
		Northern Europe		
Denmark	low	11	Yes	stakeholder
Norway	low	16	Yes	stakeholder
Sweden	high		Yes	hybrid/shareholder
		Continental Europe		
France	medium	16	Yes	stakeholder
Netherlands	medium	19	Yes	hybrid/stakeholder
Belgium	low	18	No	hybrid/stakeholder
Germany	low	18	Yes	stakeholder
Luxembourg	high	12	Yes	stakeholder
		Southern Europe		
Portugal	low	20	No	hybrid/stakeholder
Spain	low	19	No	hybrid/stakeholder
Italy	low	26	No	hybrid/shareholder
		Anglo Saxon countries		
US	high	17	No	shareholder
UK	high	24	No	shareholder
Australia	high		No	shareholder

2.3. The rise of institutional investors in continental Europe

Since the mid-1990s, most continental European countries have witnessed an upswing in equity holding by institutional investors, national (mainly mutual funds) and foreign (mainly US and UK pension and mutual funds). This evolution is closely related to the globalisation of capital markets, and to the increasing concentration of households saving in investment funds. Cross-shareholding between major non-financial companies, even if it is decreasing in importance, is still far more prevalent than in the Anglo-American systems. Nevertheless, there has been a considerable increase in institutional investors (OOE and INSEAD, 2013). France is a conspicuous example: by the end of 2003, non-resident investors owned 43.9 per cent of the outstanding share of CAC40 companies and almost 35 per cent of the shares of all listed companies. Table 4 presents the distribution of ownership for British, French and German listed companies in 2002. It appears that, to some extent, the French distribution is now more similar to the British than to the German one. In particular, the activity of institutional investors is higher in France and the UK than in Germany, even if increasing in the latter. To some extent, this movement favours a (partial) convergence of the continental model of corporate governance, traditionally stakeholder oriented, toward the US-UK (shareholder oriented) model.

2.4. Improvement in disclosure and corporate transparency

Following this transformation in the equity capital of large listed European companies, disclosure has been increasingly perceived as a crucial mechanism to increase managerial accountability. In the U.S., listed companies are subject to the federal securities regulation of the S.E.C., which has had the primary objective, since its creation by the Securities Exchange Act in 1934, to ensure that investors and shareholders have the information necessary to make accurate decisions (Brown, 2007). Toward this end, the S.E.C. provides listed companies with high standards of information reporting and disclosure, perceived as the core of an effective control of corporate executives in a situation of separation of ownership and control. These standards reinforce specific rules imposed by stock exchanges. In contrast, corporate governance in private companies is only regulated by state law, which does not provide a coherent, strong disclosure regime. This dichotomy has become stronger since the early 2000s, with the surfacing of multiple high profile corporate scandals and bankruptcies. Although institutional investors were putting pressure on corporate executives for greater transparency, regulators strengthened disclosure requirements as a perceived solution to managerial abuses.

Table 4. Ownership of common stock (as a % of outstanding shares) for listed companies in three countries, 2002

	UK	*France*	*Germany*
Households	14.3	6.5	22.9
Non-financial companies	0.8	20.2	11.7
Government	0.1	3.6	1.9
Banks	12.6	12.6	33.5
Institutional investors[1]	40.0	26.0	12
Foreign	32.1	31.2	18.1
Total	100	100	100

Source: Tirole (2006), p.37

In continental Europe, the situation was, until the beginning of the 2000s, quite different. Informational needs by minority shareholders and investors were not considered as important as they are in the U.S., and disclosure regimes, as structured by corporate and securities laws, were far less comprehensive. Accordingly, there was, until early 2000s, no specific regulation for listed companies in terms of reporting and disclosure – except listing standards as defined by local stock markets. This is no more the case, with a dramatic improvement of corporate transparency and disclosure over the last decade across Europe: by doing so, a specific regulation for listed companies has developed, largely along the lines of the financial disclosure requirements of the U.S. S.E.C. model (Perraudin, Petit and Rebérioux, 2013). This transparency primarily concerns two distinct fields: top executives remuneration as well as corporate governance functioning and structures[2]. Beside these transformations in corporate and securities law, listed firms have been more and more inclined to respect fundamental principles regarding corporate governance, as stated in corporate governance Codes. Now, virtually all jurisdictions invite listed companies to respect a particular code, or to explain why they do not – by virtue of the so-called 'comply or explain' principle.[3] In Europe, the European Union has played a crucial role here, with the 21 May 2003 Recommendation that forces member States to choose a unique reference text for its listed companies. For instance, the AMF-MEDEF Code (2010) and the Corporate Governance Code (2012) now serve as reference codes for listed firms respectively in France and in the U.K.

2.5. The evolution of board composition

Over the last two decades the boards of directors of large US and – to a lesser extent – European public companies have come increasingly to contain a majority of so-called "independent" directors. In the US, the fraction of independent directors for large public firms has shifted from approximately 20 percent in the 1950s to approximately 75 percent by the mid-2000s (Gordon, 2007). In continental Europe or in the UK, the proportion of independent directors has also steadily increased over the last 15

[1] Pension funds, mutual funds and insurance companies.

2 See e.g. the 2006 Article 46a of Directive 78/660/EEC on the annual accounts of certain types of companies, which required listed companies to publish a corporate governance statement in their annual report.

3 For a comprehensive index of these codes, see the European Corporate Governance Institute (ECGI) website: http://www.ecgi.org/codes/all_codes.php

years, to reach for example more than 50% in French large listed companies.

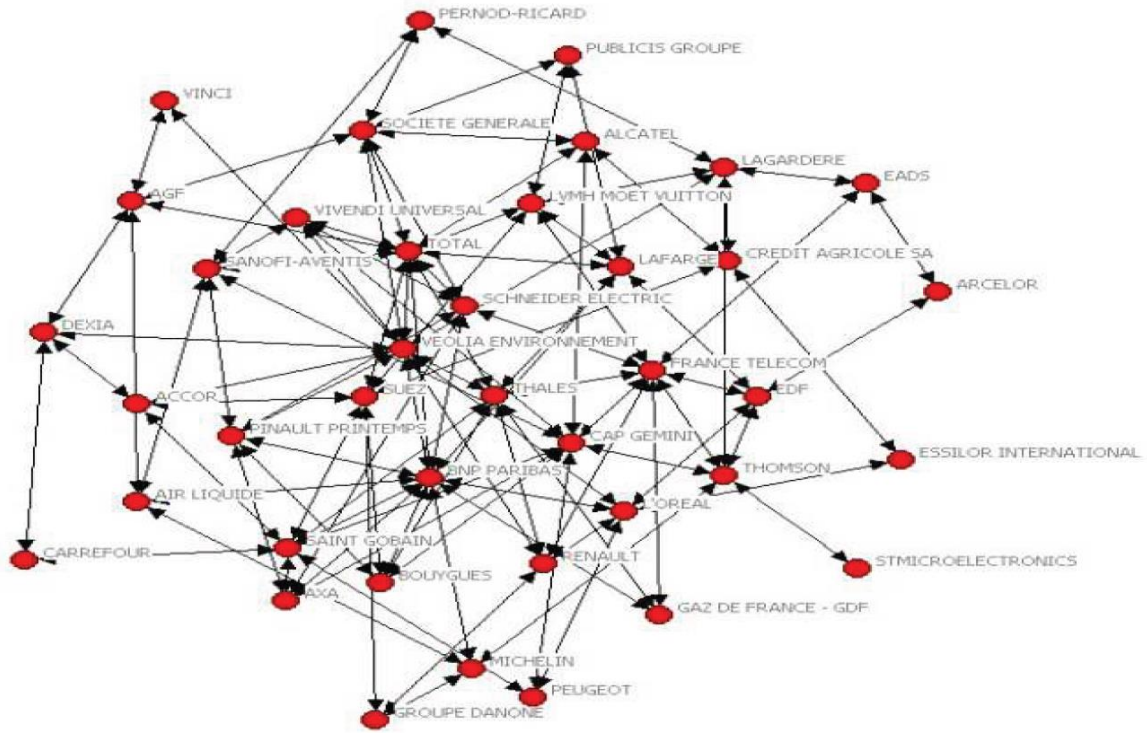
Why this focus on independence? An essential attribute for a Board is the propensity of its members not to collude with corporate executives. Accordingly, the basic idea common to a number of existing definitions of independence is to identify some criteria that are expected to minimize the probability of collusion between directors and corporate officers. Generally speaking, independence is assumed to be compromised if the director of a company (i) is, or has been, a corporate executive of that company or of its affiliates, (ii) is, or has been, employed by that company or by its affiliates, (iii) is employed as an executive of another company where any of that company's executives sit on the Board, (iv) is a large block-holder of that company or (v) has a significant business relationship with that company or its affiliates. On this basis, directors are usually divided into three groups according to their relative degree of independence. Executive or inside directors are corporate executives. Affiliated or grey directors are not executives, but they do not meet one of the previous criteria; this category encompasses in particular employees, long-term block-holders or investment bankers in relation with the company. Finally, independent directors are outsiders that fulfil the whole set of criteria.

Independence is normally treated in corporate governance codes (CGC), on the basis of «comply or explain» rules. But there are also increasing mandatory requirements on independence. The European directive of 2006 requires for instance at least one member of the audit committee be independent.

Promoting independence in countries characterized by the shareholder model of governance appeared important to regulators and investors in the face or regular financial crisis and the upswing in CEOs remunerations.

But promoting board independence in countries characterized by the stakeholder model of governance appeared also important. In fact, a number of limits of such a model are increasingly acknowledged since the mid-2000s. In such governance structures, monitoring mechanisms are more costly, which enlarges managers' discretion and gives them opportunities to pursue their personal agenda (Cennamo et al., 2009). Moreover, opacity, network and club effects based on interlocking interests and directorates together with bureaucratic costs are leading to diffused control on managerial decisions with little transparency for minority shareholders. In France for instance, there have been dominant inside and outside affiliated directors exchanging their CEOs on French boards of directors of larger firms, promoting cronyism (favoritism to friends and associates), exacerbating agency problems and potentially reducing competition in the market for corporate control, reducing efficiency and stockholder wealth (Yeo et al., 2003). To illustrate the limits of the stakeholder governance model, figure 5 reproduces the networks of relationships between boards of the CAC 40 firms in 2006.

Figure 4. Networks of relationships between boards of the CAC 40 firms 31/12/06



Source: Dardour (2009)

Hence, regulators and investors both in the shareholder and stakeholder models have put pressure for more independent boards, as a perceived mechanism to increase managerial accountability (toward shareholders or stakeholders). However, it is not so clear that board

independence has fulfilled its promise. In fact, the academic literature has been unable to observe a positive relationship between the share of independent board members and the firm performance, whether measured in market value or with accounting figures. Several studies even suggest that firms with more independent directors perform worse. For Bhagat, Bolton and Romano (2008) for instance board independence "is negatively and significantly related to contemporaneous, next year's, and next two years' operating performance. This result is surprising, especially considering the recent emphasis that has been placed on board independence (…); however, it is consistent with prior literature on boards".

Note that most of this empirical literature considers Anglo-Saxon firms, with very few exceptions on European firms. To address the issue of the relationship between board independence and firm performance, Cavaco et al. (2014) have gathered a unique and original database on French listed firms (340 firms of the SBF250 index) over the 2003-2012 period. The main result of this study shows that board composition is not neutral with respect to financial performance: independent directors tend to be associated with low firm performance from an accounting perspective (economic and financial profitability), a result similar to Baghat.et al. on U.S. data. On the contrary, the long-term value of the firm (measured by the Tobin's Q) is not affected.

Following these (rather) disappointing results, debates and researches on board composition have increasingly focused on the expertise or competence of directors, rather than on their independence. The role of expertise is to improve the capacity of directors to analyze information they receive and to better advise firms and managers on their strategic choices. Hence, expertise represents a quality guarantee for directors and is expected to play an important role for firm performance. More and more specialists stress the role that might be played by firm or industry specific expertise, to help board members to better advise CEO regarding value creation, and to certify financial (and non-financial) disclosure and reporting in complex industry or business.

Since several years, the debate on board composition also shifted from avoiding dominance by a small group of executive directors to emphasizing the characteristics of members, in particular regarding diversity indicators background, gender, age, nationality, residency, etc. In Belgium for example the law of July 2011 requires 1/3 of women on boards, within 6 to 8 years for public firms, 2012 for state-owned firms. In Italy, the law of July 2011 requires 1/3 of women on boards by 2015. In the Netherlands, a change in the civil code in June 2011 requires at least1/3 of women on boards. In Spain, a law of March 2007 demands at least 40 % of women by 2015 in boards of big firms. In France, a law of January 2011 requires parity in boards of publicly traded firms (or with supervisory boards), with an adaptation delay of 5 years with 20% of women in boards within 18 months and 40% within 4 years.

This brief review of corporate governance codes and debates shows that it is difficult to ensure efficient functioning of the boards through rules only on composition. The shift from independence to competence and diversity requires critically assessing the board own precise functioning and evaluating periodically the board as a whole and its individual members.

2.6. The Sustainable Development and CSR Movement

Last but not least, we observe an increasing concern for sustainable development, CSR and stakeholder management. The mid-2000s witnessed an increasing concern for sustainability in corporate strategies and governance, fuelled by the recurrence of financial market crisis. In western societies, the Welfare State erodes with rising public deficits, and its capacity of intervention in the economy weakens. In emerging countries, government failures and corruption and aid programs by multilateral institutions (World Bank, IMF, etc.) commonly known as the "Washington consensus" are highly criticized (Stiglitz, 2002). Hence the firm is called in.

It is also becoming more and more important for this sustainable development and CSR movement to monitor the actions of the civil society exerting direct pressure on human and social rights as well as preservation of the environment and public health. Firms are increasingly required to limit the environmental and social contestability of their industrial activity and at the Johannesburg summit in 2002, firms commit to a real business ethics and citizenship to weigh on national and international political choices (Capron and Quairel-Lanoizelée, 2007). Governments also have been very active since the late 1990s in all OECD countries, adopting laws requiring mandatory reporting on CSR (see chapter 3 for more details).

This movement is challenging for both models of corporate governance. The shareholder model, that gives priority to minority shareholder interests, is somewhat reluctant to consider other interests, whether environmental or social, in business conduct. This is perfectly illustrated by the famous rejection of CSR by Milton Friedman, back in the seventies (see section 3.2 below). By contrast, the principle of balancing divergent interests is somewhat consubstantial to the stakeholder model of corporate governance. It should be however noted that as it has been institutionalized in Europe, the stakeholder model often gives priority to direct constituencies, namely shareholders and labour. Another way of looking at this is that, remote stakeholders, like consumers, environment and local communities are not the primary concern of this model.

3. THE RISE OF CORPORATE SOCIAL RESPONSIBILITY

3.1. Definition of Corporate Social Responsibility (CSR) activities

A considerable attention in the literature has been given to the definition of CSR, the analysis of its

determinants and the measure of its impact on firm performance. Many terms referring to CSR are used in the academic literature such as corporate sustainability, business sustainability, business ethics, philanthropy, relying on overlapping concepts (van Marrewijk, 2003).

We rely here on the definition of CSR from the European Commission (2011) for which being responsible means that, beyond legal constraints, firms take responsibility for their impacts on society. A prerequisite is the respect for applicable legislation and collective agreements between social partners. In economics, CSR thus goes beyond obeying law. Further on, socially responsible enterprises should integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy with the double aim of maximizing the creation of shared value for their shareholders, stakeholders and society; and identifying, preventing and mitigating their possible adverse impacts.

This official definition hides in practice a large range of socially responsible behaviors. In the financial sphere, for the purpose of tractability, CSR policies are often clustered into three wide domains: environmental, social and governance (ESG) factors.

The environmental pillar comprises the incorporation of environmental considerations into the design, manufacturing and distribution of products ranges from local and global pollution prevention and control, waste management, the protection of water resources, and the preservation of biodiversity, to energy efficiency, cleaner production, reverse logistics, and managing the environmental impacts from transportation.

The social pillar relates to the integration of human resources into firm strategy, labor practices (participation, careers, training, compensation, working conditions), as well as company impact on society; respect of human rights; impacts on local communities

The governance pillar refers to corporate governance (boards, audit, respect for shareholders rights, CEO compensation), as well business behaviors with customers and suppliers (goods safety, information given to consumers, relations with suppliers, prevention of corruption and anti-competitive practices).

Hence the reality of the CSR concept is quite complex and the issue of why firms would engage in CSR and what are its links with corporate governance are far from trivial.

3.2. Why would firms engage in CSR activities?

Regarding the firm's CSR policy, a fundamental issue is why boards should care for CSR , and why delegate CSR to CEOs ? In fact, engagement in CSR activities will be justified on different grounds according to the model of governance, and will probably take different form. In a stakeholder value model, CSR is often comprised as a way to increase social cohesion (Kang and Moon, 2012): managers are used to negotiate with various, and sometimes opposite, interests (finance and labour). In the name of social cohesion or environmental protection, CSR will require that top executives take into account more remote interests. Considering the case of the shareholder model of corporate governance, it has long been argued that CSR is at odds with shareholder primacy. For Friedman (1970), the responsibility of CEOs is to ensure profitability. If CEOs embark firms on CSR, they might misappropriate shareholder funds for opportunistic reasons. They don't have the political legitimacy for providing public goods.[4] In the agency theory, such a CSR policy could thus be a perquisite for managers who like the accolades of the advocates of broadened social performance (Baron et al., 2008). In the entrenchment theory (Cespa and Cestone 2007) CSR strategies are a way for inefficient managers to ensure stakeholders' support to reinforce their own position at the expense of the shareholders. However, CSR can be rational or legitimate in a shareholder primacy model if it is proved to be associated with higher (short term or long term) accounting profit or shareholder value (that is the value of common stock). Kang and Moon (2012) denote this kind of rational 'strategic CSR'.

Strategic CSR starts by noting that most CSR activities, based in particular on environmental and social factors, aim at reducing negative externalities (e.g. pollution abatement) or generating positive externalities (e.g. financing hospitals). Privately providing public goods hence is an important part of CSR activities, but only if this public provision increase private performance. Several determinants of CSR activities are given in the economic literature, ranging from avoiding regulation and pressure from civil society, to responding to the demands of consumers, employees or shareholders, while managing risk and reputation. These various drivers can be grouped into three types of determinants for risk management (see Crifo and Forget, 2014).[5]

A first determinant of firms' responsible behaviors arises from pressure in the firm's external environment, coming from the regulator or the civil society. A major motive for CSR activities would be to respond to political and social pressure. In fact, the threat of fines, new regulation compliance and other regulatory costs create strong incentives for CSR activities. In the financial sector for instance, risk management now is increasingly under the scrutiny of regulators, leading financial actors to develop new tools to manage both direct and indirect risks in order to comply with regulations. But CSR may also be a response to government failure. Another channel goes through citizens and social activists who can make direct demands for firms to integrate their negative externalities, such as water pollution or toxic air emissions. Our society might also consider the activity and use of public goods by less responsible firms as socially unfair and thus withdraw its "license to operate". But most often, social pressure is not directly exerted by citizens but rather by social activists, such as Non-Governmental Organizations (NGOs). NGOs campaigns are a powerful lever of social pressure

5 In fact, economic agents may want to promote values that are not shared by law-makers. Such pro-social behaviors result from several interacting motivations, from intrinsic (genuine) altruism to extrinsic (material) motivation, social and self-esteem concerns (Bénabou and Tirole, 2010). Typically this corresponds to Milton Friedman (1970)'s view that CSR amounts to "sacrificing profits in the social interest".

designed to negatively impact sales, employee morale and corporate recruitment efforts. From this perspective, an important element is that NGOs do not necessarily target firms with highest levels of negative externalities. Social activists may in fact target their campaign against morally-managed firms because they have more to lose from the campaign than do self-interested firms (Baron et al., 2008).

A second determinant of firms' responsible behaviors arises from incentives in the firm's market structure, based on competitive pressure emanating from consumers, competitors or reputation concerns. If a firm can identify customers willing to pay for ethical goods and if it can defend the resultant niche against imitators, business strategy in this context is like any other form of product differentiation. From this perspective, labels and certification play a core role in product differentiation strategies to reduce information asymmetry. For instance, Eichholtz et al. (2010) assembled a sample of about 10 000 US office buildings and evaluated that "green" (energy efficiency) certification increased effective rents by 7% and selling prices by about 16%.

Yet, the link between competitive pressure and ethical behaviour is ambiguous. If firms compete for socially responsible consumers, increased competition may lead to superior CSR performance (Fernandez-Kranz and Santalo, 2010; Bagnoli and Watts, 2003). But enforced social or environmental corporate policies can also act as a non-tariff entrance barrier. Competitive pressure and innovation race may also be a powerful lever for CSR strategies. The famous Porter's hypothesis (Porter and Van der Linde, 1995) upholds that environmental regulation triggers innovation and production cost reduction (for instance increased input / output efficiency), leading to competitive advantage. However, no consensus has emerged so far, and the large empirical evidence on Porter's hypothesis appears rather mixed (Ambec and Barla, 2009).

As firms are making a lot of efforts to differentiate their products with CSR attributes, a recurrent theme in the literature on CSR disclosure relates to "greenwashing", defined as misleading consumers via selective disclosure of positive and withholding of negative information about a company's ESG performance (Lyon and Maxwell, 2011). Yet protecting firm reputation is an important motive for CSR activities beyond greenwashing. Consumers' memory can indeed be long-lasting. CSR may hence serve as a signal of certain characteristics of a good when quality is difficult to observe (Fisman et al., 2006). The third determinant of firms' responsible behaviors arises from incentives in the firm's agency relationships, based on responsibility delegated to CEOs by shareholders, employees or directors. The main argument here is that a CSR strategies may be an efficient tool to let executives exercise their discretionary power (necessary in all organizations) in a way favoring the interests of stakeholders to induce them to accept doing business with the firms. Shareholders hence hold a major stand with full legitimacy to ask, in addition to fiduciary duties, the firm they own to engage in CSR. Nowadays, in the US or in Europe, up to 1 dollar out of 9 would actually incorporate a socially responsible dimension, that is considers not only financial performance but also extra-financial performance criteria in the investment decision process (Crifo and Mottis, 2013). The evolution of socially responsible investment (SRI) markets is therefore an important issue for CSR decisions (Scholtens, 2006).

Regarding employees, CSR can appear as a signal for corporate culture thereby contributing to shaping worker identity and incentives (Akerlof and Kranton, 2005). CSR can also allow attracting good employees, or at least highly qualified (Backhaus et al., 2002; Albinger and Freeman, 2000), reducing costly employee turnover (Portney 2008), and directly increasing firm performance through productivity (Delmas and Pekovic, 2013; Edmans, 2011).

These three main determinants of CSR activities in a 'strategic' sense rely on the assumption that profit maximization would be compatible with business ethics, except for altruism motives which should not be considered as strategically driven – ie financially rewarded. An important issue in the literature hence is to examine the links between profits and responsibility that is to test whether CSR is a lever to improve corporate financial performance.

3.3. CSR and Financial Performance

The link between CSR and firm performance has triggered considerable academic work, as witnessed by the numerous surveys dedicated to this literature (e.g. Blanco et al., 2009; Portney, 2008; Margolis and Walsh, 2003; Orlitzky et al., 2003). This literature focuses on the trade-off between different types of performance. One possibility is that environmental or social and environmental performance improves to the detriment of classical financial performance. Another possibility is that both types of performance are correlated, in the short run, or at least in the long run.

Three main methodologies have been used in the literature to examine the link between environmental and social responsibility and firm performance.

Event studies examine the effect of new information on stock returns, considering that any information on environmental or social management should be reflected in how market analysts assess the financial impact of a firm's performance on that aspect. Capital markets in fact seem to react negatively to adverse news like environmental incidents and positively to good news such as the announcement that a firm is using cleaner technologies (see e.g. Dasgupta et al. 2001).

Best-in-class versus Worst-in-class studies compare the portfolio performance of firms considered as the most responsible, compared to irresponsible companies or on the basis of negative screening of irresponsible firms. Results appear however relatively mixed in this literature (see eg. Barnett and Salomon, 2006).

The third category, regression studies (econometric estimations on large samples) rely on environmental and social ratings (like KLD in the US or Vigeo in Europe) or on quantitative data (like emission data, corruption, rewards policy etc.) to

measure environmental and social performance and test its impact on firm performance (see e.g. Horvathova, 2010). This literature has produced mixed results on the impact of CSR on firm performance but recently, preliminary evidence appear that the causality might actually run in the other direction, namely from financial to social and environmental performance (see Scholtens, 2008).

In sum, these three types of methodologies do not seem to reach a clear-cut evidence on the relationship between CSR and performance. Yet, as suggested by Cappelle-Blancard and Monjon (2012) "maybe too much attention has been paid to the issue of financial performance of SRI", and the debate on whether CSR leads or not to increased financial performance can be somewhat considered to be closed by the extensive meta-analysis conducted by Margolis et al. (2009) on 251 studies who conclude that "the effect of corporate social performance on corporate financial performance is small, positive and significant. Corporate social performance does not destroy shareholder value, even if its effect on the value is not large".

To conclude, one should note that the Friedman strong rejection of CSR is no more shared by many academics or practitioners. For stakeholder model proponents, this rejection is supported by a deep misunderstanding of the fundamental role of large corporations in our society, that should balance the interests of various constituencies – especially when welfare States appear to be unable to secure or enforce environmental protection. For shareholder model advocates, this rejection does not take into account the fact that in the contemporary economy, value creation is often closely related with social and environmental factors. By and large, this rise of CSR consideration in business conduct has led OECD countries to regulate on this topic, mostly through extra-financial reporting. As we have already noted, this is coherent with a macroeconomic framework in which investment funds (mutual funds, pension funds, insurance companies, etc.) are dominant players on stock market – in both sides of the Atlantic.

We now examine the determinants of CSR strategies from a regulatory perspective.

4. DETAILED REGULATORY CONTEXT

CSR has become a priority issue on governments' agendas. As argued before, disclosure of extra-financial information has become the main engine for CSR in all OECD countries, following the deep transformation of western stock markets over the last decades.

4.1. CSR reporting across OECD countries

In recent years, an increasing number of national legislations have made CSR reporting mandatory for large firms (see below for details). Such regulations on extra-financial information disclosure have nevertheless evolved in very different directions across countries, leading many observers to consider that fragmented and divergent CSR legislations (from hard to soft laws) was a major impediment to the diffusion of CSR. Some countries have adopted "comply or explain" regulations (thus not so constraining), while others have implemented outright and prescriptive legal requirements. Similarly, some countries focus their disclosure requirements on large companies, while others target listed or state-owned firms. Overall, only 2500 out of the 42000 European large companies formally disclose extra-financial information on a yearly basis. Moreover, there is wide heterogeneity in the quality of extra-financial information that is disclosed, making it difficult for the stakeholders to correctly evaluate the firm's environmental and social performance.

Considered as leading region for CSR reporting, Europe is increasingly making extra-financial disclosure mandatory. In Northern Europe for example, Sweden made sustainability reporting mandatory in 2009 for state-owned companies and Denmark did so in 2010 for large companies. Yet there is heterogeneity as some other countries base their reporting obligations on a voluntary and not mandatory basis, as in Germany for instance.

France is an early example of mandatory CSR reporting, as all French listed companies are required to disclose ESG information since 2001, and all large companies must do so since 2011. Two types of laws starting in the late 1990s played an important role in the development of CSR : laws regarding pension and saving schemes (e.g. creation of a pension trust fund with dedicated SRI policy based on integration of ESG issues into investment decision-making and portfolio management, or creation of a committtee of the inter-union employee savings providing a "SRI label" to SRI employee saving funds), and laws regarding CSR reporting.

The NRE (Nouvelles Régulations Economiques [New Economic Regulations]) law of July 2001 (Article 116) obliges all companies listed on the first market (the largest market capitalizations) to report on a yearly basis on the social and environmental impacts of their activities. In 2011, The Grenelle II law of 2011 extends the reporting obligation to two types of actors: non-listed large French companies with over 500 employees and French subsidiaries of foreign companies (art. 225), and asset managers and open-end investment companies (art. 224). It also expands the range of information required, and requests external verification. Though mandatory, this law relies on a "comply or explain" basis, as in voluntary approaches.

National CSR policies in Europe are reflecting the diversity of economic, cultural and political contexts, but their main objectives are similar: promoting stakeholder dialogue and public private partnerships; enhancing transparency and credibility of CSR practices and instruments; raising awareness, increasing knowledge, disseminating and awarding best practices; and ensuring a more solid and consistent link between sustainable development objectives and public policies (European Commission DG EMPL 2007).

Stringent regulations are based mainly on mandatory reporting requirements, together with additional characteristics such as detailed rules for ESG reporting, periodic evaluation and possibly audits of CSR reports or sanctions in case of non-compliance. Non-stringent regulations are mainly based on voluntary codes or norms. The main characteristics of the CSR national frameworks are summarized in Tables 5 to 8.

4.2. A typology of CSR reporting and CG models

In Tables 5 to 8, we describe the national regulatory frameworks for CSR reporting in four groups of countries: Northern Europe (Denmark, the Netherlands, Norway, Sweden); Continental Europe (France, Belgium, Germany, Luxembourg); Southern Europe (Portugal, Spain, Italy), and Anglo-Saxon countries (UK, USA, Australia).

While specific laws on disclosure of isolated either environmental, or social or governance factors may have been adopted in each country, here we focus exclusively on integrated ESG reporting regulations to characterize the CSR national context. In turn, laws governing disclosure on environmental issues only, or social issues only, or governance structures only are not mentioned. The only exception is for Anglo-Saxon countries which have not adopted integrated CSR or ESG laws. We therefore mentioned isolated (rather than integrated) E, S or G laws in Anglo-Saxon countries.

Regarding the characteristics of each integrated CSR reporting law, we report the following items:

- latest framework reports the name of the law;
- the themes must in principles be integrated ESG themes, except in the case of Anglo-saxon countries, which may be either E, or S or G
- mandatory / voluntary describes whether CSR reporting is mandatory or not, and for mandatory laws, whether it is based on a "comply or explain" basis or not
- scope concerns affected companies
- detailed rules indicates whether the legislative text provides specific indicators or rules of reporting
- external verification states whether a third party has to certify the CSR report
- fines indicates whether non-compliance is subject to monetary sanctions
- evaluation describes whether the legislator has required a periodic evaluation of the law and its application

In order to build our typology of CSR and CG structures, we report in the last two lines of each table two aggregate "indexes": whether the CSR regime is stringent or not, depending on the characteristics of the CSR national legislative context that have been reviewed in the first part of each table; and the CG model which has been characterized in Table 3.

Given the main legislations for CSR reporting and CG structures reviewed previously, we are now able to build a typology depending on whether the CSR reporting regime is stringent or non-stringent (horizontal axis), and on whether the CG structure is based on the shareholder, the stakeholder or the hybrid model (vertical axis). This typology is reproduced in Figure 6.

Table 5. CSR national frameworks in Northern Europe

	Denmark	***Netherlands***	***Norway***	***Sweden***
Latest framework	'Social responsibility for large businesses' law, 2008	'Statement of international CSR', 2008	'Sustainability reporting' law, 2013	'Sustainability report', 2007
Themes	ESG	ESG	ESG	ES+ Ethics
Mandatory Voluntary	Mandatory	Voluntary	Mandatory Comply or explain	Mandatory Comply or explain
Scope	Large businesses with total assets / liabilities and/or net revenue > € 20M and/or >250 employees + listed and state-owned companies	International enterprises	Large companies	All state-owned companies
Detailed rules	Yes	Yes	Yes (GRI)	Yes (GRI)
External verification	No	No	No	Yes
Fines	No	No	No	Yes
Evaluation	Yes compliance rate 87% in 2011	Yes	Yes	Yes
CSR regime	Stringent	Non stringent	Mixed	Mixed
CG model	Stakeholder	Hybrid	Hybrid	Hybrid

Table 6. CSR national frameworks in Continental Europe

	France	***Belgium***	***Germany***	***Luxembourg***
Latest framework	'Grenelle II' Act 2010	'Long term view on SD' 2013	'German Sustainability Code' 2011.	'Charter and Label on Sustainable development' 2003
Themes	ESG	ESG	ESG	ESG
Mandatory Voluntary	Mandatory Comply or explain	Voluntary	Voluntary	Voluntary
Scope	All companies with > 500 employees and sales revenue > €100M	All companies and the Federal state	All companies and organizations	Any company
Detailed rules	Yes (GRI, ISO26000)	Yes	Yes (GRI, EFFAS)	Yes
External verification	Yes	No	No, but self declaration of conformity	Self evaluation
Fines	No	No	No	No
Evaluation	Yes	Yes	Yes	Yes
CSR regime	Stringent	Non Stringent	Non Stringent	Non Stringent
CG model	Stakeholder	Hybrid	Stakeholder	Stakeholder

Table 7. CSR national frameworks in Southern Europe

	Portugal	***Spain***	***Italy***
Latest framework	Sustainability reporting law 2007	'Sustainable Economy Law' 2011.	Accounts modernization decree 2007
Themes	ESG	ESG	ESG
Mandatory Voluntary	Voluntary Mandatory for some firms	Mandatory	Voluntary
Scope	All companies. Mandatory for public firm in water supply, waste management, transports, postal services and administration of harbours	State-owned companies, and companies > 1000 employees	All companies
Detailed rules	Yes	Yes (GRI)	No
External verification	No	Self-evaluation and/or declaration of verification	No
Fines	No	No	No
Evaluation		Yes	No
CSR regime	Non Stringent	Stringent	Non Stringent
CG model	Hybrid	Hybrid	Hybrid

The conclusion that wan be drawn from our typology, is that four groups of countries emerge, that somehow constitutes different models:

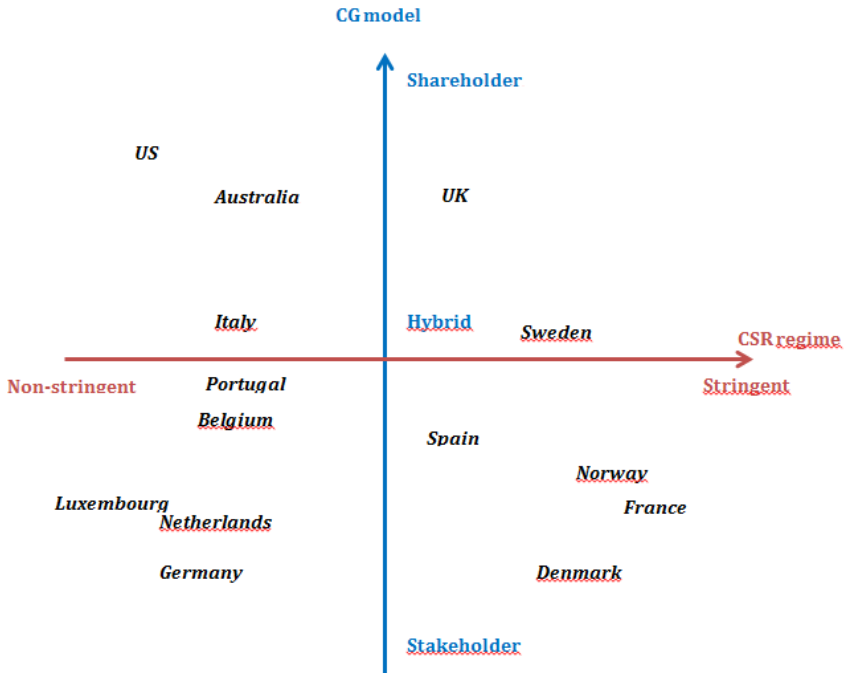
- USA: short-term oriented shareholder primacy
- UK long term oriented shareholder primacy
- France: distant stakeholders orientation
- Germany: close stakeholders orientation

The USA and the UK share a common shareholder orientation, where the ultimate goal of listed companies is to create value for their stockholders. However, and partly due to the structure of equity ownership in both countries, the temporal horizon is rather distinct. Short term value creation is favored in the US, with detrimental effect on the implementation of CSR strategies. In the UK, the prevalence of long-term institutional investors (pension funds, insurance companies) induces a strong pressure on British listed firms to regularly disclose accurate information on CSR issues (see Aguilera et al., 2006). France and Germany share a stakeholder orientation, where the interests of non-financial stakeholders (such as workers, suppliers, consumers, etc.) are allegedly part of the business conduct. The two countries, however, do not consider the same stakeholders with the same magnitude. Germany favors a strong integration of shareholders' and labour interests. France, by contrast, favors the integration of distant stakeholders, such as the environment or local communities: it results in a somehow stringent regulatory framework regarding CSR reporting.

Table 8. CSR national frameworks in Anglo-saxon countries

	US	***UK***	***Australia***
Latest framework	GHG reporting rule 2010 Sarbanes-Oxley act 2002	Carbon reduction commitment 2010 Companies Act 2006	Financial Services Reform Act 2010 Disclosure of codes of conducts
Themes	E G	E ESG	ES E
Mandatory Voluntary	Mandatory	Mandatory	Mandatory
Scope	GHG: fossil fuel and industrial chemicals, motor vehicles and engines+ large direct emitters of GHG with emissions ≥ 25,000 metric tons per year. SOA: US Listed companies	EUA: Companies that use more than 6,000MWh per year CRC: Companies listed on the London Stock Exchange	FSR : Issuers of financial products and fund managers DCC : Companies listed on ASX
Detailed rules	Yes	Yes (CRC: emissions related to energy use)	No
External verification	No	No	No
Fines	No	No	No
Evaluation	Yes	Yes	Yes
CSR regime	Non Stringent	Non Stringent	Non Stringent
CG model	Shareholder	Shareholder	Shareholder

Figure 5. A typology of CSR and CG regimes n European and Anglo-Saxon countries



4.3. Conclusion; towards a new model of governance and performance?

In this article we have emphasized the diversity of national trajectories regarding corporate governance and CSR. There are, however, common global trends that favor convergence. The rise of institutional investors and the growing importance of disclosure and of the 'comply or explain' principle as regulatory tools for large listed companies are of a primary importance. Moreover, in the light of recent scandals linked to working conditions and human rights in Bangladesh[6], business as usual is no longer considered as an option in European countries, escaping transparency requests from society and traditional reporting are no longer up-to-date. Hence, to improve the quality and quantity of information disclosed, ensure level playing field across countries and promote a sustainable European growth model based on CSR goals, a legislative proposal by the European Commission has been published in April 2013 as an amendment to the Fourth and Seventh Company Law Directive targeting the disclosure of non-financial and diversity information of certain large companies. Such a legislation at the EU level will counter the fragmented practices which existed until now and act as an accelerator for behaviours. The new proposal is now in the hands of the European Parliament and the Council.

The companies concerned by this legislation are large companies (and its consolidated subsidiaries) with more than 500 employees and balance sheet total of 20 million € or net turnover of 40 million €. Such companies will have to include in their annual report (or in the review within their consolidated annual report) a non-financial statement detailing the policies, results and risk-related aspects on environmental, social, human rights, anti-corruption and bribery issues. Such a non-financial statement may rely on national, European or international frameworks (e.g. GRI, ISO 26000, EMAS etc.), and should contain an opinion on the consistency or otherwise of the annual report with the annual accounts for the same fiscal year. Such a legislative proposal is based on the "comply or explain" rule: not disclosing is permitted subject to a reasoned explanation for doing so. Exemptions are given to companies publishing a CSR or sustainability report covering the same topics and content, relying on international frameworks, and annexed to the annual report.

Large listed companies will have to disclose diversity policies for their administrative, management and supervisory bodies as part of the corporate governance statement. Those companies without any diversity policy in place should explain why they haven't done so.

Hence, driven by the transformation in company ownership, the acknowledgement of the limits of existing models of governance and performance and the rise of the CSR movement, a new model of governance and performance may start diffusing at the dawn of the new millenium, the characteristics of which are summarized in Table 9. This model will force or induce corporate executives to take social and environmental consequences of their activities directly into account, mainly through a disclosure-induced process and a diversification of board access. For OECD countries, this (integrated) model of performance and governance might be the opportunity to develop new sources of economic growth.

[6] In April 2013, an eight-storey building collapsed in Savar, in Bangladesh's garment-industrial belt close to the capital Dhaka, illustrating a flourishing and corrupt system of workplace practices keeping prices low on Western high streets at the cost of putting faraway lives at risk. With more than 250 deaths, the catastrophe is the second-deadliest industrial disaster in South Asia after the Bhopal disaster in 1984 (The Economist, "The new collapsing building", April 25, 2013).

Table 9. The new model of corporate governance

Model	*Shareholder model*	*Stakeholder model*	*New (integrated) model*
Objective	Shareholder value	Stakeholder value	Social value
Financial Market	Very active	Limited	Active
Shareholding	Dispersed	Concentrated, blockholders	With long-term institutional investors
Control	External, Market-based	Internal, Monitoring	Harmonized principles of governance (eg. OECD)
CSR Policy	Only if compatible with financial return	Yes	Yes
Horizon Incentives	Short term High powered financial incentives	Long term Low powered financial incentives	Long term Mix of financial and extra financial incentives
Boards	Dominated by shareholder representatives	Dominated by shareholders and labour	Diversified composition

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