7. The Interest of the Company in Spain: Interés Social, Corporate Purpose, and EU Sustainability Law

Lela Mélon

A. Introduction

Corporate governance, broadly defined, refers to the ensemble of legal rules, institutional practices, and normative expectations that regulate the direction and control of corporations. Corporate governance's conceptual nucleus is the contested notion of the *interest of the company*, a legal standard that guides directors' fiduciary duties and the ultimate purpose of the company. In the Anglo-American context, this concept has traditionally been interpreted through the prism of shareholder primacy, situating the maximisation of shareholder value as the exclusive or dominant corporate objective. However, in continental Europe the picture is more complex. In many jurisdictions, company law and governance practice reflect stakeholder-oriented traditions that assign weight to employees, creditors, communities, and even broader public interests.

Spain occupies a distinct place within this debate. As a civil law jurisdiction, its corporate governance system is shaped by codified law rather than judge-made doctrine, with the *Ley de Sociedades de Capital*[1] ("LSC") providing the primary statutory framework. Within the LSC, the concept of the *interés social* – often translated as "company interest" – functions as the doctrinal anchor for corporate purpose. Yet unlike in some continental systems where the concept of the company's interest is explicitly defined, the Spanish legislature has maintained a degree of deliberate ambiguity, leaving its precise content to be fleshed out by doctrine, case law, and soft law codes of governance. Scholars have debated whether this *interés social* is equivalent to shareholder value maximisation or whether it allows –

1 Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital. Boletín Oficial del Estado, 161, 58460–58665.

or even requires – consideration of collective, social, and environmental interests.[2]

This ambiguity in understanding the meaning of *interés social* has become particularly salient in the last two decades, as Spain has faced successive crises – corporate scandals in the early 2000s, the financial crisis of 2008 and its aftermath, and the sovereign debt crisis that reshaped the role of state and markets. These pressures brought questions of corporate legitimacy and responsibility to the forefront. Simultaneously, European Union directives – first on shareholder rights, then on non-financial reporting, and now on sustainability due diligence – have introduced new dimensions to the interpretation of company interest. Spanish law has had to reconcile the LSC's doctrinal framework with these supranational developments, resulting in a hybrid model in which sustainability imperatives are increasingly integrated into the core of corporate governance.

Recent doctrinal contributions exemplify the transformation that is underway. Fuentes Naharro and Megías López argue that Spain is experiencing a paradigm shift through the introduction of the *Sociedad de Beneficio e Interés Común* (SBIC), a new corporate form that legally recognises sustainability and common benefit as intrinsic to corporate purpose.[3] This innovation positions Spain among the few European jurisdictions that have moved beyond soft law CSR initiatives toward embedding sustainability in statute. Viscasillas similarly highlights how climate change has entered the corporate governance agenda, pushing Spanish boards to reconcile fiduciary duties with ecological obligations.[4] Together, these developments suggest that the Spanish concept of the company's interest is evolving from a narrow financial orientation toward a broader, sustainability-infused standard.

Empirical studies reinforce this evolution, albeit unevenly. Analysis of IBEX35 companies shows a steady increase in ESG reporting and compliance, though performance is often motivated by regulatory pressure rather than voluntary adoption. Gutiérrez-Ponce and Chamizo-González find that Spanish listed firms formally disclose environmental, social, and governance information but often treat such disclosures as compliance exercises

2 Fuentes Naharro, M., & Megías López, J. (2023). Sustainability in Spanish company law: State of the art and a special reference to the new SBIC (Sociedad de beneficio e interés común). *European Company Case Law (ECCL).*

3 Ibid.

4 Viscasillas, P. P. (2023). Climate change and corporate governance in Spain. ex/ante.

rather than substantive reorientations of the company's interest.[5] This compliance-driven view mirrors concerns across Europe: the challenge lies not in the presence of ESG language but rather in ensuring that sustainability is embedded in decision-making rather than relegated to peripheral reporting.

Spain is also notable for its ownership and governance structure, which complicates the sustainability debate. Corporate ownership is highly concentrated in Spain, with family-controlled firms, cross-shareholdings, and state-influenced entities dominating the landscape. Leech and Manjón demonstrated the enduring influence of blockholders in Spanish listed companies, the presence of which complicates the diffusion of shareholder primacy as an ideology.[6] Instead, with concentrated ownership, corporations often pursue long-term, relational strategies which theoretically can align with sustainability goals but also create risks of entrenchment and opacity. Family business governance in particular is central to the Spanish model, which shapes both the interpretation of the company's interest and the practice of corporate responsibility.[7]

The interplay of law, ownership structure, and European integration makes Spain a compelling case for examining the redefinition of the company's interest. Unlike Slovenia, where constitutional and historical legacies of self-management explain a stakeholder orientation, Spain's trajectory toward sustainability goals reflects a gradual adaptation of a shareholder-oriented legal structure influenced by EU law and domestic innovation. The *interés social* in Spain is thus a contest between competing logics: shareholder value, collective stakeholder responsibility, and the emerging framework of sustainability.

This chapter will explore the tension between these competing ideals in depth. Section 2 traces the historical evolution of Spanish corporate governance, highlighting the transition from Francoist corporatism to democratic codification and the role of family firms. Section 3 examines the legal framework of the LSC and associated soft law, focusing on how the

5 Gutiérrez-Ponce, H., & Chamizo-González, J. (2022). *Disclosure of environmental, social, and corporate governance information by Spanish companies: A compliance analysis.* Sustainability, 14(6), 3254.

6 Leech, D., & Manjón, M. (2002). Corporate governance in Spain (ownership and control in listed companies). Universidad Rovira i Virgili.

7 Lagos Cortés, D., & Botero, I. C. (2016). Corporate governance in family businesses from Latin America, Spain and Portugal: A review of the literature. *Academia Revista Latinoamericana de Administración, 29*(3), 231–254.

company's interest is defined and contested. Section 4 analyses ownership structures and empirical patterns of governance in crisis, drawing on studies of boards and performance. Section 5 situates Spain within the EU dimension, examining how EU sustainability directives reshape Spanish domestic law. Section 6 addresses the challenges of financialisation and political capture, particularly regarding the governance of banks and *cajas de ahorro*. Section 7 theorises Spain's juridical framework of sustainable governance, emphasising social, environmental, and institutional sustainability. Section 8 concludes by positioning Spain's model within broader European debates, arguing that the Spanish experience illustrates the possibilities and limits of integrating sustainability into company law in a system marked by concentrated ownership and soft law traditions.

By analysing the Spanish case, this chapter contributes to the comparative scholarship on the company's interest in Europe. It demonstrates that the "interest of the company" is neither static nor monolithic but evolves in response to crises, legal reforms, and supranational pressures. Spain, with its hybrid legal framework and distinctive ownership patterns, provides a laboratory for understanding how sustainability can be embedded in company law – not as an external appendage but as part of the very definition of the company's interest.

B. Historical Context: From Corporatism to Europeanisation

The historical development of corporate governance in Spain cannot be understood without reference to its broader political and economic transformations. Spanish corporate law evolved in tandem with the country's shift from authoritarianism to democracy, its transition from a protectionist to a market economy, and its integration into the European Union. These shifts shaped not only the structure of corporate ownership but also the legal and normative interpretation of the "interest of the company".

I. Corporatist Foundations under Francoism (1939–1975)

Under the Franco regime (1939–1975), a form of state-led corporatism was engrained in Spanish corporate law; private enterprises coexisted with significant government control over strategic sectors, tight regulatory

oversight, and a paternalistic approach to labour. While private property remained formally recognized, the role of a corporation was seen as an instrument of national economic policy and social cohesion as opposed to that of a profit-generating vehicle.[8] As such, the idea of a company having a broader social function – *interés general* – predates the rise of sustainability discussions in Spain.

During this period, boards of directors often functioned more as extensions of political and familial networks than as professional managerial organs. Legal mechanisms for shareholder protection were underdeveloped and capital markets were weak.[9] The lack of a dynamic investor class allowed business elites to concentrate ownership and control across generations. This created a legacy of family-dominated governance and lack of transparency by boards that persists in many areas of Spanish corporate life today.[10]

II. Transition to Democracy and Legal Codification

Following Franco's death in 1975 and the adoption of the Spanish Constitution in 1978, Spain entered a period of rapid democratisation and economic liberalisation. The new constitutional order emphasized economic pluralism, property rights, and the social function of enterprise. Article 38 of the Constitution guarantees freedom of enterprise within the framework of a market economy, while Article 128 emphasizes the subordination of all economic activity to the general interest – a duality that continues to shape interpretations of the "interest of the company".[11]

In legal terms, gradual consolidation of corporate law through updates to the Commercial Code and the eventual promulgation of the *Ley de*

8 Foweraker, J. (1987). Corporatist strategies and the transition to democracy in Spain. *Comparative Politics, 20*(1), 57–72.

9 Guillén, M. F. (2000). Corporate governance and globalization: Is there convergence across countries? *Advances in International Comparative Management*, 13, 175–204.

10 Villanueva-Villar, M., Rivo-López, E., & Lago-Peñas, S. (2016). On the relationship between corporate governance and value creation in an economic crisis: Empirical evidence for the Spanish case. *Business Research Quarterly, 19*(4), 233–245.

11 Constitución Española, Boletín Oficial del Estado, núm. 311, 29 de diciembre de 1978 (Esp.).

Sociedades Anónimas (LSA)[12] and *Ley de Sociedades de Responsabilidad Limitada (LSRL)*[13] marked this period of transition. These two regimes coexisted until the enactment of the *Ley de Sociedades de Capital (LSC)* in 2010, which unified and modernised Spanish company law.[14] The LSC (Real Decreto Legislativo 1/2010) remains the cornerstone of corporate governance in Spain, codifying key provisions on director duties, shareholder rights, and the structure of corporate organs.

Importantly, the LSC reflects a hybrid model: it draws inspiration from the shareholder-centred Anglo-American model but operates within a civil law framework that allows broader doctrinal interpretation. The *interés social* (Article 225), while not explicitly defined, is widely interpreted as requiring loyalty to the company itself as a legal person, not merely to the shareholders.[15]

III. The Persistence of Family Business Governance

One of the defining characteristics of Spanish corporate life is the central role of family-owned firms. More than 85 % of Spanish businesses are family-owned, including many listed firms and companies of systemic importance.[16] This pattern is not merely a legacy of the Franco era, but a feature that is embedded in the structure of Spain's corporate economy.

Lagos Cortés and Botero describe the governance of Spanish family firms as combining formal legal mechanisms with informal social controls, such as family protocols, succession agreements, and intergenerational trust structures.[17] Although the boards of such firms often include both family members and external professionals, decision-making power typically remains concentrated within the family.

12 Ley 19/1989, de 25 de julio, de reforma parcial y adaptación de la legislación mercantil a las Directivas de la CEE en materia de sociedades (modifica la *Ley de Sociedades Anónimas*). BOE núm. 178, de 27 de julio de 1989, pp. 22797–22817 (España).

13 Ley 2/1995, de 23 de marzo, de Sociedades de Responsabilidad Limitada. Boletín Oficial del Estado, núm. 71, de 24 de marzo de 1995, pp. 8575–8599 (España).

14 Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la *Ley de Sociedades de Capital*, BOE núm. 161, de 3 de julio de 2010, pp. 58472–58594 (España).

15 Ibid.

16 Hoverd, L. (2025, July 9). The 10 largest family businesses in Madrid. Tharawat Magazine. Retrieved from https://www.tharawat-magazine.com/facts/largest-family-businesses-madrid/, last accessed on 01.09.2025.

17 Cortés and Botero (n7).

While this can foster long-term strategic thinking and social cohesion, it also raises challenges for minority shareholder protection, board independence, and accountability – especially in times of crisis or succession.[18]

The prevalence of family governance also influences the interpretation of the company's interest. In many cases, *interés social* is understood not in shareholder value terms, but as the long-term viability of the family firm, including its reputation, employment role, and intergenerational sustainability.[19] This culturally-embedded notion of fiduciary responsibility aligns in some respects with stakeholder theory, though it is not always consistent with transparency or regulatory compliance.[20]

IV. Post-Crisis Governance Reform and EU Harmonisation

Spain's experience with the 2008 financial crisis and subsequent sovereign debt crisis played a crucial role in reshaping the discourse surrounding corporate governance. Failures in the governance of *cajas de ahorro* (savings banks), excessive risk-taking in real estate-linked financial institutions, and cases of accounting manipulation (e.g., Bankia) exposed weaknesses in Spain's soft law approach to governance.[21] These events prompted the Spanish government and the CNMV (*Comisión Nacional del Mercado de Valores*) to strengthen corporate governance standards and align more closely with EU norms.

The 2014 revision of the Código de Buen Gobierno de las Sociedades Cotizadas (Good Governance Code for Listed Companies) emphasised board independence, diversity, and the role of audit and risk committees.[22] More significantly, Spain began transposing EU directives on non-financial

18 Ibid.

19 Schroeder, D., & Thomsen, S. (2022). *Foundation Ownership and Sustainability: International Evidence*. ECGI. Retrieved from the ECGI website: https://www.ecgi.global/sites/default/files/Paper%3A%20David%20Schroeder%2C%20Steen%20Thomsen.pdf.

20 La Porta, R., López-de-Silanes, F., & Shleifer, A. (1999). *Corporate ownership around the world. The Journal of Finance, 54*(2), 471–517.

21 International Monetary Fund. (2012). Spain: The reform of Spanish savings banks – Technical notes. IMF.

22 Comisión Nacional del Mercado de Valores. (2015). *Código de buen gobierno de las sociedades cotizadas*. Madrid: CNMV. Retrieved from https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Codigo_buen_gobierno.pdf.

disclosure and shareholder rights into their national law, integrating sustainability concerns into mandatory reporting and board oversight.[23]

These reforms reflected not only a response to crisis, but also a broader process of Europeanisation. Spain, as an EU Member State, is bound by the Corporate Sustainability Reporting Directive (CSRD)[24] and the forthcoming Corporate Sustainability Due Diligence Directive (CSDDD),[25] as well as the EU Taxonomy.[26] As Martín and Fuentes Naharro & Megías López note, these directives have already begun to influence the interpretive scope of *interés social*, moving it beyond shareholder protection and toward environmental and social impact accountability.[27]

V. Doctrinal and Constitutional Ambiguity

While Spain has made significant strides toward modernising its governance framework, it retains a degree of doctrinal ambiguity regarding the company's interest. Unlike jurisdictions such as Germany or Slovenia,

23 European Union. (2014). *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. Official Journal of the European Union, L 330*, 1–9, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095; Gobierno de España. (2018). *Ley 11/2018, de 28 de diciembre, por la que se modifica el Código de Comercio, el texto refundido de la Ley de Sociedades de Capital aprobado por el Real Decreto Legislativo 1/2010, de 2 de julio, y la Ley 22/2015, de 20 de julio, de Auditoría de Cuentas, en materia de información no financiera y diversidad. Boletín Oficial del Estado, núm. 314*, de 29 de diciembre de 2018, 129168–129194. https://www.boe.es/buscar/doc.php?id=BOE-A-2018-17989.

24 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. Official Journal of the European Union, L 322, 16 December 2022, p. 15–43.

25 Corporate Sustainability Due Diligence Directive (CSDDD)
Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. Official Journal of the European Union, L 168, 19 June 2024, p. 1–48.

26 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, Official Journal of the European Union, L 198, 22 June 2020, p. 13–43.

27 Fuentes Naharro and Megías López (n2); La Porta et al (n20).

where the country's constitutional or statutory frameworks explicitly define stakeholder rights, the Spanish system relies more heavily on judicial interpretation and soft law guidance.[28]

The Spanish Constitution provides a potential foundation for embedding sustainability within corporate governance. Article 45 enshrines the right to a healthy environment, while Article 33 recognises the social function of property.[29] However, these constitutional principles have not yet been interpreted in corporate case law to support a stakeholder-oriented understanding of the company's interest. Instead, sustainability has entered Spanish corporate law largely through EU directives and their transposition into national legislation,[30] rather than through domestic constitutional or doctrinal development.

This disconnect between constitutional potential and legislative practice creates both a vulnerability and an opportunity. On the one hand, the absence of a clear constitutional commitment to stakeholder governance allows space for short-termism and opportunistic behaviour. On the other hand, it opens the door for creative legal interpretation, judicial innovation, and academic advocacy to anchor sustainability more firmly within Spain's corporate law framework.[31]

C. The Legal Framework of Corporate Purpose: Interpreting Interés Social *in Spain's Statutory and Normative Framework*

I. Introduction

Following Spain's historical transition from state corporatism to European integration, the legal architecture of the company's interest has remained marked by ambiguity. Central to this framework is the concept of *interés social* – the statutory standard that guides director conduct under Article

28 Embid Irujo, J. M., & Del Val Talens, P. (2016). *La responsabilidad social corporativa y el Derecho de sociedades de capital: entre la regulación legislativa y el soft law*. Agencia Estatal Boletín Oficial del Estado.

29 España. Constitución Española de 1978, Boletín Oficial del Estado, núm. 311, 29 de diciembre de 1978. https://www.boe.es/eli/es/c/1978/12/27/(1).

30 Gutiérrez-Ponce et al (n5).

31 Fuentes Naharro and Megías López (n2).

225.2 of the Ley de Sociedades de Capital (LSC).[32] While the doctrinal significance of *interés social* is indisputable, its legal meaning is contestable.

This section examines how the Spanish legal system conceptualises and operationalises *interés social* in the absence of a precise statutory definition. Building on the historical and ownership context outlined in sections B and D, it argues that *interés social* operates as a legal placeholder, whose content is increasingly shaped by a layered legal framework. This framework is made up of codified ambiguity, interpretive doctrine, soft law guidance, and transposed EU obligations. The Spanish case, as we shall see, offers a unique instance of legal evolution – not through top-down redefinition, but through the gradual accrual of norms and through institutional experimentation.[33]

II. The LSC's Doctrinal Ambiguity: A Constructive Indeterminacy?

Article 225.2 LSC stipulates that directors must act "in the interest of the company", yet it offers no formal clarification as to what constitutes that interest.[34] This statutory silence has opened a doctrinal field characterized by competing theories:

- shareholder-oriented interpretations, influenced by Anglo-American models, define *interés social* as equivalent to shareholder value maximisation;[35]
- entity-based theories treat the company as a distinct legal subject, emphasising its integrity, solvency, and operational continuity;[36] and
- stakeholder-inclusive interpretations, increasingly present in academic commentary and policy discourse, include social, environmental, and governance considerations in directors' duties.[37]

Rather than resolving this ambiguity, Spanish lawmakers have preserved it as a form of constructive indeterminacy, enabling *interés social* to evolve

32 *See* n14.
33 Fuentes Naharro and Megías López (n2).
34 *See* n14.
35 Alfaro Águila-Real, J. (2016). *El interés social y los deberes de lealtad de los administradores. Anuario de la Facultad de Derecho de la UAM, 20,* 213–236.
36 Embid Irujo and Del Val Talens (n28).
37 Apalategui, J. M. C. (2024). *La indeterminación intencional en el derecho.* Revista de la Facultad de Derecho de la Universidad de Deusto, (27).

in line with external pressures and evolving norms. This differs notably from the German model, where the company's interest is interpreted through statutory frameworks and institutionalised stakeholder representation via co-determination, and from Slovenia, where post-socialist legal development has produced more explicit constitutional orientation toward stakeholder governance.[38]

III. The Evolving Legal Content of *Interés Social*: Sectoral Reforms and Sustainability Mandates

The doctrinal vacuum of the LSC has gradually been filled by sector-specific legislation that indirectly redefines what constitutes lawful and legitimate corporate behaviour, such as the following:

- the Ley de Economía Sostenible (2011) links corporate activity to environmental and social objectives;[39]
- the Ley de Sociedades Laborales y Participadas (2015) embeds worker participation in corporate governance;[40]
- the Ley de Cambio Climático y Transición Energética (2021) mandates business alignment with climate goals;[41] and
- the Ley de Transparencia (2013) broadens the scope of disclosure beyond financial information and shareholder accountability.[42]

Although these statutes do not directly redefine *interés social*, they expand its content by linking the company's interest to social utility, environmental alignment, and participatory governance. As Martín argues, these developments reflect a growing normative convergence between sustainability and fiduciary responsibility. Compared to jurisdictions like the UK, where Section 172 of the Companies Act of 2006 introduces "enlightened shareholder

38 Djokić, D. (2009). *The Corporate Governance Statement and Audit Committee in the European Union and Republic of Slovenia*. CYELP, 5, 283–289.

39 España. Ley 2/2011, de 4 de marzo, de Economía Sostenible. *Boletín Oficial del Estado,* núm. 55, de 5 de marzo de 2011, pp. 25033–25235.

40 España. Ley 44/2015, de 14 de octubre, de Sociedades Laborales y Participadas. *Boletín Oficial del Estado,* núm. 247, de 15 de octubre de 2015, pp. 95086–95104.

41 España. Ley 7/2021, de 20 de mayo, de Cambio Climático y Transición Energética. *Boletín Oficial del Estado,* núm. 121, de 21 de mayo de 2021, pp. 62072–62120.

42 España. Ley 19/2013, de 9 de diciembre, de Transparencia, Acceso a la Información Pública y Buen Gobierno. *Boletín Oficial del Estado,* núm. 295, de 10 de diciembre de 2013, pp. 97922–97952.

value" but remains tethered to shareholder benefit,[43] the Spanish approach offers more interpretive elasticity, while still retaining the codified core of civil law.

IV. Soft Law as Normative Glue: The Role of the CNMV

In the absence of statutory reform, the Código de Buen Gobierno de las Sociedades Cotizadas (CNMV, 2020)[44] has emerged as a pivotal interpretive tool for *interés social*. Revised in 2020, the Code introduces guidelines on long-term value creation, board independence, ESG oversight, and risk control structures. Although the Code operates on a "comply or explain" basis, empirical studies suggest that listed firms increasingly treat these norms as de facto obligations.[45]

Soft law bridges the gaps between these norms: it reconciles the LSC's formal ambiguity with emerging investor, societal, and EU expectations. This mirrors governance developments in Germany, where the *Deutscher Corporate Governance Kodex* plays a similar role,[46] albeit within a more rigid institutional architecture, and in the UK, where the UK Corporate Governance Code exerts pressure primarily through investor relations.

In Spain, however, soft law is more doctrinally significant because it fills interpretive gaps left by the LSC; soft law effectively functions as a "living commentary" on the meaning of *interés social*.

V. Institutional Innovation and the Codification of Purpose: The SBIC

The establishment of the *Sociedad de Beneficio e Interés Común* (SBIC) in 2022 marks a significant departure from the previous soft-law approach to corporate sustainability, which relied on voluntary compliance with

43 United Kingdom. Companies Act 2006, c. 46, §172. *An Act to reform company law and restate the greater part of the enactments relating to companies.* London: The Stationery Office.

44 *See* n22.

45 Gutiérrez-Ponce et al (n5).

46 Regierungskommission Deutscher Corporate Governance Kodex. (2022). *Deutscher Corporate Governance Kodex [German Corporate Governance Code].* Berlin: Regierungskommission. Retrieved from https://www.dcgk.de.

non-binding principles and reporting guidelines.[47] SBICs must incorporate social and environmental purpose into their statutes and deliver annual public reporting on their impact.[48] This statutory form mirrors international experiments such as the US Benefit Corporation[49] or France's Société à mission.[50]

Unlike traditional companies under the LSC, SBICs legally define their purpose beyond profit. This innovation positions Spain as a leader in institutionalising sustainability within corporate law, going beyond CSR rhetoric to bind companies to plural objectives. However, the effectiveness of the SBIC model will depend on uptake, enforcement, and integration into broader governance norms – a challenge also observed in countries with similar legal frameworks.[51]

VI. Conclusion: A Juridical Field in Motion

The Spanish legal framework for the company's interest presents no single authoritative doctrine. Rather, *interés social* serves as a dynamic legal construct, shaped by constitutional principles, sectoral statutes, soft law codes, and transnational norms.

This layered juridical architecture allows for gradual transformation without the disruption of holistic statutory overhaul. Yet this same flexibility invites institutional ambiguity and requires judicial, doctrinal, and governance actors to play interpretive roles. In this respect, Spain's model may offer a hybrid approach to integrating sustainability goals in the corporate governance framework, situated between the rigid codification of the German model and the voluntary compliance of Anglo-Saxon jurisdictions.

As European directives on sustainability due diligence and ESG integration deepen, the Spanish framework – with its civil law roots, high

47 España. Ley 18/2022, de 28 de septiembre, de creación y crecimiento de empresas. *Boletín Oficial del Estado,* núm. 234, de 29 de septiembre de 2022, pp. 125893–125952.

48 Fuentes Naharro and Megías López (n2).

49 United States. Model Benefit Corporation Legislation. (2016). *Benefit Corporation White Paper.* B Lab. Retrieved from https://benefitcorp.net/for-legal-professionals/model-legislation.

50 France. Loi n° 2019–486 du 22 mai 2019 relative à la croissance et la transformation des entreprises (Loi PACTE). *Journal Officiel de la République Française,* 23 mai 2019.

51 Martínez, B., & Fontrodona, J. (2024). *Benefit corporations y sociedades de beneficio e interés colectivo: un movimiento en auge* (Cuaderno n.º 59). Cátedra CaixaBank de Sostenibilidad e Impacto Social, IESE Business School.

ownership concentration, and plural legal instruments – provides fertile ground for observing how sustainability as a goal becomes codified, not merely an aspect of business to be reported on. Whether *interés social* will evolve into a truly stakeholder-oriented legal standard remains to be seen, but the direction of reform is increasingly clear: the company's interest in Spain is being redefined not through revolution, but through layered legal evolution.

D. Ownership, Control, and Crisis: The Company's Interest in the Shadow of Concentrated Power

In the doctrinal architecture of Spanish company law, *interés social* is flexible: ambiguous enough to absorb evolving sustainability imperatives but stable enough to anchor director duties in formal legality. Yet, as the preceding sections suggest, legal doctrine alone does not determine the actual trajectory of the company's interest. Ownership structures function as a deeper juridical infrastructure – shaping not only the substance of corporate governance reforms but also their capacity to evolve and take root in practice.

In Spain, corporate ownership is deeply concentrated. Whether in public firms dominated by family groups, in state-linked strategic sectors, or in the shadow of the *cajas de ahorro* collapse, concentrated control continues to shape how the company's interest is defined. This chapter contends that Spain's governance model is not merely *civil law with concentrated ownership* – but a structurally-distinct system in which legal ambiguity interacts with informal power and institutional disinterest.

To understand the limits – and the possibilities – of embedding sustainability into the actual corporate law doctrine in Spain, we must examine how concentrated ownership influences legal interpretation, board dynamics, and resistance to reform. Drawing on comparative examples from Germany and Anglo-Saxon jurisdictions, the following chapter situates Spain's tradition of corporate control as both a barrier and a potential vehicle for transformation.

I. Ownership as Infrastructure: Beyond Share Concentration

Ownership in Spain is not simply a matter of who holds how many shares – it is a socio-legal infrastructure that organises access to control, constrains the diffusion of countervailing interests, and perpetuates elite governance logics. According to Leech and Manjón, more than half of IBEX35 companies have ownership structures where a single blockholder controls over 30 % of voting rights, often through pyramid or crossholding arrangements.[52]

This is not a transitional condition on the way to dispersed Anglo-American capitalism – it is manufactured equilibrium. Spanish company law, while formally enabling shareholder equality and board independence, rarely disrupts these control configurations. Minority shareholder protections exist, but they are weakly enforced, and institutional investors have historically played a minimal role in challenging dominant blocs. The result is what scholars have called *insider governance* – a model where dominant families, state-linked entities, or crossholding conglomerates control strategic decisions through social, rather than competitive, mechanisms.[53]

II. Family Capitalism and the Temporal Logic of Purpose

Family firms represent the core of Spanish corporate culture. More than 85 % of companies are family-owned, including many listed firms.[54] But their significance lies not only in numbers but in their *temporal logic*. Family ownership often brings about long-term strategy for the firm, intergenerational planning, and embedding the firm in the local community, all of which *could* align with sustainability imperatives.

Yet this alignment is conditional. Governance in family firms frequently involves informal institutions – succession protocols, family councils, cross-generational mentorships – that exist outside of formal legal channels. While these practices can foster stability and loyalty, they can also obscure

52 Leech and Manjón (n6).

53 Aguilera, R. V., & Cuervo-Cazurra, A. (2004). Codes of good governance worldwide: What is the trigger? *Organization Studies*, 25(3), 415–443.

54 Instituto de la Empresa Familiar. (2015). *The Family Business in Spain 2015*. Madrid: IEF.

decision-making, limit board independence, and shield controlling interests from public accountability.[55]

Succession moments offer a rare opening: as Lagos Cortés and Botero show, sustainability commitments tend to increase when generational transfer occurs to heirs educated in international business ethics and ESG principles.[56] Yet this is uneven across sectors and highly dependent on external reputational incentives, not legal mandates.

III. Blockholder Logic and ESG Absorption

A key tension lies in the strategic logic of dominant shareholders. Blockholders in Spain – be they family owners or industrial conglomerates – are not inherently opposed to sustainability. But their ESG commitments tend to be instrumental, reputational, or defensive, not transformative.

Gutiérrez-Ponce and Chamizo-González demonstrate that while ESG disclosure among Spanish firms has risen, particularly in response to EU directives, such disclosures are often shallow, aimed at meeting regulatory expectations without altering internal governance priorities.[57] The ESG function is isolated, detached from strategic decision-making, and is rarely reflected in executive incentives or board mandates.

Such concerns are also raised across Europe, but the Spanish context amplifies them. Without pressure from dispersed shareholders or codified co-determination (as in Germany), dominant insiders face little structural incentive to integrate sustainability as a *purpose-defining* obligation.

IV. The Case of the Cajas: Governance Without Accountability

The collapse of the *cajas de ahorro* system after 2008 reveals how stakeholder governance in form can mask profound governance failure in substance. *Cajas* were structured as non-profit entities, regionally rooted and stakeholder focused. But their boards were often populated by political ap-

55 Amato, S., Minichilli, A., & Corbetta, G. (2023). Family firms amid the global financial crisis: Territory-embedded and employment-protective behaviors in Spain. *Journal of Business Ethics, 183*(2), 459–477. https://doi.org/10.1007/s10551-021-04930-0.

56 Cortés and Botero (n7).

57 Gutiérrez-Ponce et al (n5).

pointees who lacked financial expertise and operated with minimal external oversight.[58]

The Bankia case exposed how political interference and weak supervision frameworks permitted reckless lending, especially in the real estate sector, to spiral into a systemic crisis. The failure here was not stakeholder governance – it was the absence of legally-enforceable fiduciary standards that would balance stakeholder aims with prudential control.

Unlike Germany, where worker participation is legally mandated on corporate boards, Spain lacked binding stakeholder governance mechanisms. The *cajas* demonstrate that "plural purpose" in rhetoric, without institutional checks, can facilitate capture rather than accountability.

V. Path Dependency and the Limits of Post-Crisis Reform

In the aftermath of the crisis, Spain implemented a series of reforms – strengthening the CNMV's supervisory powers, updating the Good Governance Code, and transposing EU directives such as the Non-Financial Reporting Directive (NFRD) and the Corporate Sustainability Reporting Directive (CSRD) into domestic law. Yet these reforms operate largely through soft law, transparency obligations, and reputational mechanisms.

This contrasts sharply with Germany, where co-determination law mandates employee board representation, or with France, where *Sociétés à mission* are backed by audit and certification regimes. In Spain, the newly introduced *Sociedad de Beneficio e Interés Común* (SBIC) remains low in uptake and lacks integration into mainstream corporate governance.[59]

The path dependency of insider control limits the effectiveness of these reforms. Board diversity quotas are met formally, but decision-making remains centralised. ESG functions exist but they are isolated. Sustainability is reported but rarely governs decision-making.

---

58 Cuñat, V., & Garicano, L. (2010). Did good cajas extend bad loans? Governance, human capital and loan portfolios. *FEDEA Working Paper 2010–04.* Fundación de Estudios de Economía Aplicada.

59 Hopt, K. J. (2011). Comparative corporate governance: The state of the art and international regulation. *American Journal of Comparative Law, 59*(1), 1–73; Segrestin, B., Hatchuel, A., & Levillain, K. (2021). When the law distinguishes between the enterprise and the corporation: The case of the new French law on corporate purpose. *Journal of Business Ethics, 171*(1), 1–13.

VI. Comparative Reflections: Spain Between Models

Spain occupies a distinct place in the European corporate governance landscape. Unlike Germany, it lacks institutionalised stakeholder governance. Unlike Slovenia, it has no constitutional memory of self-management. Unlike the UK or the US, it does not rely on active capital markets to discipline management.

Instead, Spain's governance regime is a hybrid of legal ambiguity, network-based control, and high ownership concentration. While this configuration enables stability, it also allows for inequality of voices on the board. The regime absorbs sustainability mandates procedurally but resists substantive doctrinal transformation.

If Spain is to transition toward adopting a definition of the company's interest that takes the obligations of ecological and social sustainability seriously, it must address the deep-seeded structure of control. For Spain to address these structural issues, it must do more than transposing EU directives – it requires aligning fiduciary duties with plural purpose, democratising board structures, and recognizing that ownership *is* governance.

VII. Conclusion: Reimagining Purpose Through Control

Ownership concentration in Spain is not simply a fact – it is a system of power that defines how the company's interest is constructed, contested, and constrained. Legal doctrine may open the door for a concrete legal framework for sustainability. Nonetheless, in Spain, it is who controls the company that ultimately determines whether that space is used for transformation or co-optation.

Until the architecture of control shifts – from opaque relational blocs to accountable, plural governance – efforts to redefine the *interés social* will remain structurally constrained. In this context, sustainability becomes not a question of regulatory compliance, but of political economy.

E. The EU Dimension and Sustainability: Transposing Supranational Purpose into Spanish Corporate Law

As corporate governance frameworks across Europe undergo transformation, the EU has emerged as both a regulatory engine and a legal architect

in redefining the company's interest. Through an increasingly ambitious suite of directives – ranging from non-financial disclosure and sustainable finance to mandatory human rights and environmental due diligence – the EU is not merely regulating corporate behaviour but actively reconstituting the conceptual boundaries of the business corporation.[60] In this evolving landscape, the function of the company no longer equates to private wealth generation; rather, it is being juridically recast as a socio-economic institution embedded within broader ecological and human rights frameworks.[61]

Spain stands at a critical intersection of this transformation. As a civil law jurisdiction with a legacy of concentrated ownership and path-dependent governance institutions,[62] it faces the dual challenge of complying with EU mandates while navigating the ambiguities of its own doctrinal constructs – chiefly, the open-textured nature of *interés social*.[63] The transposition of EU sustainability law into Spain's corporate legal order is not a mere technical exercise in compliance. It constitutes a deeper realignment of norms, in which previously peripheral considerations – such as environmental stewardship, stakeholder engagement, and intergenerational equity – begin to migrate toward the centre of the company's interest.[64]

This section examines how Spain is internalising the EU's sustainability turn, both legally and institutionally. It considers the evolution from the 2014 Non-Financial Reporting Directive (NFRD) to the more demanding 2022 Corporate Sustainability Reporting Directive (CSRD), as well as the emergent Corporate Sustainability Due Diligence Directive (CSDDD).[65] These instruments are analysed not only in terms of their formal implementation but also through their effects on corporate governance practices, legal interpretation, and the practical meaning of *interés social*. Spain pro-

60 Sjåfjell, B., & Wiesbrock, A. (Eds.). (2015). *The greening of European business under EU law: Taking article 11 TFEU seriously*. Routledge.

61 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 PE/9/2024/REV/1, OJ L, 2024/1760.

62 Leech and Manjón (n6).

63 Viscasillas (n4).

64 Sequeira Martín, A. (2021). *El desarrollo de la responsabilidad social corporativa versus sostenibilidad, y su relación con el gobierno corporativo en las directivas comunitarias y en el derecho español de sociedades cotizadas. Revista de Derecho de Sociedades*, (61), 39–8.

65 Consolidated text: Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, ELI: http://data.europa.eu/eli/dir/2022/2464/2025-04-17.

vides a rich ground for observing the frictions and possibilities of aligning national company law with supranational regulatory ambitions.

I. From Reporting to Purpose: The Trajectory of EU Sustainability Law

The trajectory of EU corporate sustainability law has shifted decisively from transparency to transformation. Early legislative efforts, such as the Non-Financial Reporting Directive (2014/95/EU), were framed primarily as disclosure obligations, requiring certain large undertakings to report on ESG issues.[66] While this approach was significant in prompting corporations to consider non-financial dimensions of performance, it maintained a clear separation between ESG reporting and the core of the company's interest.

This separation is now eroding. The Corporate Sustainability Reporting Directive (CSRD), which entered into force in January 2023, redefines the normative foundations of corporate reporting. The CSRD expands both the scope and the depth of ESG obligations: it applies to a wider range of companies (including listed SMEs from 2026), mandates alignment with the EU Taxonomy for Sustainable Activities,[67] and requires disclosures to be integrated into management reports and verified by independent assurance providers.

For Spain, this regulatory transformation carries both technical and doctrinal implications. On the technical side, companies must adapt internal governance systems to comply with the European Sustainability Reporting Standards (ESRS).[68] But on the doctrinal level, the CSRD catalyses a shift in how *interés social* – the statutory corporate purpose under Article 225 of the Ley de Sociedades de Capital – is interpreted. No longer merely a reference to shareholder welfare or corporate solvency, *interés social* increasingly

66 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330, 15.11.2014.

67 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (EU Taxonomy), OJ L 198, 22.6.2020.

68 European Financial Reporting Advisory Group (EFRAG). (2023). *European Sustainability Reporting Standards (ESRS) Set 1*. Brussels: EFRAG.

encompasses environmental risks, social impacts, and long-term sustainability objectives as material concerns for directors' fiduciary duties.[69]

This shift builds upon Spain's earlier transposition of the NFRD through Ley 11/2018, de 28 de diciembre, which introduced binding obligations for large public-interest entities to disclose information relating to environmental matters, employee-related issues, respect for human rights, anti-corruption, and board diversity.[70] Crucially, the law required this information to be included in the management report, reinforcing the integration of ESG concerns into core corporate oversight mechanisms. Spain's relatively robust implementation positioned it among the more assertive EU Member States in embedding sustainability within its corporate governance frameworks.[71]

The CSRD extends this trajectory by reframing sustainability not merely as a reporting issue but as a governance imperative. It challenges Spanish corporate boards to reconsider their obligations under the ambiguous standard of *interés social*. Whereas historically *interés social* accommodated both shareholder-oriented and entity-based interpretations, the CSRD introduces a new regulatory logic: sustainability is no longer reputational but fiduciary.

Comparatively, Spain's path contrasts that of other EU systems. Unlike Germany, where the codetermination regime enshrines stakeholder involvement through institutional channels,[72] Spain operates without formalised worker representation in governance. At the same time, Spain has avoided the pitfalls of the UK's Section 172 "enlightened shareholder value" model, which remains legally vague and weakly enforced.[73] Instead, Spain's evolution has followed a distinct trajectory of compliance-induced convergence: the progressive juridification of sustainability via EU law in a civil law context with high ownership concentration.

---

69 Fuentes Naharro and Megías López (n2).

70 Ley 11/2018, de 28 de diciembre, por la que se modifica el Código de Comercio, el texto refundido de la Ley de Sociedades de Capital aprobado por el Real Decreto Legislativo 1/2010, de 2 de julio, y la Ley 22/2015, de Auditoría de Cuentas, en materia de información no financiera y diversidad. *Boletín Oficial del Estado*, 314, 29 de diciembre de 2018.

71 Sequeira Martín (n64).

72 Hopt, K. J., & Leyens, P. C. (2004). Board models in Europe – Recent developments of internal corporate governance structures in Germany, the United Kingdom, France, and Italy. *European Company and Financial Law Review*, 1(2), 135–168.

73 Keay, A. (2013). The enlightened shareholder value principle and corporate governance. *Company Lawyer*, 26(10), 307–314.

The CSRD thus becomes more than a compliance mechanism: it acts as a catalyst for doctrinal transformation. It pushes the meaning of *interés social* toward a pluralistic, forward-looking understanding of the company's interest – one that reflects not only fiduciary loyalty to the firm but also accountability to environmental thresholds, societal expectations, and intergenerational equity. Whether this reinterpretation can take hold in corporate practice depends on enforcement, judicial uptake, and cultural transformation – but the legal direction is now unmistakable.

II. From Voluntary Responsibility to Legal Obligation: The CSDDD and the Hardening of Corporate Duty

The Corporate Sustainability Due Diligence Directive (CSDDD) represents a watershed moment in the European Union's effort to embed sustainability into the legal architecture of corporate governance. While earlier EU instruments focused on transparency and reporting, the CSDDD imposes affirmative duties on companies to identify, prevent, mitigate, and account for adverse impacts on human rights and the environment throughout their value chains.[74] This shift from disclosure to legal obligation is not merely technical – it signals a redefinition of the company's interest within the EU legal order, and a recalibration of directors' fiduciary duties.

In contrast to prior soft-law approaches, the CSDDD applies extraterritorially, covers both upstream and downstream operations, and includes enforcement mechanisms via administrative sanctions and civil liability. It thus solidifies expectations that were previously voluntary as binding legal norms.[75] Spain, as a Member State, will be required to transpose the directive within two years of its entry into force, compelling significant adjustments to domestic company law, particularly the interpretation and operationalisation of *interés social*.

At the core of the CSDDD is the imposition of due diligence duties not merely as compliance mechanisms, but as expressions of fiduciary respon-

74 European Union. (2024). *Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. Official Journal of the European Union, L 1760*, 5 July 2024.

75 De Schutter, O., Ramasastry, A., Taylor, M. B., & Thompson, R. (2020). Human rights due diligence: The role of states. *International Journal of Human Rights*, 24(10), 1471–1491.

sibility. Article 25 of the directive requires Member States to ensure that directors "take into account the human rights, climate and environmental consequences of their decisions". This provision effectively reconfigures the scope of director loyalty, compelling a pluralistic orientation that includes non-shareholder interests.[76] Such a requirement marks a radical departure from classic corporate law paradigms, particularly in jurisdictions like Spain where *interés social* has traditionally accommodated multiple interpretations but lacked enforceable stakeholder protection.[77]

Spain's transposition of the directive is likely to intersect with ongoing debates over the scope of directors' duties under Article 225.2 of the Ley de Sociedades de Capital. As Martín notes, Spanish corporate law has so far permitted – but not mandated – a stakeholder-sensitive reading of fiduciary obligations.[78] The CSDDD may resolve this ambiguity by introducing minimum sustainability duties that redefine what directors must consider when acting "in the interest of the company".

This shift also raises questions about enforcement. While Spain has made strides in integrating ESG into governance codes and reporting obligations, enforcement remains weak, particularly in firms with concentrated ownership and low investor oversight.[79] The CSDDD introduces national supervisory authorities that are empowered to investigate breaches and impose sanctions. This may help address the enforcement deficit observed under Ley 11/2018 and the CSRD, aligning legal theory with governance in practice.

Comparatively, Spain may be better prepared for this transition than some peers. Its prior experience with Sociedades de Beneficio e Interés Común (SBICs) has already created a statutory form in which social and environmental purpose are legally embedded.[80] While still marginal in number, SBICs provide a conceptual template for operationalising the CSDDD's principles in company statutes, board procedures, and performance metrics.

Yet challenges remain. Spanish firms – especially SMEs and family-controlled entities – may struggle to implement robust due diligence processes

76 European Parliament. (2023). *Explanatory Memorandum for the Proposal for a Corporate Sustainability Due Diligence Directive*. COM(2022) 71 final.
77 Viscasillas (n4).
78 Sequeira Martín (n64).
79 Gutiérrez-Ponce et al (n5).
80 Fuentes Naharro and Megías López (n2).

across complex supply chains. Furthermore, the cultural norm of informal governance and reliance on soft law may delay full compliance.[81] Bridging this gap will require not only regulatory clarity, but institutional support from the CNMV, judicial engagement, and active stakeholder pressure.

In sum, the CSDDD represents a paradigmatic evolution: from permissive stakeholder orientation to obligatory sustainability governance. Its implementation will likely mark a turning point for *interés social* in Spain – not by replacing the concept, but by supplying it with normative content and enforceable duties. If Spain embraces this shift, it may not only comply with EU law but also catalyse a deeper transformation in the meaning of corporate purpose.

III. ESG as Governance: The CNMV's Evolving Role

In Spain's journey from shareholder-centred governance toward sustainability-oriented regulation, the Comisión Nacional del Mercado de Valores (CNMV) occupies a strategic yet paradoxical position. As the national securities regulator, the CNMV has played a critical role in transposing European Union sustainability mandates into Spanish governance practice. Its main mechanism for doing so has been the Código de Buen Gobierno de las Sociedades Cotizadas, the voluntary governance code applicable to listed companies. Since its revision in 2020, the Code has elevated ESG considerations from peripheral concerns to normative benchmarks of board performance and corporate legitimacy.[82]

Among the Code's most significant updates are provisions that encourage boards to integrate long-term ESG risks into their oversight functions, establish specific ESG committees, and link variable remuneration to sustainability metrics.[83] These guidelines – though formally "soft law" – carry quasi-regulatory weight due to the "comply or explain" mechanism enforced through public reporting and investor scrutiny. As empirical studies indicate, firms on the IBEX 35 index increasingly treat CNMV recom-

81 Lagos Cortés and Botero (n7).

82 CNMV. (2020). *Código de Buen Gobierno de las Sociedades Cotizadas*. Madrid: Comisión Nacional del Mercado de Valores.

83 Gutiérrez-Ponce et al (n5).

mendations as *de facto* obligations, particularly in areas related to board diversity, climate risk, and ESG disclosure.[84]

This evolution positions the CNMV as a norm entrepreneur – a domestic institutional actor capable of translating EU legal innovations (such as the CSRD and forthcoming CSDDD) into the lived governance practices of Spanish firms. By embedding ESG into the fiduciary routines of corporate boards, the CNMV bridges the doctrinal gap between the abstract notion of *interés social* and its operational meaning in boardroom decision-making.

Yet, the CNMV's impact is structurally constrained. Its jurisdiction is limited to listed companies – just a fraction of the Spanish corporate ecosystem, which is overwhelmingly composed of family-controlled, unlisted firms and SMEs.[85] These firms often lack both the institutional incentives and the internal capacity to adopt ESG governance frameworks, which results in a two-sided system: sophisticated ESG compliance among large, listed firms versus regulatory evasion or inertia among smaller entities.[86]

Moreover, the CNMV lacks coercive enforcement power; its recommendations rely on reputational pressure rather than legal obligation. In contexts where ownership is concentrated and external accountability is weak – as is common in Spain's relational capitalism – such pressure may prove insufficient. ESG commitments risk becoming ornamental, embedded in corporate communications rather than in core strategy.[87]

Addressing these limitations will require multi-level coordination. First, the Spanish legislature could expand ESG-related obligations beyond listed entities, especially in high-impact sectors. Second, the CNMV could strengthen its monitoring function through ESG benchmarking and enhanced disclosure audits. Finally, institutional investors – particularly public pension funds and EU-based asset managers – must align their stewardship policies with the trajectory of EU sustainability law.[88]

In sum, the CNMV is no longer merely a market supervisor but a governance architect, responsible for domesticating EU sustainability norms and redefining the company's interest through ESG oversight. Its evolving role illustrates the potential – and the limits – of soft law in transforming

84 Garnacho Cabanillas, L. (2020). *Revisión del código de buen gobierno de las sociedades cotizadas. Revista de Derecho de Sociedades*, (60), 257–292.

85 Lagos Cortés and Botero (n7).

86 Sequeira Martín (n64).

87 Fuentes Naharro and Megías López (n2).

88 European Commission. (2023). *Guidelines on the involvement of asset managers in sustainable corporate governance*. Brussels: DG FISMA.

entrenched governance cultures. In the Spanish context, where doctrinal ambiguity persists and ownership remains concentrated, the CNMV's soft law instruments serve as both catalyst and constraint: capable of directing firms toward sustainability, yet dependent on a broader legal and institutional ecosystem to ensure durability and diffusion.

IV. Spain's Interpretive Convergence: From Compliance to Conceptual Change?

In the transposition of EU sustainability directives, Member States often prioritise formal compliance over substantive conceptual realignment. This dynamic – characteristic of harmonisation processes in European company law – risks neutralising the transformative ambitions of EU-level sustainability initiatives by confining them to the procedural margins of corporate reporting. Yet in Spain, the interaction between EU law and domestic company interest reveals signs of a deeper interpretive recalibration: a shift from compliance as obligation to compliance as doctrinal opportunity.[89]

Recent scholarship suggests that the evolving EU sustainability architecture – particularly the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) – is gradually altering the meaning of *interés social*. Traditionally underdefined in the Ley de Sociedades de Capital, *interés social* functioned as a doctrinal vessel for diverse, often contradictory interpretations: shareholder value, corporate continuity, managerial discretion. However, as Martín and Fuentes Naharro and Megías López observe, EU sustainability law is beginning to fill this vessel with content, reconfiguring *interés social* as an anchor for long-term environmental stewardship, social inclusion, and intergenerational equity.[90]

This evolution is not guaranteed. It depends on a complex web of legal considerations: the judiciary's willingness to interpret fiduciary duties in light of EU environmental and human rights obligations; the academic community's capacity to articulate coherent doctrinal syntheses; and the responsiveness of corporate boards to the emerging governance logic of sustainability. Instruments such as double materiality**,** value chain responsi-

89 Aguilera, R. V., & Jackson, G. (2003). *The cross-national diversity of corporate governance: Dimensions and determinants.* Academy of Management Review, 28(3), 447–465.

90 Sequeira Martín (n64); Fuentes Naharro and Megías López (n2).

bility, and stakeholder engagement – far from being technical novelties – constitute conceptual levers for reshaping the legal imagination of what a company is for.

Indeed, Spain's case demonstrates that sustainability governance is not merely a functional overlay on traditional corporate form, but a site of a shift in the foundation of norms. As EU law migrates from the regulatory periphery into the core architecture of the company's interest, the role of national legal cultures becomes critical: not only to translate obligations into local practice, but to embed new values into the doctrinal DNA of corporate law. In this process, compliance ceases to be a mere threshold – it becomes a catalyst for conceptual transformation.

V. Comparative Insight: A European Laboratory?

Spain's reception of EU sustainability law makes it a revealing site for comparative corporate governance analysis – a legal "laboratory" where supranational norms confront national traditions of ownership, governance, and doctrinal ambiguity. Unlike jurisdictions with deeply entrenched models of stakeholder governance (Germany) or investor-led ESG compliance (United Kingdom), Spain offers a hybrid configuration: one where civil law formality coexists with concentrated ownership, weak institutional voice mechanisms, and evolving soft law instruments.[91]

In Germany, the architecture of *Mitbestimmung* (co-determination) places employee interests directly in the boardroom through parity representation, institutionalising a pluralist vision of the *Gesellschaftszweck* (company interest). ESG objectives are not externally imposed but embedded within governance structures that balance labour, capital, and environmental concerns. In contrast, the United Kingdom continues to rely primarily on market-based mechanisms: Section 172 of the Companies Act of 2006 encourages directors to consider stakeholder interests but remains anchored to the primacy of shareholder benefit.[92] ESG in the UK is increasingly shaped by investor expectations, stewardship codes, and reputational calculus.

Spain occupies an intermediate position. It lacks co-determination and doctrinal clarity but compensates through a dynamic interplay between

91 Aguilera and Jackson (n89).
92 Keay (n73).

EU directives, evolving soft law (e.g., CNMV Codes), and recent statutory innovations such as the *Sociedad de Beneficio e Interés Común* (SBIC). These developments allow Spain to operate as a "transitional jurisdiction": its legal system remains rooted in traditional civil law architecture, yet its responsiveness to EU mandates and normative pluralism opens the door for governance experimentation.[93]

This hybridity is both an advantage and a vulnerability. On one hand, it enables flexibility and innovation without the need for statutory reform. Spain can integrate EU sustainability principles through interpretive layering, soft law, and sectoral legislation, avoiding the political and legal inertia often seen in more rigid systems. On the other hand, the absence of institutionalised stakeholder mechanisms and the dominance of blockholder governance constrain the reach of sustainability reforms. Without deeper reforms in board composition, fiduciary standards, and enforcement mechanisms, ESG risks remain at the periphery of the company's interest – cosmetic rather than constitutive.

In this sense, Spain offers a cautionary and instructive case. It demonstrates how EU law can catalyse national governance transformation through juridical diffusion and soft power. But it also illustrates the limits of top-down convergence: unless the structural foundations of corporate control – particularly ownership concentration and political capture – are addressed, sustainability remains a compliance variable rather than a guiding purpose.

VI. Conclusion: European Law as a Vector of Normative Realignment

The evolving body of EU corporate sustainability law – rooted in the CSRD, the forthcoming Corporate Sustainability Due Diligence Directive (CSDDD), and the EU Taxonomy – has become more than a regulatory framework. It realigning norms, gradually reconfiguring what company interest means across Member States. In Spain, this shift is particularly resonant, not because of statutory clarity or constitutional overhaul, but because the legal ambiguity around *interés social* is grounds for interpretive innovation.

EU directives are not simply overlaid upon the Spanish system – they seep into its doctrinal gaps, activating a redefinition of fiduciary duties,

93 Fuentes Naharro and Megías López (n2).

board obligations, and reporting practices. As these norms migrate from the periphery of compliance toward the core of governance logic, they demand a deeper recalibration of legal, institutional, and business practices. The *interés social* – once a doctrinal placeholder – is increasingly reframed to include ecological risk, social cohesion, and long-term sustainability as integral components of corporate legitimacy.

Yet this transformation is precarious. Without stronger enforcement mechanisms, clearer stakeholder representation, and structural reform of Spain's ownership concentration, EU sustainability law will likely remain performative rather than transformative. ESG, under these conditions, does not become a central aspect of decision-making.

Nonetheless, Spain's evolving governance remains a dynamic site of legal and normative experimentation. The combination of soft law guidance, EU alignment, and institutional innovation – such as the *Sociedad de Beneficio e Interés Común* – suggests that change is not just possible, it is already underway. If doctrinal development continues to align *interés social* with the EU's sustainability imperatives, Spain could emerge as a prototype for gradual but substantive integration of stakeholder values into company law.

In this light, European law is not merely harmonising reporting obligations – it is reframing the interest of the company. Spain, through its adaptive legal frameworks and interpretive flexibility, demonstrates how a Member State can absorb, reinterpret, and project supranational norms into national corporate governance. Whether this realignment becomes embedded in institutional DNA or remains a surface-level adaptation will depend on the next phase: judicial uptake, enforcement rigor, and a cultural shift in corporate decision-making.

F. Financialisation, Political Capture, and the Governance of Spanish Capital

As European corporate governance realigns through the growing force of sustainability directives, Spain confronts a deeply entrenched barrier: the structural inertia of financial capital. While *interés social* evolves in legal doctrine and EU instruments urge a reorientation toward dynamic corporate purposes, the Spanish financial sector remains anchored to a legacy architecture shaped by financialisation without democratisation – and by stakeholder rhetoric devoid of enforceable accountability.

This section argues that the promise of EU-driven reform cannot be realized without reckoning with the persistent influence of elite relational networks, institutional opacity, and risk-externalising financial logics. Spain's experience reveals a critical insight: that sustainability cannot be retrofitted onto governance systems deliberately designed to concentrate power, obscure responsibility, and resist transformation. Unless these dynamics are addressed, sustainability risks becoming a procedural facade – absorbed in compliance routines but excluded from the strategic core of financial governance.

I. Financialisation Without Market Discipline

Unlike the Anglo-American model of financial capitalism – where dispersed ownership and liquid capital markets provide external checks on managerial discretion – Spain's financial system is defined by ownership concentration, institutional entrenchment, and nearly-absent shareholder activism.[94] The post-2008 consolidation of the banking sector did not democratise governance; rather, it engrained oligopolistic structures, producing a financial architecture in which discipline is internal, strategic, and often unaccountable.[95]

Flagship institutions such as Santander, BBVA, and CaixaBank exemplify this model. Their public adherence to ESG frameworks, sustainability indices, and EU reporting standards masks an internal governance logic still dominated by short-term financial metrics, capital efficiency, and shareholder return.[96] ESG units exist – often well-resourced and externally visible – but they remain structurally decoupled from strategic decision-making, with little influence over credit allocation, investment priorities, or executive compensation schemes.

The Spanish case thus reveals the paradox of financialised sustainability: where ESG metrics proliferate in reporting cycles, but the underlying financial calculus remains extractive, speculative, and ecologically disembedded. Compliance is abundant; transformation is absent. The result is a

94 Deeg, R., & Hardie, I. (2016). What is patient capital and who supplies it? Socio-Economic Review, 14(4), 627–645.

95 Hardie, I., & Howarth, D. (2013). Market-based banking and the international financial crisis. Oxford University Press.

96 Gutiérrez-Ponce et al (n5); CNMV. (2023). Informe Anual sobre Gobierno Corporativo de las Entidades Cotizadas. Madrid: Comisión Nacional del Mercado de Valores.

system where sustainability is not a constraint on capital, but a language through which capital justifies itself.

II. The Political Economy of the *Cajas*: Stakeholder Rhetoric and Elite Capture

The collapse of the *cajas de ahorro* in the aftermath of the 2008 financial crisis stands as one of the clearest indictments of Spain's stakeholder governance architecture – an architecture that operated in form but failed in function.[97] These savings banks, historically rooted in regional development and social cohesion, were designed as stakeholder-oriented entities. Their governance structures included representatives from municipalities, depositors, employees, and civil society organizations.[98] Yet in practice, these multi-stakeholder boards became sites of political patronage, opacity, and financial imprudence.

Rather than serving as bulwarks against short-termism, many *cajas* became vehicles for politically driven credit expansion – especially in the real estate sector – underwritten by weak risk controls and minimal supervisory scrutiny.[99] The absence of formal shareholder pressure was not replaced by participatory accountability, but by elite entrenchment. The democratic potential of stakeholder governance was hollowed out by the instrumentalisation of public and civic seats for partisan gain.

The case of Bankia – created through the forced merger of several failing *cajas* and later nationalized following a massive bailout – reveals how stakeholder rhetoric can mask institutional capture.[100] Bankia's board, populated by political appointees with little banking expertise, approved

97 Fernández, R., & Aalbers, M. B. (2016). Financialization and housing in Spain: A crisis on the Southern periphery of neoliberal capitalism. *Housing Policy Debate*, 26(4–5), 1–25.

98 Martínez-Ferrero, J., Vaquero-Cacho, L.-A., Cuadrado-Ballesteros, B., & García-Sánchez, I.-M. (2015). El gobierno corporativo y la responsabilidad social corporativa en el sector bancario: el papel del consejo de administración. *Investigaciones Europeas de Dirección y Economía de la Empresa, 21*(3), 129–138.

99 Luque-Vílchez, M., & Larrinaga, C. (2016). Reporting models do not translate well: Failing to regulate CSR reporting in Spain. *Social and Environmental Accountability Journal, 36*(1), 56–75.

100 Rodríguez-Gutiérrez, P., Fuentes-García, F. J., & Sánchez-Cañizares, S. M. (2013). Transparency in social disclosure in financial institutions through Spanish CSR reports in the context of crisis. *Universia Business Review*, Segunda época, 18, 85–106.

reckless strategies with limited dissent, shielded by an accountability vacuum. The failure was not of stakeholder governance *per se*, but of a model in which stakeholder representation lacked the legal teeth, fiduciary clarity, and external checks necessary for meaningful constraint.

This experience continues to cast a long shadow over Spanish corporate governance reform. Efforts to embed sustainability or pluralistic purpose into board structures now confront scepticism rooted in the *cajas*' collapse. For stakeholder governance to regain legitimacy in Spain, it must not only articulate inclusive ideals but also institutionalise enforceable standards – combining plural representation with technical competence, transparency, and independent oversight.

III. Governance Reform and the Limits of Institutional Memory

In the aftermath of the *cajas* crisis, Spain undertook a series of institutional reforms designed to restore financial stability and align banking governance with EU regulatory expectations. These included the consolidation of savings banks into commercial entities, increased capital requirements under the CRR/CRD IV framework, and the partial privatisation of state-rescued banks overseen by the FROB (Fund for Orderly Bank Restructuring).[101] On paper, these reforms marked a transition from politicised stakeholder governance toward market-based professionalism. In practice, however, they left the core architecture of elite control largely intact.

One key limitation lies in the absence of robust institutional memory. The crisis was treated not as a systemic failure of governance culture, but as a technical failure of risk management.[102] As a result, reform focused on financial ratios and supervisory oversight rather than on restructuring board composition, conflict-of-interest rules, or mechanisms of political insulation. Former political figures continued to occupy board seats in key financial entities, and the revolving door between public office and bank directorships remained largely unregulated.

101 Bank of Spain. (2021). *Informe anual 2021: Evolución del sistema bancario español*. Madrid: Banco de España; European Parliament and Council. (2013). *Capital Requirements Directive IV (CRD IV)* and *Capital Requirements Regulation (CRR)*. Official Journal of the European Union, L176.

102 Castillero-Ostio, E., Moreno-Cabanillas, A., & Castillo-Esparcia, A. (2023). *Transparencia y gobierno: puertas giratorias en España. Revista Española de la Transparencia*, (18), 201–229. https://doi.org/10.51915/ret.295.

Moreover, governance reform failed to address the broader question of the company's interest within financial institutions.[103] While EU law increasingly requires financial actors to align with climate transition goals and human rights frameworks, Spanish banking governance has not structurally internalised these imperatives. ESG functions exist, but they are often marginal, focused on reporting without strategic integration. Climate risk remains decoupled from core credit risk assessments, and few institutions embed double materiality into their decision-making processes.

The result is a form of regulatory adaptation without normative transformation. Spain's financial sector now complies more effectively with external rules, but the underlying governance logic continues to prioritise shareholder return, political influence, and institutional self-preservation over sustainability or stakeholder accountability. Without deeper reforms – especially in board appointment processes, fiduciary standards, and supervisory enforcement – financial governance risks replicating past failures under the guise of ESG alignment.

IV. The Persistence of Capture: Relational Capital and Soft Power

Despite reforms to enhance transparency, accountability, and risk governance in Spain's financial sector, the deeper architecture of influence remains largely intact. Political capture and elite entrenchment persist not through overt illegality, but through the informal economies of relational capital: revolving doors between regulatory agencies and financial institutions, networked appointments to bank boards, and the soft power of institutional proximity.[104]

These mechanisms, while subtle, exert profound influence over how governance norms – especially those relating to sustainability – are interpreted, prioritised, or deferred. Regulatory bodies such as the Bank of Spain and the CNMV have historically maintained permeable boundaries with the financial institutions they supervise. Former ministers, regulators, and central bank officials frequently assume post-retirement roles on the boards

103 Álvarez-Román, L., Mayordomo, S., Vergara-Alert, C., & Vives, X. (2024). *Climate risk, soft information and credit supply* (Banco de España Working Paper No. 2406).

104 Juste de Ancos, R. (2023). *La gran transformación del poder económico: puertas giratorias, capital y consejeros en la red de empresas españolas cotizadas. Revista Española de Sociología, 32*(2), a157. https://doi.org/10.22325/fes/res.2023.157.

of major banks or their philanthropic foundations, reinforcing a shared cognitive and normative framework that resists adversarial oversight.[105]

This relational ecosystem is not unique to Spain, but its density and cultural normalisation distinguish it within the European context. Unlike jurisdictions with strong civic counterweights or judicial activism in corporate governance (e.g. Germany or the Netherlands), Spain lacks robust institutional channels through which stakeholder or public interest claims can effectively challenge deep-seated corporate-financial alliances.[106] Even EU-mandated sustainability obligations – such as those under the CSRD or forthcoming CSDDD – risk dilution when filtered through institutional cultures oriented toward consensus, continuity, and elite coordination.

Moreover, the technocratic rhetoric of ESG often obscures these power dynamics. Sustainability, framed as a matter of data, ratings, and KPIs, can become a discursive shield behind which business-as-usual persists. The shift toward sustainability is thus not simply a question of legal transposition or board training – it requires confronting with the normative legitimacy of relational governance itself.

In this light, Spain's financial governance landscape demonstrates that the barriers to sustainable company interests are not just legal or structural, but epistemic and relational. The persistence of capture ensures that sustainability remains vulnerable to instrumentalisation, and that *interés social* may be rhetorically expanded but strategically hollowed out.

V. Reclaiming Financial Governance: Toward a Sustainable Political Economy of Capital

If sustainability is to function as more than regulatory rhetoric in Spain's financial sector, a deeper reconfiguration is needed – one that moves beyond green branding and ESG disclosure toward democratised financial governance.[107] The core argument of this section is that without structural transformation of how capital is governed, allocated, and contested, sus-

105 Pons-Hernández, M. (2022). *Power(ful) connections: Exploring the revolving doors phenomenon as a form of state-corporate crime. Critical Criminology, 30*(2), 305–320. https://doi.org/10.1007/s10612-022-09626-z.

106 Colonnello, S., Koetter, M., Sclip, A., & Wagner, K. (2023). *The reverse revolving door in the supervision of European banks.* (Working paper). SSRN. https://doi.org/10.2139/ssrn.3997731.

107 Rubio Nieto, C. (2025). *Social Activity in Spanish Banking Foundations. Sociology Journal*, 14(3), 166.

tainability in Spanish finance will remain performative, rather than substantive.

This transformation requires confronting the legacy of elite entrenchment, especially in the governance of Spain's major financial institutions. The revolving doors between political elites and bank leadership, the role of economic ministries in appointing regulators, and the informal coalitions between large corporate groups and public financial agencies form a dense web of relational power. These networks are not anomalies – they are systemic features of Spain's financialised capitalism. They enable the externalisation of risk, insulation from accountability, and resistance to reform that sustainability governance seeks to overcome.[108]

In parallel, Spain lacks institutionalised mechanisms of stakeholder voice in financial decision-making. Unlike Germany, where labour representatives sit on supervisory boards, or Scandinavian countries with public ownership models, Spanish banks operate without meaningful democratic input, even in publicly-significant sectors like housing, energy, and infrastructure. Community impact, environmental thresholds, and intergenerational justice remain marginal concerns – unless translated into reputational or legal risk.

A genuinely sustainable financial governance model would require several strategic shifts:[109]

- embedding planetary boundaries into financial supervision via the Banco de España and the CNMV, including mandatory stress testing for climate and biodiversity-related risks;
- aligning fiduciary duties with long-term ecological and social value, revising definitions of prudence, loyalty, and care in banking law;
- expanding stakeholder representation, particularly from affected communities and labour, in oversight structures of public and quasi-public financial entities; and
- restructuring incentives, so that executive pay and investment decisions reflect real-world sustainability outcomes, not just ESG metrics or short-term returns.

108 López, I., & Rodríguez, E. (2011). *The Spanish model. New Left Review*, 69, 5–29.

109 Sullivan, R., Martindale, W., Feller, E., & Bordon, A. (2015). *Fiduciary Duty in the 21st Century.* UNEP FI, PRI, UNEP Inquiry, and The Generation Foundation.

These proposals may appear radical in the current Spanish context, but they are not utopian. Across Europe, similar initiatives are gaining traction: the European Central Bank has begun integrating climate risks into its prudential frameworks,[110] the Netherlands has explored legal duties to divest from unsustainable assets, and France has introduced obligations for institutional investors to disclose climate goal alignment.[111]

In Spain, however, the political economy of financial governance remains resistant. Banks wield outsized influence over economic policy, media, and political parties. Regulatory institutions lack sufficient independence or mandate to challenge entrenched interests. And civil society mobilisation around financial reform remains limited in comparison to environmental or labour movements.

Nonetheless, the sustainability transition will not succeed without finance, and finance will not be sustainable without democratisation. Reclaiming financial governance is not merely a question of technical reform, it is a political project – one that confronts power, redistributes voice, and redefines legitimacy in a world where ecological thresholds are non-negotiable.

Spain has the legal tools, policy levers, and constitutional values to lead this shift. What is lacking is the political will to challenge the structural impunity of financial capital, and the articulation of a vision of finance that serves society – not the other way around.

G. Toward a Juridical Framework for Sustainable Governance in Spain

Spain's encounter with EU-driven sustainability regulation has catalysed a reconfiguration of its corporate governance discourse. What began as compliance with supranational reporting standards is maturing into a broader normative project: the gradual emergence of a juridical framework for sustainable governance. This framework does not denote a new code or singular statute, but a set of evolving legal, institutional, and cultural logics

110 Martínez-Ferrero, J., & García-Sánchez, I. M. (2017). Sustainability performance and stakeholder engagement: The role of institutional investors in Spain. *Corporate Social Responsibility and Environmental Management, 24*(1), 28–43.

111 European Central Bank. (2025). *ECB to introduce 'climate factor' into lending operations.* Reuters; European Central Bank. (2025). *European banks have progressed on climate risk, but more still needs to be done.* Green Central Banking.

through which sustainability becomes juridified – not merely in form, but in function.

This section maps the juridical framework across three interdependent aspects: social sustainability (via family firms and employment embeddedness), environmental sustainability (via EU-aligned CSR and climate law), and institutional sustainability (via the resilience-building function of EU legal integration). Together, these dimensions demonstrate how Spain is becoming a "laboratory" for reconciling path-dependent ownership structures with supranational norms of company interest.

I. Social Sustainability: Family Firms and Employment

In the Spanish context, social sustainability is not an abstract policy ideal but a lived corporate logic, deeply rooted in the structure of its business landscape. With over 85 % of Spanish companies classified as family-owned – including some of the country's most significant corporate actors – the company's interest is often embedded in long-term relational capital**,** employment continuity**,** and regional anchoring.[112]

This ownership configuration has both regressive and progressive implications. On one hand, concentrated control and succession opaqueness poses challenges for board independence, stakeholder participation, and gender diversity. On the other hand, family firms often display a temporal logic aligned with intergenerational responsibility – an element that EU sustainability law now recognises as essential to fiduciary transformation.

Indeed, Spain's social sustainability trajectory hinges on whether these firms can operationalise ESG mandates as intrinsic components of their continuity strategies as opposed to external constraints. Emerging practices – such as ESG-driven succession planning, purpose-led governance charters, and stakeholder-inclusive governance protocols – suggest that this transformation is already underway, albeit unevenly.[113]

112 Sánchez-Famoso, V., Cano-Rubio, M., & Fuentes-Lombardo, G. (2025). *Relational capital's contribution to international success: Evidence from family-owned wineries and olive oil mills in Spain. Research in International Business and Finance, 74.*

113 Cabaleiro-Cerviño, G., & Mendi, P. (2024). *ESG-driven innovation strategy and firm performance.* Eurasian Business Review, 14(1), 137–185.

II. Environmental Sustainability: The Juridification of Climate and CSR

Spain's legislative transposition of CSR norms – initially through Ley 11/2018 and more recently through the CSRD – has initiated a shift in how environmental sustainability is framed within corporate governance. While earlier frameworks encouraged transparency through "non-financial" disclosures, the CSRD, EU Taxonomy, and forthcoming CSDDD compel firms to integrate environmental risks into core governance processes.[114]

Environmental sustainability is now embedded into the operational language of director duties, risk reporting, and board accountability. Article 225.2 of the LSC, though still doctrinally indeterminate, is being reinterpreted by scholars and regulators to include climate risks as material to the long-term interest of the company. This is a significant development: it reframes environmental concerns not as reputational liabilities but as fiduciary obligations.

Spain's Ley de Cambio Climático y Transición Energética (2021) reinforces this evolution, mandating climate alignment in corporate and sectoral planning. Yet, enforcement remains weak, and ESG considerations often take the form of fragmented compliance rather than systemic transformation. Bridging this gap requires embedding environmental governance in internal corporate structures – via ESG committees, board-level responsibility, and integration with remuneration policies.[115]

III. Spain as a Laboratory: Between Ownership Path Dependency and Legal Innovation

Spain's corporate governance model – marked by high ownership concentration, soft law governance, and civil law elasticity – presents a paradox. On one hand, it is structurally conservative: relational capitalism, elite control, and weak external accountability persist. On the other hand, it is

114 Grant Thornton (2023). *Corporate Sustainability Reporting Directive (CSRD): Double materiality and corporate governance.* Grant Thornton Spain.

115 *España. Ley 7/2021, de 20 de mayo, de cambio climático y transición energética.* Boletín Oficial del Estado, 21 May 2021; *Proyecto de Real Decreto sobre informes de riesgo financiero por riesgos climáticos.* April 2023; *Real Decreto 214/2025*, de 12 de abril, sobre huella de carbono y reducción de emisiones de gases de efecto invernadero; López Ramón, F. (2021). *Notas sobre la Ley 7/2021 de cambio climático y transición energética. Actualidad Jurídica Ambiental*, n.º 114.

institutionally innovative, absorbing EU norms through soft law, doctrinal commentary, and sectoral statutes.

This paradox positions Spain as a laboratory for testing how sustainability governance can emerge through interpretive and institutional layering instead of through wholesale statutory reform. Its hybridity is not a weakness, but a site of experimentation: a mid-point between institutional rigidity and liberal market voluntarism.

The question that remains is whether Spain's juridical framework can stabilize into a durable legal paradigm. This will require sustained judicial engagement, stronger enforcement of ESG norms across ownership structures, and integration of stakeholder voice into governance processes. But the trajectory is visible: sustainability is no longer peripheral to Spanish corporate law – it is moving toward the centre.

H. Conclusion: Redefining Corporate Purpose in Spain through Layered Legal Evolution

Spain's corporate governance order is undergoing a transformation that is neither loud nor abrupt but is no less profound for its subtlety. The elusive concept of *interés social*, still formally undefined in the Ley de Sociedades de Capital, has become a vessel for reinterpretation. Its content is being reconstructed not by statute but through a multilayered legal process: doctrinal innovation by scholars, incremental adaptation by institutions, harmonising pressures from EU law, and the steady accumulation of regulatory codes.[116] What emerges is not new corporate statute, but a *juridical framework* – a flexible idiom that can integrate environmental, social, and institutional sustainability into the very heart of the company's interest.

Sustainability in Spain has not entered corporate law by way of constitutional rupture or revolutionary legislation. Rather, it has seeped across the fabric of governance: through non-financial disclosure laws, corporate governance codes, judicial interpretation, and supranational directives.[117] The result is a hybrid model – still marked by concentrated ownership and the weight of family capitalism, yet increasingly receptive to European legal principles of sustainability and stakeholder engagement.

116 Embid Irujo and Del Val Talens (n28).
117 Ibid.

Spain's trajectory differs markedly from other European jurisdictions. In Germany, stakeholder rights are structurally entrenched through *Mitbestimmung* (co-determination). In Slovenia, post-socialist constitutional legacies of self-management embed a stakeholder logic in law.[118] Spain lacks such institutional anchors. Yet what appears as weakness doubles as flexibility: the ambiguity of *interés social* allows Spanish corporate law to absorb new normative content without legislative rupture.

Seen from this angle, Spain becomes a laboratory for company interest in post-transitional economies. It shows how civil law systems with path-dependent ownership structures can nevertheless evolve toward stakeholder-oriented governance by leveraging soft law innovation, EU alignment, and doctrinal reinterpretation. The statutory creation of the *Sociedad de Beneficio e Interés Común* (SBIC) in 2022, however embryonic, exemplifies a willingness to experiment with weaving sustainability into the corporate fabric through codification.

Still, the risks are evident. Without addressing structural constraints – concentrated ownership, weak enforcement, and regulatory asymmetries – sustainability may remain cosmetic, a gloss on prevailing logics of financial control. Banks, family firms, and politically-connected conglomerates continue to dominate strategic sectors, often without embedding ESG into governance beyond compliance. Courts, meanwhile, have been slow to embrace expanded readings of *interés social*.

Yet the trajectory of change is unmistakably pointing forward. Spain is shifting from shareholder primacy by default to sustainability by design – not by abandoning its legal tradition, but by stretching it. Here, EU law acts not as an external imposition but as a normative catalyst, urging domestic actors to reimagine the corporation in light of planetary limits, social cohesion, and intergenerational justice. In doing so, Spain lends its voice to the wider European debate about firms in the 21st century: not as a mere profit machine, but as a civic institution bound by the grammar of public purpose, ecological boundaries, and shared value.

118 Spain's trajectory differs markedly from other European jurisdictions. In Germany, stakeholder rights are structurally entrenched through *Mitbestimmung* (co-determination). In Slovenia, post-socialist constitutional legacies of self-management embed a stakeholder logic in law.

References

Legal Texts & Legislation (Spain):

España. (1978). *Constitución Española* [Spanish Constitution]. *Boletín Oficial del Estado*, núm. 311, 29 de diciembre de 1978. https://www.boe.es/eli/es/c/1978/12/27/(1)

España. (1978). Constitución Española [Spanish Constitution]. Boletín Oficial del Estado, núm. 311, 29 de diciembre de 1978. https://www.boe.es/eli/es/c/1978/12/27/(1)

España. (1989). Ley 19/1989, de 25 de julio, de reforma parcial y adaptación de la legislación mercantil a las Directivas de la CEE en materia de sociedades. Boletín Oficial del Estado, núm. 178, 27 de julio, 22797–22817.

España. (1995). Ley 2/1995, de 23 de marzo, de Sociedades de Responsabilidad Limitada. Boletín Oficial del Estado, núm. 71, 24 de marzo, 8575–8599.

España. (2010). Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital. Boletín Oficial del Estado, núm. 161, 3 de julio, 58460–58665.

España. (2011). Ley 2/2011, de 4 de marzo, de Economía Sostenible. Boletín Oficial del Estado, núm. 55, 5 de marzo, 25033–25235.

España. (2013). Ley 19/2013, de 9 de diciembre, de Transparencia, Acceso a la Información Pública y Buen Gobierno. Boletín Oficial del Estado, núm. 295, 10 de diciembre, 97922–97952.

España. (2015). Ley 44/2015, de 14 de octubre, de Sociedades Laborales y Participadas. Boletín Oficial del Estado, núm. 247, 15 de octubre, 95086–95104.

España. (2018). Ley 11/2018, de 28 de diciembre, sobre información no financiera y diversidad. Boletín Oficial del Estado, núm. 314, 29 de diciembre, 129168–129194. https://www.boe.es/buscar/doc.php?id=BOE-A-2018-17989

España. (2021). Ley 7/2021, de 20 de mayo, de Cambio Climático y Transición Energética. Boletín Oficial del Estado, núm. 121, 21 de mayo, 62072–62120.

España. (2022). Ley 18/2022, de 28 de septiembre, de creación y crecimiento de empresas. Boletín Oficial del Estado, núm. 234, 29 de septiembre, 125893–125952.

European Union Directives & Regulations:

Directive 2014/95/EU of the European Parliament and of the Council. (2014). Disclosure of non-financial and diversity information by certain large undertakings and groups. Official Journal of the European Union, L 330, 1–9. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095

Directive (EU) 2022/2464 of the European Parliament and of the Council. (2022). Corporate sustainability reporting. Official Journal of the European Union, L 322, 15–43.

Directive (EU) 2024/1760 of the European Parliament and of the Council. (2024). Corporate Sustainability Due Diligence Directive (CSDDD). Official Journal of the European Union, L 168, 1–48.

Regulation (EU) 2020/852 of the European Parliament and of the Council. (2020). Establishing a framework to facilitate sustainable investment. Official Journal of the European Union, L 198, 13–43.

Academic and Institutional Sources:

Aguilera, R. V., & Cuervo-Cazurra, A. (2004). Codes of good governance worldwide: What is the trigger? Organization Studies, 25(3), 415–443.

Aguilera, R. V., & Jackson, G. (2003). The cross-national diversity of corporate governance: Dimensions and determinants. Academy of Management Review, 28(3), 447–465.

Alfaro Águila-Real, J. (2016). El interés social y los deberes de lealtad de los administradores. Anuario de la Facultad de Derecho de la UAM, 20, 213–236.

Amato, S., Minichilli, A., & Corbetta, G. (2023). Family firms amid the global financial crisis: Territory-embedded and employment-protective behaviors in Spain. Journal of Business Ethics, 183(2), 459–477. https://doi.org/10.1007/s10551-021-04930-0

Apalategui, J. M. C. (2024). La indeterminación intencional en el derecho. Revista de la Facultad de Derecho de la Universidad de Deusto, (27).

Comisión Nacional del Mercado de Valores. (2015). Código de buen gobierno de las sociedades cotizadas. https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Codigo_buen_gobierno.pdf

Djokić, D. (2009). The corporate governance statement and audit committee in the European Union and Republic of Slovenia. Croatian Yearbook of European Law & Policy, 5, 283–289.

Embid Irujo, J. M., & Del Val Talens, P. (2016). La responsabilidad social corporativa y el Derecho de sociedades de capital: Entre la regulación legislativa y el soft law. Agencia Estatal Boletín Oficial del Estado.

Foweraker, J. (1987). Corporatist strategies and the transition to democracy in Spain. Comparative Politics, 20(1), 57–72.

Fuentes Naharro, M., & Megías López, J. (2023). Sustainability in Spanish company law: State of the art and a special reference to the new SBIC (Sociedad de beneficio e interés común). European Company Case Law.

Gutiérrez-Ponce, H., & Chamizo-González, J. (2022). Disclosure of environmental, social, and corporate governance information by Spanish companies: A compliance analysis. Sustainability, 14(6), 3254. https://doi.org/10.3390/su14063254

Hoverd, L. (2025, July 9). The 10 largest family businesses in Madrid. Tharawat Magazine. https://www.tharawat-magazine.com/facts/largest-family-businesses-madrid/

La Porta, R., López de Silanes, F., & Shleifer, A. (1999). Corporate ownership around the world. The Journal of Finance, 54(2), 471–517.

Lagos Cortés, D., & Botero, I. C. (2016). Corporate governance in family businesses from Latin America, Spain and Portugal: A review of the literature. Academia Revista Latinoamericana de Administración, 29(3), 231–254.

Leech, D., & Manjón, M. (2002). Corporate governance in Spain (ownership and control in listed companies). Universidad Rovira i Virgili.

Martínez, B., & Fontrodona, J. (2024). Benefit corporations y sociedades de beneficio e interés colectivo: un movimiento en auge (Cuaderno n.º 59). Cátedra CaixaBank de Sostenibilidad e Impacto Social, IESE Business School.

Schroeder, D., & Thomsen, S. (2022). Foundation ownership and sustainability: International evidence. European Corporate Governance Institute (ECGI). https://www.ecgi.global/sites/default/files/Paper%3A%20David%20Schroeder%2C%20Steen%20Thomsen.pdf

Sequeira Martín, A. (2021). El desarrollo de la responsabilidad social corporativa versus sostenibilidad, y su relación con el gobierno corporativo en las directivas comunitarias y en el derecho español de sociedades cotizadas. Revista de Derecho de Sociedades, (61), 39–83.

Villanueva-Villar, M., Rivo-López, E., & Lago-Peñas, S. (2016). On the relationship between corporate governance and value creation in an economic crisis: Empirical evidence for the Spanish case. Business Research Quarterly, 19(4), 233–245.

Viscasillas, P. P. (2023). Climate change and corporate governance in Spain. ex/ante.