CORPORATE LAW, BOARD PRACTICES AND VALUE CREATION: SPANISH EVIDENCE

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Abstract

Previous research suggests that boards of directors influence firm performance due to their role in activities such as strategic design and its implementation. From this perspective, many corporate governance researchers have tried to demonstrate empirically the impact of board characteristics on firm performance in different contexts. In this context, the objective of this work is to disclosure proven relationships between board governance variables and firm performance based on an analysis of relevant studies in Spain. Before a review of the relevant literature, we provide a legal overview of Spanish corporations and an analysis of corporate board practice in Spain (paying special attention to the composition of the boards of directors, the duality of the CEO and Chairman, gender diversity on boards and directors with multiple directorships). Following this, the analysis of the literature was carried out. The results show that in the majority of studies independent directors and CEO/Chairman duality have no relationship with firm performance. However, the proportion of women on the board of directors does show a positive relationship with firm performance. For the variable busy director, no conclusion can be established because the evidence found is scarce. We can conclude, therefore, that as a result of the inconclusive results as well as the scarcity of the study of some aspects for this field of study, further research on the relationship between the board and firm performance is necessary in the Spanish context.

Keywords: Board of Directors, Firm Performance, Independent Directors, Duality, Women Directors, Busy Directors

1. INTRODUCTION

According to the Agency Theory arguments, internal and external control mechanisms are of critical importance in making management structure work properly in firms where there is separation between ownership and control (Fama & Jensen, 1983). Among these mechanisms, the board of directors (hereinafter BD) is highlighted in literature as being one of the most important internal control mechanisms for monitoring and controlling management and larger shareholders in order to prevent opportunistic behavior against the interests of shareholders (see, among others, Fama, 1980; Hermalin & Weisbach, 1988; Yermack, 1996).

In particular, the Spanish business context is characterised by ownership concentration in the hands of small groups of shareholders and a corporate governance system with different types of board members, some of whom have a particular interest in the firm (proprietary directors). In this context, the BD has a critical role to ensure that senior management acts in the best interests of the owners and that dominant shareholders are not influencing decisions at the expense of other shareholders. To this end, from 1998 when the first code of good governance in Spain was approved (Olivencia Code of Good Governance or Olivencia Report), codes of good governance in Spain have required compliance with the recommendations therein in order to achieve a good corporate governance system, although firms are only obliged to disclose the degree of compliance with these recommendations in their annual reports[1] and to explain their reasons in the case of failing to do so[2].

[1] The Art. 538 of Spanish Company Law establishes that listed companies must make public an Annual Corporate Governance Report and disseminate it as a relevant fact (sending it to the CNMV, in whose webpage – www.cnmv.es – it can be consulted), detailing the degree of fulfilment of the Code of Good Governance recommendations.
[2] Following the "comply or explain" approach.

As a consequence of some corporate scandals, in both international and national contexts (such as Enron, American International Group, WorldCom or Bankia, among others), various reforms on corporate governance recommendations has been made in Spain, particularly oriented to increasing the efficiency of the BD in their function, through issues related to an increase in transparency on corporate governance mechanisms, appropriate composition of the board, diversity, or dedication of directors to their functions, among others. Given the influence of boards and their characteristics in activities such as designing and implementing firm strategy, the BO has, at least in theory, an impact on firm performance (O'Connell & Cramer, 2010). From this perspective, many corporate governance researchers have tried to demonstrate empirically the impact of board characteristics on firm performance in the Spanish context (as has been done in the same way in the context of other countries). In this context, the objective of this work is to disclosure proven relationships between board governance variables and firm performance based on an analysis of relevant studies in Spain. The remainder of this study is organised as follows: Section 2 describes the legal overview of the corporations in the Spanish context. Section 3 shows an analysis of corporate board practice in Spain (with special attention to the composition of the BD, the duality of the CEO and Chairman, the gender diversity on BD and directors with multiple directorships), aspects that will allow the reader to gain an understanding of the Spanish context within which the analyzed companies and BDs are operating. Section 4 describes the main characteristics and results of the analyzed studies. Finally, the Section 5 concludes this work.

2. LEGAL OVERVIEW OF THE CORPORATIONS IN SPAIN

In Spain, as in the rest of European countries, most companies are small and medium-sized (94.8% in 2017 were micro, small and medium enterprises according to the OECD study of 2017), however, large listed companies are of great importance in the country's economy (the companies listed on the IBEX-35[3] accounted for the equivalent of 27% of Spain's GNP generated abroad in 2016)[4]. The codes of good governance are primarily intended for these large listed companies, although they can also be applied to all the remaining companies. Along the years, different codes of good government have existed in the Spanish context – from the first, which was the Olivencia Report (1998), to others such as the Aldama Report (2003) and the Unified Good Governance Code (2006) – However, from 2015 (with the approval of Law 31/2014), the corporate governance framework for listed companies in Spain is based on:

- The binding provisions contained in Spanish Company Law (hereinafter SCL) and other applicable laws and regulations;
- The corporate governance recommendations contained in the Good Governance Code of Listed Companies adopted in 2015 (hereinafter the CBGSC).

Although different corporate governance systems can exist (unitary board, two-tier board and mixed system), large listed companies in Spain (similar to other European countries such as the United Kingdom and Italy) have a unitary board structure characterized by a single-tier BD, comprising non-executive and executive directors. In general terms and following previous literature (Johnson, Daily & Ellstrand, 1996; Pearce & Zahra, 1992; Zahra & Pearce, 1989), different functions have been attributed to the BD such as functions of control, service activities, strategic decisions and policy support and resources acquirer, among others. In particular, there are three fundamental approaches that have emerged in relation to the roles of BD: following the Agency Theory, it is argued that the BD is responsible for supervising and controlling the management team, preventing the emergence of conflicts of interest between managers and shareholders or between various groups of shareholders - *monitoring function* - (Letza et al., 2004; Sundaramurthy & Lewis, 2003); based on the Stewardship Theory, it is considered that the BD should guide and advise on the management and strategy of society - *advisory function* - (Donaldson & Davis, 1991); and, finally, the Resources Dependency Theory, establishes that the BD should be the link between the organization and its environment with the objective of attracting resources thanks to the ties and contacts that the directors have with the environment.

In the context of Spanish regulations, the different functions assigned to the BD of any type of Capital Company can be included in two types which are: advisory functions (performed by directors) and monitoring functions (performed by the BD as a whole). The monitoring function is made up of three fundamental responsibilities (CNMV, 2013): to guide and promote company policy (strategic responsibility) (S), to monitor management actions (vigilance responsibility) (V) and to serve as a link with the shareholders (communication responsibility) (C) (for more detail, see Table 1).

[3] It is a market capitalization weighted index comprising the 35 most liquid Spanish stocks traded in the Madrid Stock Exchange General Index and is reviewed twice annually.

[4] Taken from https://intereconomia.com/mercados/bolsa/ibex-35-ingreso-420-686-millones-del-exterior-66-del-total-20170524-1143/ [Accessed 29/07/2018].

Table 1. Functions of board of directors for all Spanish companies (non-delegable according to the legislation)

Functions (SCL)	*Advisory function*	*Monitoring function*		
		V	*S*	*C*
The supervision of the effective functioning of the constituted committees and of the performance of the delegated bodies and appointed managers		✓		
Establishing the general policies and strategies of the company			✓	
The authorization or dispensation of the obligations derived from the duty of loyalty		✓		
Their own organization and operation	✓			
The formulation of the annual accounts and their presentation to the general meeting of shareholders				✓
The formulation of any kind of report required by law to the administrative body as long as the operation referred to in the report may not be delegated				✓
The appointment and dismissal of the CEOs of the company, as well as the establishment of the terms of their contract		✓		
The appointment and dismissal of the directors who have direct dependence on the board or one of its members, as well as the establishment of the basic conditions of their contracts, including their remuneration		✓		
Decisions regarding the remuneration of directors, within the statutory framework and, where applicable, the remuneration policy approved by the general meeting of shareholders	✓			
The convening of the general meeting of shareholders and the preparation of the agenda and the proposal of agreements				✓
The policy regarding share ownership or participations			✓	
The powers that the general meeting have delegated to the board of directors, unless expressly authorized to sub-delegate them				✓

Source: Own research from Art. 429 bis SCL.

In addition to the previous functions granted to any BD, Spanish legislation includes a series of non-delegable functions in the case of listed companies, which are the following (Art. 429 ter SCL):

- The approval of the strategic or business plan, the annual management and budget objectives, the investment and financing policy, the corporate social responsibility policy and the dividend policy.
- The determination of the risk control and management policies, including fiscal policies, and the supervision of the internal information and control systems.
- The determination of the corporate governance policy of the company and the group of which it is the dominant entity; its organization and operation and, in particular, the approval and modification of its own regulations.
- The approval of the financial information that, due to its status as a listed company, the company must periodically make public.
- The definition of the structure of the group of companies of which the company is the dominant entity.
- The approval of investments or operations of any kind which, due to their magnitude or special characteristics, have a strategic nature or special fiscal risk, unless their approval corresponds to the general shareholders meeting.
- The approval of the creation or acquisition of shares in special purpose entities or entities domiciled in tax havens, as well as any other transactions or operations of a similar nature.
- The approval, prior report of the audit committee, of the operations that the company or companies of its group perform with directors.
- The determination of the company's fiscal strategy.

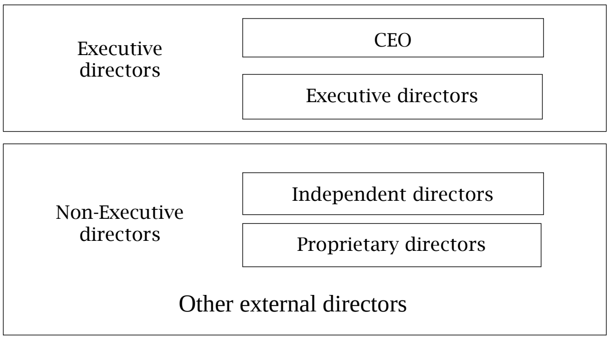
3. ANALYSIS OF CORPORATE BOARD PRACTICES IN SPAIN

The content of the CBGSC (2015), divided in different sections – General arrangements, Shareholders´ General Meeting and Board of Directors – has mainly focused on the organization and operation of the BD (in total, 53 recommendations from 64). As the analysis of all the aspects contained in the code would exceed the boundaries of this work, we have only analyzed some of them, these being the composition of the BD, duality CEO/Chairman, busy directors and gender diversity.

3.1. Composition of the board of directors

As previously mentioned, in the case of Spain, with a monist or unitary corporate governance system, the BD is composed of executive (also called "insiders") and non-executive (or "outsiders") directors. Among non-executives, it is possible to further distinguish between independent, proprietary and other externals (see Figure 1).

Figure 1. Typical board structure in Spanish listed companies



Source: Merino et al. (2012: 395)

The Spanish legislation (Art. 529 duodeceis SLC), with the approval of Law 31/3014, contains the definition of each type of director (see Table 2), except the figure of "other external directors" (those that are external but cannot be classified as proprietary or independent).

Table 2. Definition of types of directors and recommendation contained in the CBGSC (2015)

Type of directors	***Definition (SCL)***	***Recommendations in CBGSC (2015)***
Executive directors or *insiders*	Those who perform management functions in the company or their group, regardless of the legal relationship they maintain with it	The number of executive directors should be the minimum practical (*Recommendation 15*).
Independent directors	Those who, appointed according to their personal and professional conditions, can perform their functions without being conditioned by relations with the company or its group, its significant shareholders or its directors.	Proprietary and independent directors should constitute an ample majority on the BD (*Recommendation 15*). Independent directors should number at least half of all board members. However, when the company does not have a large market capitalization, or when a large cap company has shareholders individually or concertedly controlling over 30% of capital, independent directors should occupy, at least, a third of board places (*Recommendation 17*).
Proprietary directors	Those that have a shareholding equal to or greater than that which is legally considered significant (3% or more) or who would have been appointed by their status as shareholders, even if their shareholding does not reach that amount, as well as those who represent shareholders of the aforementioned	Proprietary and independent directors should constitute an ample majority on the BD (*Recommendation 15*). The percentage of proprietary directors out of all non-executive directors should be no greater than the proportion between the ownership stake of the shareholders they represent and the remainder of the company's capital. This criterion can be relaxed: a) In large cap companies where few or no equity stakes attain the legal threshold for significant shareholdings. b) In companies with a plurality of shareholders represented on the board but not otherwise related (*Recommendation 16*).

Source: Own research.

Following the trend of the codes of good governance of most countries, the CBGSC (2015) recommends the inclusion of a majority of outside directors (independent and proprietary) on the BD (Recommendation 15, CBGSC, 2015) since these should complement the knowledge and experience of the executive directors, especially through their independence of criteria and objectivity of judgment. Accordingly, with regard to the figure of proprietary directors, it should be noted that in the Spanish context, these directors are particularly worth mentioning because ownership is very concentrated and they represent those significant shareholders, in fact, the data show that in 2016, 34.7% of the directors belonged to this category (39.4% in 2015 and 42.1% in 2014) (see Table 3). This high percentage of proprietary directors in Spanish listed companies may favor the risk of expropriation of wealth from majority shareholders to the detriment of minority interests (*principal-principal conflict of interests*), although it has also been pointed out that these large shareholders can expropriate wealth to others stakeholders such as managers or workers (Anderson & Reeb, 2003; Faccio et al., 2001). Considering this risk, the CBGSC (20015) recommends that *"the percentage of proprietary directors out of all non-executive directors should be no greater than the proportion between the ownership stake of the shareholders they represent and the remainder of the company's capital"* (Recommendation 16, CBGSC, 2015).

In this context, the incorporation of independent directors on the BD is fundamental, since these are the ones that contribute with objectivity and independence to the decision-making process (Dalton et al., 1998) and who can avoid the expropriation of wealth, reducing the influence of management on the board and defending the interests of shareholders, especially those of minority shareholders (Giraldez & Hurtado, 2014). In addition, independent directors are expected to have no conflict of interests (Khan et al., 2018), are more sensitive to the demands of other stakeholders (Ibrahim & Angelidis, 1995) and they can contribute with important opinions and advice due to their high professional training (Coles et al., 2008). It is precisely this professional experience which enables independent directors to carry out the advisory function and in addition they are expected to be diligent in the performance of their functions since they are mindful of their reputation in the managerial work market (Ghosh et al., 2010). Following these arguments, the CBGSC (2015) recommends that at least half of BD members are independent except in certain circumstances (Recommendation 17). In the Spanish context, 41.7% of board members were independent directors in 2016 (40.1% in 2015 and 36.5% in 2014) (see Table 3). These types of directors constitute a growing trend in recent years although they do not reach the recommended 50%.

Table 3. Representation of the different categories of directors

	% Executives			*% Proprietaries*			*% Independents*			*% Other externals*		
	2014	**2015**	**2016**	**2014**	**2015**	**2016**	**2014**	**2015**	**2016**	**2014**	**2015**	**2016**
Ibex-35	16.7	15.9	15.5	31.1	29.1	25.6	45.1	47.6	50.2	7.1	7.4	8.7
More than € 500 M	17.7	15.3	17.2	41.2	43.2	39.4	32.9	36.2	35.8	8.3	5.2	7.6
Less than € 500 M	17.3	17.0	15.5	44.9	39.8	39.4	31.4	36.0	38.4	6.3	7.3	6.7
Total	17.2	16.2	16.0	42.1	39.4	34.7	36.5	40.1	41.7	8.0	6.9	7.6

Source: CNMV (2017)

However, it is undeniable that the presence of executive directors is also necessary since this category of director has a greater knowledge of the company and the environment in which it operates that the rest of the directors do not have, however, they may be reluctant to supervise managers (Hermalin & Weisbach, 1998) because they are not independent of the CEO (Zajac & Westpahl, 1996), hence the importance of the other types of directors (independent and proprietary) to carry out this supervisory function. In the Spanish context, 16% of board members were executive directors in 2016 (16.2% in 2015 and 17.2% in 2014) (see Table 3). Table 3 shows that each year the presence of this type of directors has decreased.

Table 4. Compliance with the CBGSC (2015) recommendations 15 to 17[5]

Recommendation of the CBGSC (2015)	*2015*	*2016*
Recommendation 15 (majority of proprietary and independent directors)	94.2	94.2
Recommendation 16 (ratio between proprietary and other non-executive directors)	81.8	80.3
Recommendation 17 (number of independent directors)	72.3	70.8

Source: CNMV (2017).

In summary, in the Spanish context, the majority of listed companies comply with the recommendation of the incorporation a majority of proprietary and independent directors on the BD (Recommendation 15) (94.2% in 2015 and 2016 have followed this recommendation) (see Table 4). In regard to the recommendation of the ratio between proprietary and other non-executive directors (Recommendation 16), 81.8% in 2015 and 80.3% in 2016 have followed this, showing the trend is decreasing despite the fact that the percentage of these types of directors has decreased, as mentioned above. Finally, the recommendation concerning the incorporation of at least 50% of independent directors on the BD (Recommendation 17) has only been followed by 70.8% in 2016 (72.3% in 2015), so the trend with regard to compliance is decreasing although the percentage of these categories of directors has increased. This data indicates that although there are a greater number of independent directors, there are a greater number of companies that do not follow the above recommendation.

3.2. Duality chairman/CEO

There is duality when the same person holds the position of Chairman of the Board and Chief Executive Officer of the company. On a theoretical level and following the Agency Theory, duality inhibits the BD from being able to exercise, independently, its control and supervision function over management (Pucheta-Martínez, 2015; Tang, 2017). Similarly, the accumulation of power in the same person creates a strong individual power base (Scafarto et al., 2017) that can favour opportunistic actions to the detriment of the company (Jensen & Meckling, 1976; Jensen, 1986) and CEO entrenchment (Daily & Dalton, 1993). All this can result in poor performance (Ghosh et al., 2010; Tuggle et al., 2010, among others).

On the other hand, based on the Stewardship Theory (Davis et al., 1997), unifying power avoids coordination problems and facilitates the transmission of information, aspects that reduce coordination costs (Corbetta & Salvaro, 2004; Song et al., 2006; Tang, 2017). In addition, the existence of duality allows "*a unified and strong leadership with a clear sense of strategic direction*" (Braun & Sharma, 2007) that will lead to greater autonomy (Cabrera-Suárez & Martín-Santana, 2015), faster decision making processes and increased company efficiency (Dowell et al., 2011). All this could lead to a greater increase in value in the company (Huang et al., 2012; Dowell et al., 2011; Kota & Tomar, 2010; Donaldson & Davis, 1994).

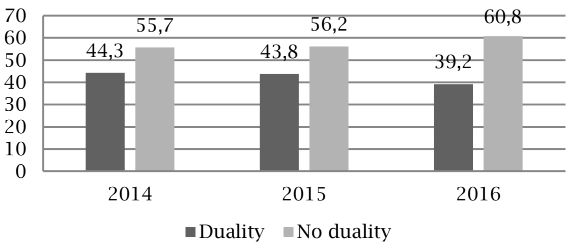
As a consequence of this lack of international consensus on the subject, in the Spanish context, the CBGSC (2015) does not pronounce on the convenience or otherwise of separating these figures, highlighting that both options have advantages and disadvantages. In fact, the regulations allow duality albeit subject to the favorable vote of two-thirds of the BD members (Art. 529 septies SCL, introduced by Law 31/2014). However, if there is duality, a lead director must be appointed from among the independent directors with the following functions: *"convene the board of directors or include new points of the day to the board meeting already convened; coordinate and*

[5] Only data for 2015 and 2016 are available and comparable of the recommendations of the CBGSC (2015).

bring together non-executive directors; and, conduct the periodic evaluation of the chairman of the board of directors" (Art. 529 septies SCL, introduced by Law 31/2014). To the previous functions, the CBGSC (2015) has added the following functions to be performed by the lead independent director: *"chair the board of directors in the absence of the chairman or vice chairman give voice to the concerns of non-executive directors; maintain contacts with investors and shareholders to hear their views and develop a balanced understanding of their concerns, especially those to do with the company's corporate governance; and coordinate the chairman's succession plan"* (Recommendation 34, CBGSC, 2015).

In practice, in 2016, duality existed in 39.2% of firms (43.8% in 2015 and 44.3% in 2014) (CNMV, 2017), therefore, the trend over the years is for the cases of companies in which there is duality to decrease (see Figure 2).

Figure 2. Percentage of companies with or without Duality CEO/Chairman



Source: CNMV (2017)

However, based on data of CNMV (2017) 9.6% of listed companies with duality saw no need to assign powers to the lead independent director over and above those established by the SCL. A further 22.9% of lead directors hold only some of the powers specified in Recommendation 34 (CBGSC, 2015). The power least conferred is that of maintaining contacts with investors and shareholders.

3.3. Gender diversity

Various theories have defended the advantages that the presence of women on the BD can have for the organizations although there are drawbacks too (see Table 5). Accordingly, and following the Agency Theory woman are more active in the monitoring and control role (Virtanen, 2012) as they exert more effort (Adams & Ferreira, 2009), are more likely to ask questions (Bilimoria & Wheeler, 2000) and to participate in debates (Ingley & Van der Walt, 2005), thereby exercising participatory leadership (Eagly & Johnson, 1990). Moreover, Carter et al. (2003) point out that the independence of the board is greater and Kim and Starke (2017) show that the set of boards´ expertise is diversified, when there is gender diversity on the BD, aspects that could improve the monitoring function.

For its part, based on the Resource Dependency Theory – the board has, among other functions, that of providing resources and relationships from and within the environment (Pfeffer & Salancik, 1978) – the presence of female directors on the BD bring skills (Hillman & Dalziel, 2003), diverse networks (Ibarra, 1993), experience and understanding about certain markets in which women are consumers (Arfken et al., 2003) and non-business backgrounds (Hillman et al., 2002). All these skills and experiences can contribute to creativity and innovation in the decision making process (Terjessen et al., 2015).

Finally, the *Gender Role Theory* is based on the idea that women have qualities that may be useful in the performance of their duties as directors, such as greater empathy with and concern for others (Eagly & Johannesen-Schmidt, 2001) and they are more communicative, democratic, participatory and cooperative (Eagly et al., 2003).

Table 5. Advantages and drawbacks derived from gender diversity on BD

ADVANTAGES	Promotes a better understanding of the marketplace, thereby increasing company ability to penetrate markets	Carter et al (2003) Campbell and Mínguez-Vera (2008)
	Leads to more effective problem-solving since a more diverse board provides a broader perspective and, consequently, a greater number of alternatives to evaluate	Rose (2007)
	May improve the quality of the directors and managers if they are selected from both genders without prejudice	Campbell and Mínguez-Vera (2008)
	May issue positive signals to markets – labour, products and capital markets – by providing a greater degree of legitimacy to corporations and improving their reputations	Carter el al. (2007) Rose (2007)
DRAWBACKS	Implies heterogeneous teams, which tend to communicate less frequently	Cox and Blacke (1991) Watson et al. (1993)
	Heterogeneous teams are less cooperative and experience more conflicts	Williams and O´Reilly (1998)
	May lead to the generation of discrepancies and slow down the decision-making process because leadership styles are different between males and females	Litz and Folker (2002) Fenwick and Neal (2001)
	Can generate more opinions and critical questions within heterogeneous boards that can be more time-consuming	Erhardt et al (2003) Smith et al (2006)

Source: Adapted from Gallego-Álvarez et al. (2010).

In recent years, gender diversity has received specific attention in several countries belonging to the European Union[6], based on the assumption that the presence of women on boards creates value (2018). In Spain, various initiatives have been developed. First, the Spanish Parliament approved in 2007 the Gender Equality Act (the so-called "Law of Equality"), which requires companies that cannot present an abbreviated profit and loss account to include a number of women in their Board of Directors that enables a balanced presence of women and men to be achieved by 2015.

Second, the SCL has established that the director selection policy should seek a balance of knowledge, experience, and gender in the board´s membership and should not suffer from implicit biases that may imply any discrimination and, in particular, should facilitate the selection of female

[6] For more information, see the works of Pastore (2018), in the Italian context, or Trinh et al (2018) in the UK context, among others.

directors (Art. 529 bis SCL, introduced by Law 31/2014).

Third, the 14th recommendation of the CBGSC (2015) establishes that *"director selection policy should pursue the goal of having at least 30% of total board places occupied by woman directors before the year 2020"*. In this sense, the CBGSC (2015) argues that diversity *"is a cornerstone of good corporate governance that conditions its effectiveness and influences both the quality of its decisions and ability to successfully promote the corporate interest"*. The above recommendation is based on a draft recommendation of the European Union, pending approval, which suggests that by 2020, 40% of the members of the governing bodies of listed companies in the EU countries should be women (EU, 2012). In addition, the CBGSC (2015) recommends that BD approve a policy for the selection of directors that, among other objectives, favors the diversity of knowledge, experience and gender (Recommendation 14, CBGSC, 2015).

Table 6. Presence of women on the board of directors

	Number of women directors			*% of women directors on total*			*Number of firms with women directors*			*% of firms with women directors on total*		
	2014	*2015*	*2016*	*2014*	*2015*	*2016*	*2014*	*2015*	*2016*	*2014*	*2015*	*2016*
Ibex-35	78	90	90	16.7	19.6	19.7	32	34	34	91.4	97.1	97.1
More than € 500 M	32	37	61	11.6	12.9	15.9	19	22	31	73.1	78.6	86.1
Less than € 500 M	71	80	72	11.8	13.8	14.3	47	50	47	58.8	67.6	71.2
Total	181	207	223	13.5	15.6	16.6	98	106	112	69.5	77.4	81.8

Source: CNMV (2017)

According to the figures in Table 6, in Spanish companies in 2016 only 16.6% of directors were women (15.6% in 2015 and 13.5% in 2014). Similarly, the percentage of companies with women directors has also increased in recent years (81.8% of the firms had women on the BD in 2016 in comparison with 69.5% in 2014). However, despite the growing trend, these figures are far from those presented by other countries of the European Union such as Belgium (27.9%), Denmark (27%), Finland (29.2%), Norway (46.7%) or Sweden (33.6%), among others (Deloitte, 2017).

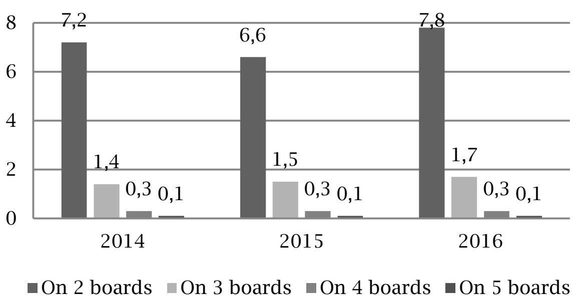
3.4. Busy directors

The "busy" directors are those who sit on more than one BD. On a theoretical level, on the one hand, the defenders of "Reputation Effect" highlight that the number of multiple directorships seems to be associated with high quality directors (Vafeas, 1999) and, therefore, a greater diversity of experience (Ferris et al., 2003). Moreover, these busy directors are interested in preserving their reputation (López & Morrós, 2014) so they should be expected to perform their functions efficiently. In fact, several empirical studies (Brown & Malloney, 1999; Vafeas, 1999; among others) have used the number of multiple directorship as a proxy for the reputation of outside directors in the external labour market. Furthermore, the argument is put forward that firms could use their directors to sit on the boardroom of other firms with the objective of forming contractual relations (Ferris et al., 2003) or cooperating with them (Koenig et al., 1979). In addition, it is considered that busy directors have "*a well-developed relational capital network with other organizations and external contingencies*" (Hundal, 2017).

However, on the other hand, the defenders of the "Busyness Effect" point out that directors, who hold directorships on multiple firms, do not have sufficient time for the discharge of their professional responsibilities on a single board (Lipton & Lorsch, 1992; Hauser, 2017) because they have an *"excessively diversified job, with time constraints and the need to collaborate with very different firms and possibly different industries"* (López & Morrós, 2014). Thus, multiple directorship could affect their ability to prepare for meetings (Harris & Shimizu, 2004) and their director effectiveness as corporate monitors (Shivdasani & Yermack, 1999).

In line with the previous arguments, some good governance codes in other countries have established limits on the number of boards to which non-executive directors may belong. However, in the Spanish context, the CBGSC (2015) has limited itself to recommending that *"the nomination committee should ensure that non-executive directors have sufficient time available to discharge their responsibilities effectively. The board of directors regulations should lay down the maximum number of company boards on which directors can serve"* (Recommendation 25). Therefore, individual companies have the discretion to limit the maximum number of boards to which the directors may belong.

Figure 3. Percentage of directors belonging to more than one board



Source: CNMV (2017)

According to statistics prepared by CNMV, in 2016, a total of 1,197 people occupied the 1,346 positions of directors of listed companies, which represents a ratio of 1.12 directorships per person (1.11 in 2015). Of these, a total of 1,079 administrators (90.1% of the total) occupied a single board. Therefore, the rest, 9.9% participated on more than one board, with the following details (see Figure 3): 7.8% participated on the boards of two entities (6.6% in 2015 and 7.2% in 2014), 1.7% in three entities (1.5% in 2015 and 1.4% in 2014), 0.3% in four entities (same percentage as in 2015 and 2014) and 0.1% in five companies (same percentage as in 2015 and 2014) (CNMV, 2017).

4. ANALYSIS OF A LINK BETWEEN BOARD GOVERNANCE AND COMPANY PERFORMANCE

Following the international trend, in Spain, the interest aroused has led to an extensive study of the literature on the relationship between the characteristics of the BD and the performance of the company in the Spanish context (Arosa et al., 2013; López & Morrós, 2014; Cabrera-Suárez & Martín-Santana, 2015; Villanueva-Villar et al., 2016; Pucheta-Martínez, 2015, Rodríguez et al., 2013, among others).

In view of the results obtained in the various considered studies, we can point out that there is no unanimity regarding the relationships obtained, with this depending on the variables used to measure business profitability, among other factors. In this sense, diverse performance measures have been used such as: return on equity ratio (ROE), measured as net profit over total equity; return on assets ratio (ROA), measured as earnings before interests and taxes over total assets; Tobin´s Q (which is the ratio between market capitalization and total assets) or q (proxy for Tobin´s Q, measured as the sum of the market value of the stock and the book value divided by the book value of the total assets); among others.

Furthermore, in studies of different countries, corporate governance has been measured by indexes (aggregates of governance attributes) such as the G-index (Gompers et al., 2003), the E-index (Bebchuk et al., 2009) or the Corporate Governance Quality Index (CGQI) (Rossi et al., 2015). However, the Spanish studies on the relationship between corporate governance and firm performance usually focus on one or more specific board of director characteristics (board size, independence directors, gender diversity, duality, etc.).

Table 7. Overview of the empirical studies on the relationship between different categories of directors and firm performance in the Spanish context

	Sample	*Years*	*Performance measure*	*Categories of directors measure*	*Relationship between categories of directors and performance*
Arosa et al. (2013)	307 SMEs	2006	ROA	Outside directors	Negative
Cabrera-Suárez & Martín - Santana (2015)	544 non-listed family firms	1989-2007	Productivity (natural logarithm of the ratio of sales to employees)	Executive directors	Negative
				Outside directors	Negative
García-Ramos & García-Olalla (2014)	247 firms from Spain, Portugal and Italy	2003-2007	Long-term sales growth	Independent directors	Positive and negative (inverted U-shaped)
Pucheta-Martínez (2015)	162 listed firms (non-financial)	2004-2011	Market-to-book ROA	Independent directors	No relationship
				Proprietary directors	No relationship
Rodríguez et al. (2013)	121 firms	2009	ROE ROA Tobin´s Q	Independent directors	No relationship
Villanueva-Villar et al. (2013)	65 firms	2006-2012	Q (proxy for Tobin´s Q)	Independent directors	No relationship
	65 firms	2009-2012	Q (proxy for Tobin´s Q)	Independent directors	Positive

Source: Own research.

With regard to results concerning the relationship between different categories of directors on BD and firm performance, there is no consensus (see Table 7).

Table 8. Overview of the empirical studies on the relationship between duality and firm performance in the Spanish context

	Sample	*Years*	*Performance measure*	*Relationship between duality and performance*
Arosa et al. (2013)	307 SMEs	2006	ROA	No relationship
Cabrera-Suárez & Martín Santana (2015)	544 non-listed family firms	1989-2007	Productivity (natural logarithm of the ratio of sales to employees)	Positive
García-Ramos & García-Olalla (2014)	247 firms from Spain, Portugal and Italy	2003-2007	Long-term sales growth	Positive
Pucheta-Martínez (2015)	162 listed firms (non-financial)	2004-2011	Market-to-book ROA	No relationship
Rodríguez et al. (2013)	121 firms	2009	ROE ROA Tobin´s Q	No relationship
Villanueva-Villar et al. (2013)	65 firms	2006-2012	Q (proxy for Tobin´s Q)	Positive
	65 firms	2009-2012	Q (proxy for Tobin´s Q)	No relationship

Source: Own research.

First, when the variable "outside directors" (including independent and proprietary directors) is used, the results show a negative relationship with firm performance (Arosa et al., 2013; Cabrera-Suárez and Martín-Santana, 2015). Second, if the variable used is "independent directors", some studies document a non-existent relationship (Pucheta-Martínez, 2015; Rodríguez et al. 2013; Villanueva-Villar et al., 2013) and others, a positive relationship (García-Ramos & García-Olalla, 2014; Villanueva-Villar et al., 2013). Finally, only one study (Pucheta-Martínez, 2015) has used the variable "proprietary directors", obtaining a non-exist relationship with firm performance.

In regard to the relationship between duality and firm performance, the evidence obtained from empirical studies is mixed (see Table 8). In fact, some studies have obtained a positive relationship between the variables (Cabrera-Suárez & Martín-Santana, 2015; García-Ramos & García-Olalla, 2014; Villanueva-Villar et al., 2016) while other studies document a non-existent relationship (Arosa et al., 2013; Pucheta-Martínez, 2015; Rodríguez et al., 2013). Due to the heterogeneity of both the results obtained and the samples analyzed (large companies and SMEs, listed and non-listed companies, family and non-family firms ...), no conclusions can be drawn, however, we can underline that we have not found any study in the Spanish context that has shown that duality causes a negative effect on business performance as suggested by the Agency Theory.

Table 9. Overview of the empirical studies on the relationship between gender diversity and firm performance in the Spanish context

	Sample	*Years*	*Performance measure*	*Relationship between gender diversity and performance*
Campbell and Míguez-Vera (2008)	68 non-financial listed firms	1995-2000	Q (proxy for Tobin´s Q)	Positive
Gallego-Álvarez et al. (2010)	117 listed firms	2004-2006	Q (proxy for Tobin´s Q), ROA, ROE, ROS (return on sales), ROAN (net return on assets, GM (ratio between gross margin and net sales)	No relationship
Martín-Ugedo and Mínguez-Vera (2012)	Non-financial SMEs (42,979 observations)	2003-2008	ROA	Positive
Reguera-Alvarado et al. (2017)	125 non-financial listed firms	2005-2009	Tobin´s Q	Positive
Rodríguez-Domínguez et al. (2012)	117 non-financial listed firms	2004-2006	Q (proxy for Tobin´s Q), ROA, ROE, ROS (return on sales), ROAN (net return on assets, GM (ratio between gross margin and net sales)	Positive (in equal basis of work conditions and academic background and sectors dominated by males)

Source: Own research.

The majority of empirical studies that have analysed the relationship between the presence of women on the BD and firm performance in the Spanish context have obtained a positive result between these variables (Campbell & Mínguez-Vera, 2008; Martín-Ugedo & Mínguez-Vera, 2012; Reguera-Alvarado et al., 2017; Rodríguez-Domínguez et al., 2012).

Finally, with respect to the busy directors, we have only found one study that has analysed this variable in the Spanish context. Specifically, López and Morrós (2014) analysed the influence of multiple directorship on the performance with a sample of Spanish listed firms between 2007 and 2009 (in total, 311 firm-year observations). The results show a nonlinear relation between firm performance (measured as a Tobin's Q ratio proxy and ROA) and the average number of BDs to which its independent directors belong. Initially, a reputation effect prevails so that a positive relation exists between the variables. However, after reaching a threshold (around four BDs of listed firms), the relation turns negative due to a falling dedication effect as a director can no longer perform as well because they are sitting on too many BDs.

5. CONCLUSIONS

The corporate governance framework for listed companies in Spain from 2015 is based on the binding provisions contained in SCL and the recommendations contained in the CBGSC (2015). The content of the CBGSC (2015), divided in different sections, has focused primarily on the organization and operation of the BD. As the analysis of all the aspects contained in the code would fall beyond the boundaries of this work, we have only analyzed some of them, these being the composition of the BD, the duality CEO/Chairman, busy directors and gender diversity.

First, large listed companies in Spain have a unitary board structure characterized by a single BD, comprising non-executive and executive directors. Within the category of non-executive directors, different types exist, such as independent, proprietary and other external directors. In relation to the composition of the BD, the CBGSC (2015) recommends that the majority of members must be non-executive directors, and almost all Spanish listed companies have followed this (94.2% of the listed companies in 2016). However, the recommendation of the CBGSC (2015) which holds that at least 50% of BD members are independent has not been followed by 29.2% of the listed companies in 2016.

Second, in the Spanish context, the existence of duality is possible because neither the law prohibits it nor does the CBGSC (2015) recommend otherwise. However, if duality does exist, a lead independent director will be appointed with special functions (some mandatory by law and others recommended by the CBGSC (2015)). According to the statistics elaborated by CNMV (2017), in the last three years, the number of companies with CEO/Chairman duality has decreased (only 39.2% in 2016). However, there are 32.5% of companies which have not attributed the powers recommended by the CBGSC (2015) to a lead independent director.

Third, recommendations related to gender diversity have focused, on the one hand, on the fact that the minimum number of women on the BD be at least 30% by 2020 and that a selection policy that favors, among others, gender diversity is approved. In practice, although the number of companies that have women on their boards has increased in recent years, companies are still far from reaching the recommended figure (the average percentage of women was 16.6% in 2016).

And, four, the "busy" directors are those who sit on more than one BD. In the Spanish context, the CBGSC (2015) gives companies discretion to limit the maximum number of company boards on which a director can serve. However, the busyness of directors do not appear to be a problem in Spain because only 9.6% of directors sit on two or more BDs in 2016.

Finally, a review of empirical studies about the relationship between the above variables and firm performance in the Spanish context has been carried out. In summary, the results show that in the majority of studies the firm performance has a non-relationship with independent directors, a positive or non-relationship with duality CEO/Chairman and a positive relationship with proportion of women on the BD. For the variable busy director, only one study has been found, therefore no conclusion can be established.

In the future, companies are expected to increase their level of compliance with the recommendations contained in the CBGSC (2015), especially as regards the incorporation of independents and the number of female directors on the BD. With regard to future lines of research, a greater knowledge about the effect that the presence of proprietary directors have on corporate performance would be desirable, as well as a greater analysis of busy directors considering not only the number of boards to which they belong but also whether they are directors of companies in the same sector or in different sectors.

The main limitation of this work is that the study has been limited only to the Spanish context. Also, only those variables most analyzed in the different studies have been included. In the future, a more complete analysis, in terms of the study context and variables analyzed, would be convenient.

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