Climate Change and Corporate Governance in Spain

Pilar Perales Viscasillas*

KEYWORDS: climate change – corporate governance – sustainability – due diligence – non-financial information

ABSTRACT: This paper addresses the impact of climate change as one of the sustainability factors in the governance of listed companies in Spain. The phenomenon of the fight against climate change is observed inserted in the broader framework of sustainability while it is analyzed and integrated from the point of view of corporate governance in relation to the long-term perspective of the company, non-financial information, corporate purposes and the remuneration of the members of the board of directors, without forgetting to illustrate these issues from the corporate perspective of Spain. The work is framed in the so-called sustainable corporate governance where the fight against climate change takes on a special role.

I. Climate Change: An Urgent Concern

The special Eurobarometer on climate change published in June 2021[1] shows the sensitivity of European citizens in relation to climate change[2], and their attitude towards it, also indicating their perception about whether their national governments or European institutions are making enough efforts to deal with this problem. The Eurobarometer provides several significant data highlighting that 93 % of Europeans believe that climate change is a serious problem, including 78 % who say it is a very serious problem and 15 % a fairly serious problem.

This concern of Europeans about climate change that responds to the perceptions of 'common human beings'[3] is corroborated and tragically increased with the latest scientific data from the Working Group I contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) that on 7 August 2021 issued its Report Climate Change 2021: The Physical Science Basis, of nearly 4,000 pages[4] reporting the irreversible consequences of climate change unless we urgently act to reduce greenhouse gas emissions[5] and other factors that have contributed to global warming (aerosols, ozone, land use change, aviation, etc), which since they have been observed have not stopped to increase. The future projections that derive from the Report continue in this line of devastating data for the planet with the growth and severity of the aforementioned phenomena and the raising in the global surface temperature. The projections show that global warming will keep on raising until at least the middle of the century in all the emission scenarios con-

* Commercial Law Professor, University Carlos III of Madrid. This work is part of the Research Project Grant TED2021-130293B-100, Climate Change and Sustainable Finance, funded by MCIN/AEI/10.13039/501100011033 and by the European Union NextGenerationEU/PRTR. Further, also: PID2020-114549RB-I00.
This contribution is licensed under Creative Commons Licence CC BY-NC-ND. DOI of this article: 10.3256/978-3-03929-033-8_05.

1 Special Eurobarometer, Climate Change, March–April 2021, available at: https://ec.europa.eu/clima/sites/default/files/support/docs/report_2021_en.pdf.

2 It is defined in article 1.2 of the United Nations Framework Convention on Climate Change (UNFCCC), New York, 9 May 1992, in force 21 March 1994, 1771 UNTS 107: 'Climate change' means a climate change attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods'.

3 Global Risks Report 2021, 16th Edition, World Economic Forum, p.7, available at: https://www3.weforum.org/docs/WEF_The_Global_Risks_Report_2021.pdf.

4 Available at: www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf.

5 IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, available at: www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf.

sidered, unless CO_2 emissions and other greenhouse gas emissions are significantly reduced.

Social and scientific concern is also perceived in the business world, both in relation to investments and corporate governance, since, as various reports point out, climate change, whether at a global or European level, is the priority of investors and boards of directors[6].

In Spain, concern about climate change is equally observed at different levels of society, companies and legislation, including the Emergency Climate Declaration by the Government of Spain on 21 January 2020[7]. In fact, climate change is a priority on the agenda of the boards of directors of listed companies in Spain and globally as well[8]. A movement towards more transparency and information on climate change and environmental concerns is seen: specific public reports[9], and the new 2021 Law on Climate Change and Energy Transition[10] approved before the 'European Climate Law'[11].

II. From Corporate Social Responsibility (CSR) to Sustainability. The need to move Towards Climate Sustainability

The phenomenon of Corporate Social Responsibility (CSR) started on a voluntary basis in the light of human rights and has evolved towards a mandatory process where companies are including sustainability goals; a term that includes the famous ESG factors (Environmental, Social and Governance) and that in fact goes beyond the name of CSR[12].

From this perspective and to understand the process at hand, there are several important pieces: the economic crisis of 2008–2009 and later, which affected the entire Spanish economy, but especially the financial sector, and which brought the need to strengthen corporate governance; the climate action of the EU and its international commitments, especially those derived from the 2015 Paris Agreement, which has brought with it – and will continue in the future – a whole regulatory revolution in terms of sustainability[13]; and the impact of the Codes of Good Governance, in the case of Spain (2015 and 2020)[14]. The Good Governance Code of Listed Companies (2020)

6 See: The State Street Global Advisors Report, Research report Environmental, Social and Governance, The World Targets Change, November 2021, pp. 3–6, available at: www.ssga.com/library-content/pdfs/global/esg-research-report-global.pdf. And Annual Letter from BlackRock to CEO and clients that focuses on Climate Change of January 2022, both available at: https://www.blackrock.com/

7 The Council of Ministers of the Government of Spain made the Declaration on the climate and environmental emergency on January 21, 2020, available at: www.miteco.gob.es/es/prensa/declaracionemergenciaclimatica_tcm30-506551.pdf.

8 Spencer Stuart Index of Boards of Directors, 2019, 23rd Edition, p.6, in relation to Spanish companies. Idem, 2020, 24th Edition, p.5. Along the same lines, KPMG, Generating doses of confidence. Keys to the agenda of the Board of Directors and the Audit Committee for 2021. February 2021, p.6, available at: https://assets.kpmg/content/dam/kpmg/es/pdf/2021/02/claves-consejo-comisiones-2021.pdf; and Board Leadership Center, KPMG/SERES, The vision of ESG issues from the Board of Directors, February 2021, p.19, highlighting that 'the directors consulted are aware of the relevance of climate change. However, half consider that climate risks are not yet sufficiently present on the board's agenda, and that companies have not yet been able to assess the impact of climate change on financial results', available at: https://assets.kpmg/content/dam/kpmg/es/pdf/2021/02/asuntos-esg-consejo-administracion.pdf.
More Recently: Russell Reynolds Report, The Road to Corporate Governance listed Companies' study, September 2021, pp. 33–34, confirms that among both global and European trends in relation to corporate governance, climate change ranks first. In both rankings, issues related to other aspects of sustainability follow, and in the European case, third place is Directive (EU) 2017/828, Official Journal, 20 May 2017, L 132, and Law 5/2021, of April 12, BOE, nº88, 13 April 2021.

9 For example, the Corporate Social Responsibility Observatory in Spain, Corporate Social Responsibility in Ibex 35 companies, has carried out for the first time a specific Report focused on the Environment, which has been published in the last quarter of 2021.

10 Of particular interest are articles 32–34 that establish a climate report for financial and insurance companies. See: A. Campuzano and A. Palomar, 'El informe de información no financiera: evolución e incidencia en la Ley de cambio climático y en el ámbito de la gestión administrativa' (2021) 49 *Revista Aranzadi de Derecho Ambiental*, 29–70.

11 Regulation (EU) 2021/1119 of the European Parliament and of the Council, of 30 June 2021, establishing the framework to achieve climate neutrality and amending Regulations (EC) No. 401/2009 and (EU) 2018/1999 ('European Climate Legislation') where transitory objectives are established for 2050 (climate neutrality) in 2030 and 2040.

12 There is some scholarly debate on the terminology to be used. See: with further citations: P. Perales Viscasillas, 'La integración de la sostenibilidad y el largo plazo en la Ley 5/2021', in S. Izaguirre and P. Perales (eds.), Implicación a largo plazo de los accionistas en Sociedades Cotizadas. Comentarios a la Ley 5/2021 (Valencia: Tirant lo Blanch and Cátedra Deloitte Legal de Derecho Empresarial, 2022), pp. 259–297.

13 See art. 15 (Combating Climate Change) of The Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 23 February 2022 COM(2022) 71 final, 2022/0051 (COD), at: https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf.

14 Available at: https://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/CBG_2020_ENen.PDF.

has had a very important impact on sustainability in corporate governance as a whole, although with a general focus on environmental sustainability (i.a: Recommendations 12, 45 and 55), and this in contrast with other comparative Codes that includes a specific treatment of climate change[15].

Among the ESG factors, the most important is, without doubt, the one related to climate change, which has to be analyzed within the broader framework of sustainability and at the same time from the point of view of corporate governance towards a sustainable corporate governance that it is linked with the long-term perspective of the companies (below 3), the non-financial information (below 4), the corporate purpose (below 5) and the remuneration of the directors (below 6).

Among the mutations of interest that we can observe in relation to corporate governance and climate sustainability is the establishment of a specific universe or system of regulations that relate mostly to large companies and companies in the financial sector with a specific focus on the environment, and within it on climate change. This has important implications in terms of the development of its own language and regulations related to climate change, such as: climate risk, climate report, climate responsibility, climate taxonomy, and climate litigation[16], which entails a change of perspective and mindset around climate change issues.

III. The Long-Term Vision of the Fight Against Climate Change

One of the key aspects in terms of climate sustainability is that of the long-term as opposed to short-termism, which is especially relevant in relation to the fight against climate change, which by its very nature is an objective in the long-term (2050). This objective is addressed in various EU corporate legal instruments, i.a., Directive 2017/828 as regards the encouragement of long-term shareholder engagement, and its transposition in Spain in Law 5/2021[17], the European Green Deal[18], as well as in the Strategy on Sustainable Finance[19].

The aim is to avoid short-term pressures in the management of companies, so that sustainability objectives

15 On the specific area of the financial sector, see the modifications made on 11 March 2021 in the Guernsey Finance Sector Code of Corporate Governance to include in the decisions of the management body the effect of climate change on its strategy and risk profile and, when appropriate, make related disclosures with climate change. And the UK Stewardship Code 2020 that makes various references to climate change: i) among the general principles that must be taken into account by the signatories, as well as in the information obligations; ii) includes climate change among the systemic risks – those that can lead to the collapse of an industry, economy or financial market-, so this risk factor falls within the reporting duties and obligations of institutional investors and asset managers to identify and evaluate them; and iii) incorporates climate change into management and investment objectives.

16 In Spain, the only cases known related to climate change that are still on-going are Greenpeace and others versus Spain (known as Greenpeace I and II) in relation to the failure of the Spanish Government to take adequate action on climate change, and challenging the National Plan of Energy and Climate (2021–2030). The claims rely only on similar cases against Governments, mainly Urgenda (High Supreme Court of The Netherlands, 20 December 2019) and Neubauer (Constitutional Court of Germany, 24 March 2021).
The recent success of legal cases against governments (Urgenda and Neubauer) will undoubtedly lead to more litigation against private companies as well. There are several examples in Germany where claims against private companies are increasing, such in the cases filed on 20 September 2021, by The Deutsche Umwelthilfe (DUH) against several car manufacturers, Mercedes-Benz AG (Deutsche Umwelthilfe (DUH) v. Mercedes-Benz AG, claim of 20 September 2021), BMW (Deutsche Umwelthilfe (DUH) v. Bayerische Motoren Werke AG (BMW), 20 September 2021), and later on the 8 November 2021 against VW (Kaiser, et al. v. Volkswagen AG, 8 November 2021) or against German companies in the oil and gas sector: claim of the 4 October 2021, Barbara Metz et al., v. Wintershall Dea AG. In fact, the claims against these private companies are following the same reasoning found in Neubauer where the claimants successfully alleged that the state has not introduced a legal framework sufficient for swiftly reducing greenhouse gases, especially carbon dioxide (CO_2) – a legal framework that for the claimants is necessary to limit the increase in global temperature to well below 2°C and preferably to 1.5°C.
All the cases cited here are available at: http://climatecasechart.com.

17 Directive (EU) 2017/828, Official Journal, 20 May 2017, L 132, and Law 5/2021, of 12 April, BOE, nº88, 13 April 2021.

18 Communication from the Commission, The European Green Deal, Brussels, 11 December 2019, COM (2019) 640 final; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Investment Plan for a Sustainable Europe, Investment Plan of the European Green Deal. Brussels, 14 January 2020, COM(2020) 21 final.

19 Action Plan: Financing Sustainable Development, 2018, March 8, 2018, COM(2018) 97 final. It is the first major instrument in this area that has been followed by the New Strategy of 6 July 2021: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions emptied. Strategy to finance the transition to a sustainable economy, 6 July 2021, COM(2021) 390 final. Recently among the Spanish scholars: A.J. Tapia Hermida, Sostenibilidad financiera (Reus, 2021).

can be taken into account in the medium and long-term, which is positive for the company itself, the well-being of stakeholders other than shareholders and for the economy in general, improving its resistance to crises and its potential growth. This vision will not be surprising considering that the economic crisis of 2008 and subsequent years was largely blamed on this short-term vision or strategy.

Even logically following the basic postulates of Directive 2017/828, the Spanish transposition into Law 5/2021 links more strongly corporate governance, long-term and sustainability. This is due to the fact that the transposition was not done immediately after the approval of the Directive, but rather the Spanish delay in the transposition has taken place in a very different scenario: the crisis caused by Covid-19 and the reinforcement at European level of the objectives of sustainability, in particular the fight against climate change and the increase of the EU's ambition towards it[20].

The short-term negative effects go beyond the objectives of sustainability and profitability of the companies individually considered, and may also generate relevant risks in the economy and society as a whole and the stability of the capital markets, as highlighted in the Explanatory introduction to Law 5/2021: 'This so-called 'quarterly capitalism' (referring to the pressure to maximize financial results in each of the quarterly financial reports), has effects on economic growth, employment and capital productivity. The 2008 financial crisis occurred, among other factors, as the result of a short-term view of the economy. The growth model prior to the crisis, being based on the need to generate profits in the short term, generated a risky and excessively leveraged business model'. Hence, Law 5/2021 eliminates from article 120 of the Securities Market Law the obligation of companies – whose shares are listed on regulated markets – to publish quarterly financial information, which becomes optional.

In Spain, scholars debate about whether or not this new model is beneficial for the company, offers competitive advantages, and whether integrating mandatorily sustainability together with the long-term objectives is the correct approach in corporate governance, particularly because of the onus imposed to companies and its boards[21]. These are controversial issues and are opened to discussion from a dogmatic point of view[22], but in our opinion far from reality when related to climate and sustainability goals.

In this transition to a low-carbon economic model, it is evident that a long period of time for its implementation is required: reconversion of the economy and industry, and of a change of attitudes and mentalities. It will be necessary to face this gradual process of transition towards the decarbonization with large investments, hence the importance of a financial sector oriented towards these climate sustainability objectives. As highlighted, for example, in the Preamble of Law 7/2021: 'Meeting the global objective of the Paris Agreement is possible, but it requires the adoption of precise public policies and well-targeted investments. The next ten years are going to be decisive in order to succeed in preserving our security. Exceeding the limit of 1.5 ºC will depend on the actions to combat climate change carried out by all actors, not only governments, but also the private sector and the rest of society'. It will be a long process, as highlighted in the European Green Deal, No. 2.1.3, where it is observed that it takes twenty-five years – a generation – to transform an industrial sector and all value chains. If we want to be ready in 2050, decisions must be made and actions taken in the next five years.

It is a fact that long-term sustainability is here to stay as a way of generating value for the companies and its shareholders, forming part of the objectives and policies of companies, the business management, and of the scope of the diligence and responsibility of the board of directors, even reaching their remuneration. In this way, and especially if we think of companies with an indefinite duration, the sustainability and duration of the company in the long-term are incorporated implicitly or indirectly as part of the social interest and the object or purpose of the company[23].

20 Art. 1, 2nd paragraph European Climate Law (Regulation (EU) 2021/1119).

21 P. Perales Viscasillas, 'Retos y tendencias actuales en sostenibilidad y gobierno corporativo: una mirada tras el Covid-19' (2021) 185–186 *Revista Española de Derecho de Seguros*, 30–45, with further citations.

22 I.a., J.I. Peinado, 'La sostenibilidad y el deber de diligencia de los administradores' (2019) 311 *Revista de Derecho Mercantil*, 3–4; and recently: A. Recalde, 'La inclusión de objetivos públicos en la gestión de las sociedades de capital' (2022), available at SSRN: https://ssrn.com/abstract=.

23 See: J. Sánchez-Calero Guilarte, 'El interés social como principio orientador del gobierno corporativo', in A. Martínez-Echevarría (ed.), Interés social y gobierno corporativo sostenible: deberes de los administradores y deberes de los accionistas (Madrid: Thomson-Reuters, Aranzadi, 2019), p.42, with an extensive debate on the role that social interest should play in listed companies.

IV. Information on Sustainability: from Non-Financial Information to the Report on Climate Change

A. The first steps: The transposition of Directive 2014/95

From the point of view of corporate governance and the fight against climate change, the introduction of sustainability had one of its first relevant actions in the obligation to certain companies to include a report on non-financial information thanks to Directive 2014/95 of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups[24]. The new Directive 2022/2464 on Corporate Sustainability Reporting[25] connects the disclosure of non-financial information as an essential part of the climate objectives, especially in view of the transition period. In this regard, the UN Agenda 2030 gives also attention to this issue[26] by encouraging companies, especially large companies and transnational companies, to adopt sustainable practices and incorporate information on sustainability in their reporting cycle.

In Spain, the late transposition of Directive 2014/95 occurred with Law 11/2018[27], which in turn modified the Commercial Code (CCo) to include the report on non-financial information going beyond the Directive by expanding the list of companies that are obliged to report, the expansion of the matters that must be reported, the submission of this information to the 'comply' or 'explain' principle, and the location of the non-financial information in the management report, together with the consolidated annual accounts, which implies that the report ought to be submitted for approval to the General Meeting (article 42.5 CCo), and must be subscribed by all the directors who will be held responsible for the veracity of the information contained therein (article 44.6 CCo). Specifically, the information that must be reported in relation to climate change is that related to greenhouse gas emissions generated as a result of the company's activities, including the use of the goods and services it produces; measures taken to adapt to the consequences of climate change; the reduction goals voluntarily established in the medium and long-term to reduce greenhouse gas emissions and the means implemented for this purpose.

B. Law 7/2021 on Climate Change and Energy Transition

Following the European Green Deal, the Law on Climate Change and Energy Transition, Law 7/2021 of 20 May, was approved in Spain, anticipating the European Climate Law. The Law lives up to its name and provides for minimum national objectives for the year 2030 aimed at reducing greenhouse emissions, increasing renewable energies and energy efficiency (article 3). Likewise, the Law places special emphasis on sustainable finance, a focus of special attention within the EU, which logically affects the financial sector of Spanish listed companies, although not only banking or credit institutions, but also including insurance and reinsurance companies. As highlighted in Preamble of Law 7/2021: 'These initiatives are based on the existence of a growing recognition of the positive correlation between climate risk management, long-term value creation and the power of markets. The Law responds to the growing interest of the financial sector in green finance and confirms the reorientation of banking strategies and the financial world of the 21st century'.

In view of the foregoing, Law 7/2021 increases the non-financial information requirements. A special annual report must be presented within the management report whereby an assessment is to be made by companies in regard to the financial impact of the risks associated with climate change generated by the exposure of the activity of the companies subject to this obligation, including the risks of the transition towards a sustainable economy and the measures adopted to deal with said financial risks (article 32.1). This Report will be further developed by a Royal Decree within two years following the approval of the Law 7/2021 (article 32.5). In particular, the climate change report should focus, among others, on corporate governance, strategic approach of the company, its activities and its financial planning, as well as in relation to its risk's control.

V. Sustainability and 'Purpose' of Companies

In this progressive formation of the new sustainable corporate governance, it is necessary to carry out relevant regulations and introduce new paradigms, which serve the purpose of achieving the strategic objectives of sus-

24 OJ 2014 No. L 330, 15 November 2014.

25 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, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022L2464&from=EN

26 Transforming our world: the 2030 Agenda for Sustainable Development, 27 September 2015 (A/70/L.1), nº12.6.

27 Law 11/2018, of 28 December .

tainability and, in particular, those of the European Green Deal related to the fight against climate change, especially for the transition period (2020–2030). One of those new paradigms is that of the purpose of the companies and whether third party interests, other than those of shareholders, ought to be considered by corporations. Third parties – or so-called stakeholders – are defined in article 3 n) of the Proposal for a Directive on Corporate Sustainability due diligence of 23 February 2022[28] as:

'stakeholders' means the company's employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships'[29].

This definition is useful to understand the current role of the company that is inserted within the market, but affects society as a whole, and it is an aspect to consider when integrating ESG risks into the business strategy that contributes to a better governance of the company either by establishing a dialogue, by exercising the vote, or having an active voice to influence the activities or behavior of the company. In this line, the determination of what is the social interest is considered basic to solve the potential conflicts of interest that derive from the different perspectives that are adopted by the company, the shareholders, the institutional investors, the asset managers, proxy advisors, etc[30].

The discussion generated around the world related to this 'new paradigm' has to be linked with the traditional lucrative corporate purpose[31]. It is a discussion that is especially intense in the USA[32] and other parts of the world. While scholars focus on this interesting debate, business reality in Europe accepts this trend without complexes, unquestionably embracing broader purposes than the exclusive maximization of the value of its shareholders, in what is still a reflection of the complex social reality in which we live.

Observing the legal and corporate reality of large companies in Spain, we find different levels, but some common trends as well:

i) At the legal level, we have yet not modified our codified provisions based on pure profit[33], although we have introduced regulatory reforms in line with sustainability goals that in turn means that companies should incorporate broader interests. The survival of the classic lucrative model does not present, in our opinion, and contrary to some scholars[34], a serious

28 Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 23 February 2022 COM(2022) 71 final, 2022/0051 (COD), at: https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf.

29 For a former definition: art. 3.1 of The Proposal of the European Parliament and of the Council on due diligence of companies and corporate responsibility, which as an Annex is part of the Resolution of the European Parliament, P9 TA(2021)0073, of 10 March 2021, with recommendations addressed to the Commission on business due diligence and corporate responsibility (2020/2129(INL)): "stakeholders' means individuals, and groups of individuals whose rights or interests may be affected by the potential or actual adverse impacts on human rights, the environment and good governance posed by an undertaking or its business relationships, as well as organizations whose statutory purpose is the defense of human rights, including social and labour rights, the environment and good governance. These can include workers and their representatives, local communities, children, indigenous peoples, citizens' associations, trade unions, civil society organizations and the undertakings' shareholders'. The main criticism that can be made to this definition is the very broad subjective scope of application, where the part is confused with the whole. In our opinion, the shareholders are not *stakeholders* and their role – legitimation before the directors, exercise of voting rights, etc – in the company itself is very different from what others affected by the company's activity may have.

30 Further: H.S. Birkmose and F.Möslein, 'Mapping Shareholder's Duties for Corporate Sustainability', in A. Martínez-Echevarría (ed.), Interés social y gobierno corporativo sostenible: deberes de los administradores y deberes de los accionistas (Madrid: Thomson-Reuters, Aranzadi, 2019), pp. 192–194.

31 Art. 116 Code of Commerce (Spain): 'The company contract, by which two or more people are obliged to pool goods, industry or any of these things, to obtain profit (...)'. And article 1665 Civil Code (Spain).

32 M. Friedman, 'The Social Responsibility of Business is to Increase its Profits', *The New York Times Magazine,* 13 September 1970, and the declaration of the 'Business Roundtable https://purpose.businessroundtable.org/' on 19 August 2019, available at: https://purpose.businessroundtable.org/. Very shortly before in time, see: the Law proposal: Accountable Capitalism https://www.warren.senate.gov/imo/media/doc/Accountable Capitalism Act One-Pager.pdf, introduced by Senator Elizabeth Warren in August 2018.

33 Interesting is the modification of the Civil Code of France in May 2019 to consider within the cause of the corporation social and environmental aspects of its activity (art. 1833 CC) and the express possibility of including within the bylaws sustainability objectives that goes beyond pure profit (art. 1835 CC). Law nº 2019–486 of 22 May 2019, relative to the *Croissance et la tranformation des enterprises*', which also introduces the *Société à mission*.

34 Rightly speaking about an 'emotional dividend', that is, 'a theoretical construction that explains how the emotional shareholder finds compensation in owning a company beyond the purely monetary return': R. Plaza Martínez, 'Dividendo emocional y activismo accionarial', in A. Martínez-Echevarría (ed.), Interés social y gobierno corporativo sostenible: deberes de los administradores y deberes de los accionistas (Madrid: Thomson-Reuters, Aranzadi, 2019), p.649.

obstacle to accepting broader criteria if we take into account that in the Spanish legal system the rules are capable of adapting to the social reality of the time in which they have to be applied, as correctly stated in article 3.1 of the Civil Code.

ii) At the level of listed companies' bylaws, different levels of integration are observed, particularly if compared with the classic bylaws models where profit occupies a main role[35].

iii) What is common to large companies is the elaboration of their Purpose, Missions or Values including long-term, stakeholders and sustainable values[36].

The purpose of the companies transcends the objectives of doing business by integrating sustainability goals into the duties of the board of directors[37], as presently stands in The Good Governance Code of Listed Companies (2020) in relation to the functions of the sustainability committee (Recommendation 54 a)) ensuring that the corporate culture is aligned with its purpose and values. It follows the style of other comparative good governance codes, particularly that of the United Kingdom, which is the one that established this trend in 2018. Purpose that under the Spanish Code (2020) is identified with the social interest that reconciles and unifies the values of the two apparently contradictory models[38].

Progressively, moreover, this broader purpose of the company is permeating the specific corporate regulations. Law 5/2021, together with others such as Law 11/2018, coincide in a common objective, still in the process of construction and consolidation, especially in line with the movement within the EU in favor of sustainability, which is to modify and change the paradigms in the policies, strategies and operations of companies, particularly listed companies and those in the financial sector, in such a way that corporate governance, corporate responsibility and due diligence in the supply chain go through peaceful coexistence. ESG issues become relevant throughout the corporate structure, its objectives, purpose, business and investment plans, being necessary to create models of identification and management of risks related to sustainability factors, which are observed from a financial perspective and not only reputational[39].

In Spain, it is worth mentioning that on the occasion of the transposition of Directive 2017/828, we have examples that invite us to consider the introduction, however indirect, in the general corporate regulations, as well as in that of the listed company, of this new paradigm. From this perspective, we do not find innocent – nor inconsequential –, on the one hand, the modification of article 225 Spanish Corporate Law – a provision that applies to all corporations – by introducing within the general duty of diligence of the directors the subordination of their particular interest to the 'interest of the company'[40]. And, on the other hand, and connected in our opinion with the above, that the Preamble of Law 5/2021 expressly mentions the Davos Manifesto 2020[41] and the purpose of companies that goes beyond of profit to embrace also environmental and social objectives.

The purpose of the company – and therefore of the responsibilities and duties of the directors – implies in turn guiding the directors and the corporate governance structures (non-financial information, remuneration, composition of the board, and involvement of the stakeholders) towards interests and objectives of sustainability and in the long-term of the company, changing the supposedly predominant approaches of the short term and pure shareholder's model[42].

35 See below section 7.

36 See below section 7.

37 On detail: B. Sjafjell, 'Integrating Sustainability into the Duties of the Corporate Board', in A. Martínez-Echevarría (ed.), Interés social y gobierno corporativo sostenible: deberes de los administradores y deberes de los accionistas (Madrid: Thomson-Reuters, Aranzadi, 2019), pp. 163–167.

38 See Recommendation 12 of The Good Governance Code of Listed Companies (2020). The two models are the pure lucrative and the wide social interest.

39 It is immediately discovered, among others, in the Resolution of the European Parliament, of 17 December 2020, on sustainable corporate governance, (2020/2137(INI))(2021/C 445/12), OJ 29 October 2021, C 445, letters C, Q and R, and nº 18–19. And further in art. 4 of the Proposal on Due Diligence (above at 14).

40 Further details: J. Sánchez-Calero Guilarte, 'La modificación del deber de diligencia' (2021) 163 *Revista de Derecho Bancario y Bursátil*, 231–278; and S. Pérez Escalona, 'El valor posicional de los objetivos no financiero en el derecho de sociedades de capital y el problema de la responsabilidad social corporativa (novedades en materia de configuración del deber de diligencia de los administradores sociales, nombramiento imperativo de consejeros personas físicas en sociedades cotizadas y ampliación del estado de información no financiera)', in S. Izaguirre and P. Perales (eds.), Implicación a largo plazo de los accionistas en Sociedades Cotizadas. Comentarios a la Ley 5/2021 (Valencia: Tirant lo Blanch and Cátedra Deloitte Legal de Derecho Empresarial, 2022), pp. 319–326.

41 Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution, available at: https://www.we forum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/

42 EY Study on directors' duties and sustainability company governance, Final Report, July 2020, pp.vii – ix, favoring intervention in relation to the 'purpose' of companies. The Study

We also observe how the Spanish legislator transcends the Directive 2017/828 by including stakeholders as part of the encouragement policy of certain investment companies going beyond, article 3 octies 1 a) of the Directive-, i.e., the policy has to explain how to communicate with important stakeholders of the companies in which they invest[43]. Emphasize, but now sticking to the literal wording of the Directive, that proxy advisors in their annual report must indicate the degree and manner in which they maintain channels of communication with the companies that are the subject of their investigations, advice or voting recommendations and with other interested parties in society (article 137 quater 1 f) LMV)[44].

Further, the birth in some countries of the so-called 'social benefit companies' is an interesting development. In Spain, it is illustrated by the recent approval of the »Sociedades de Beneficio y de Interés Común« which, based on comparative models, rather than seek recognition of a new type of company, would seek that corporations (therefore 'lucrative creatures') incorporate into their corporate purpose one or more objectives of common benefit (social, enviromental, etc) [45]. In this way, it would be the director's duty to operate to gain profits for distribution to the shareholders and to operate in the market in a sustainable and transparent way considering the broad group of stakeholders.

In conclusion, in view of the evolution produced in this field, the so-called paradigm of the long-term objective of companies is also incorporated as part of the social interest, along with the need to align business policies with ESG issues and the interests of stakeholders. This new paradigm is in our opinion independent of whether or not the bylaws of corporations contain provisions on a broadly configured social interest. We are before a progressive advent of a new sustainable corporate governance framework, which brings a broader, plural and sustainable perspective of companies, which will imply a revolution in traditional corporate structures, for which corporate law and corporate governance must necessarily adapt to the new times, challenges, objectives and values demanded by climate change and the recovery after Covid-19.

VI. Remuneration: Sustainability, Fight Against Climate Change and Long-Term

Sustainability has been progressively incorporated as part of the remuneration system for executive directors, in such a way that a remuneration oriented towards the sustainability strategy can greatly contribute to their potential development. This focus on the remuneration of directors derives, like the long-term, from the financial crisis of 2008 and the finding that part of it was due to corporate governance deficits and in the inappropriate design of compensation systems[46].

Little attention is perceived in the field of regulations relating to non-financial information that refers laconically to information on 'the average remuneration of directors and managers' (article 49.6 CCo (section II)). However, a greater interweaving between sustainability and remuneration is perceived as crucial, and links several dimensions in such a way that it is confirmed that there is a growing relationship between the long-term, sustainability and the remuneration of directors[47], and as such it can be said that there is a growing trend that the performance of directors (and senior managers) be evaluated using not only financial criteria, as it has traditionally

is considered the basis for launching the proposal for a Directive on sustainable corporate governance that is under way. The Study on directors' duties and sustainable corporate governance, Final report is available at: https://op.europa.eu/es/publication-detail/-/publication/e47928a2-d20b-11ea-adf7-01aa75ed71a1/language-en. See above at 14.

43 Ley 35/2003, de 4 de noviembre, de Instituciones de Inversión Colectiva (arts.47 ter and quáter) (LIIC).

44 And art. 3 j) 2 f) Directive 2017/828.

45 The Common Benefit and Interest Companies has been recognized by Law 18/2022, of 28 September of creation and growth of companies, Official Journal, 29 September 2022. In accordance to the new Law the »Sociedades de Beneficio y de Interés Común« are those capital companies that, voluntarily, decide to collect in their statutes:
- Its commitment to the explicit generation of positive impact at the social and environment through its activity.
- Their submission to higher levels of transparency and accountability in the performance of the aforementioned social and environmental objectives, and taking into account consideration of the relevant interest groups in their decisions.
- Through regulatory development, the criteria and methodology will be considered of validation of this new business figure, which will include a verification of the company's performance, subjecting both the criteria and the methodology to highest standards.

46 In the words of the Preamble of Law 31/2014, of 3 December, which modifies the Capital Companies Law for the Improvement of Corporate Governance.

47 The connections between the long-term, sustainability and remuneration have been considered by a sector of the Spanish doctrine before and after the Directive 2017/828. See, i.a: J.M. Embid Irujo and P. Val Talens, *La responsabilidad social corporativa y el Derecho de sociedades de capital entre la regulación legislativa y el Soft Law* (Madrid: Boletín Oficial del Estado, 2006) pp. 157–158.

been the case, but also non-financial criteria[48], including, where appropriate, ESG factors, as developed in article 9.6 Directive 2017/828 regarding variable remuneration[49].

Basically, it is a question of reflecting long-established objectives in the remuneration policies, namely: that remuneration adequately reflect the real evolution of the company and be correctly aligned with the interest of the company and its shareholders[50], and therefore in accordance with the 'new paradigm' with the parameters, values and objectives of sustainability[51]. The fight against climate change could be favored by a clear and decisive commitment to include this objective among the factors to be taken into consideration within the remuneration system for key executives and other relevant company personnel[52]. It is in fact the path chosen by article 15 (Combating Climate Change) of The Proposal for a Directive on Corporate Sustainability Due Diligence[53] whereby member States shall ensure that companies duly take into account that variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.

In conclusion: remuneration criteria can contribute to business strategy and to the long-term interests and sustainability of the company. In this way, sustainability penetrates into the remuneration of directors as long as it is oriented to the long-term and to the company's strategy. For this reason, it is not sustainability at all costs, but sustainability oriented towards business objectives and strategies, which ultimately implies sustainability oriented towards the company's profit.

VII. Examples of good Sustainable Corporate Governance in Spanish Corporations

The concern for climate change has gone through a process of evolution: from a mere reputational instrument, as part of corporate philanthropy and subsequent CSR, to a gradual mandatory character. This development leads us to a vision of climate change as a business, financial or solvency risk, which must be fully incorporated into the business system, to which a specific business policy could or should be associated that would be separated from the general environmental policy[54].

Spanish companies are making a great effort in terms of sustainability in general and in particular in relation to climate change. The foregoing is illustrated by the following examples that show an impressive qualitative leap in business practice in favor of the strong acceptance of sustainability and the fight against climate change:

A. Sustainability and long-term

The express statutory incorporation of sustainability and the long-term within the corporate structure of Banco Santander is a good example. The bylaws of Banco Santander refer to the creation of value for the shareholders understanding social interest as 'the achievement of a profitable and sustainable business in the long-term, which promotes its continuity and the maximization of value of the company', and the Board must ensure that it

48 Also: The Good Governance Code of Listed Companies (2020), Recommendation 58 a).
Investors consider increasingly important that top executive compensation includes ESG factors: Morrow Sodali, Institutional Investor Survey 2021 (IIS), 2021, p.21.

49 See new: art. 529 novodecies, section 3 and art. 541.5 a) Spanish Corporate Law.
Particularly in the area of financial companies: art. 5 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ L 317, 9.12.2019, pp.1–16, and Commission Delegated Regulation (EU) 2021/1256 of 21 April 2021 amending Delegated Regulation (EU) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings, OJ L 277, 2 August 2021, pp.14–17.

50 Preamble Law 31/2014.

51 Law 5/2021 modifies Law 22/2015, of 20 July, on Audit of Accounts, to include the annual report on directors' remuneration among the information whose existence the auditor must verify when analyzing the management report of the listed companies (new art. 5.1 f, which also refers to non-financial information in art. 49.6 Commercial Code). With regard to the annual remuneration report model, it should be noted that it has recently been modified to adapt to Law 5/2021. See Section B.3 of Circular 3/2021, de 28 de septiembre, de la Comisión Nacional del Mercado de Valores, por la que se modifica la Circular 4/2013, 12 June (BOE, 9 octubre 2021, núm.242) that requires an explanation on how the remuneration contributes to the long-term and sustainable performance of the company. Further details: L. Otamendi, 'Novedades en materia de remuneración de consejeros en sociedades cotizadas', in S. Izaguirre and P. Perales (eds.), Implicación a largo plazo de los accionistas en Sociedades Cotizadas. Comentarios a la Ley 5/2021 (Valencia: Tirant lo Blanch and Cátedra Deloitte Legal de Derecho Empresarial, 2022), pp. 85–111.

52 Below section 7.

53 Above at 14.

54 Regarding environmental policy in listed companies, the Corporate Social Responsibility Observatory highlights, Corporate Social Responsibility in Ibex 35 companies, Environment, Analysis of the 2019 financial year, published in 2021, p.18, that climate change is the most common aspect reflected in corporate policies.

'observes the principles of sustainability and responsible business that it has voluntarily accepted' (article 40)[55].

B. The corporate governance structure: the board committees focused on sustainability

It is interesting to observe the setting up of special committees of the boards of directors on sustainability; a tendency that is increasingly seen. As shown by recent reports, the number of Board committees related to sustainability has increased considerably, going from 13 % to 29 % in one year and indicating that the real increase has been in the commitment to sustainability goals, which has risen from 8 % (10 companies) to 22 % (28 companies)[56].

One of the pioneering companies was Banco Santander with the creation in 2008 of a Board committee responsible for sustainability, which is also reflected in article 54 ter of Banco Santander Bylaws: the 'Responsible banking committee, sustainability and culture', which 'will assist the board of directors in fulfilling its supervisory responsibilities with respect to the responsible business strategy and sustainability issues of the Company and its Group'[57]. Other companies have specific sustainability commissions such as Iberdrola[58] or combined with the Risk Commission such as Mapfre[59].

C. Remuneration of directors and managers linked to sustainability

Practice of Spanish companies show that the remuneration of directors and senior managers is gradually linked to sustainability factors and climate change, even anticipating the reforms of the Spanish Corporate Act by virtue of Law 5/2021.

- The remuneration framework established in relation to the Chairman of BBVA stands out, linking it to sustainability and the indicators of Responsible Banking[60];
- Banco Santander is also a good example in relation to the variable remuneration of the executive directors in attention to the progress in the 11 public commitments of responsible banking included in the responsible banking report[61];
- IAG points out in its Annual Report that 'it was the first group of airlines to commit to a goal of neutrality in its carbon emissions by 2050, with objectives for management in current incentive programs'[62];
- Inditex indicates in relation to the remuneration of the executive directors that: 'The receipt of Inditex's variable remuneration, both annual and multi-year, is linked to the fulfillment of sustainability objectives (environmental, social and corporate governance). These objectives are in line with the Group's sustainable strategy, which considers all stakeholders. Specifically, in the 2021 financial year, the weight of the sustainability objectives in the total variable remuneration was at least 15 %'[63];
- Iberdrola that establishes in its remuneration policy[64] that the remuneration principles to be included in the annual variable component must have a significant component linked to corporate interest and the company's objectives, and will include long-term environmental and sustainability parameters, including those related to the energy transition, with mitigation and adaptation to climate change and with others ESG criteria. Likewise, it is established that the variable remuneration of the Chairman and CEO in relation to his short-term variable will be related to parameters such as the results in the fight against climate change

55 Available at: www.santander.com/content/dam/santander-com/es/contenido-paginas/landing-pages/estatutos-sociales/do-estatutos-sociales-vigentes-es.pdf.

56 Russell Reynolds Report, The Road to Corporate Governance, Spanish Listed Companies' study, September 2021, p.9, also highlighting that the increase has been observed in general in Europe.

57 The creation of the Sustainability Commission in 2008 derives from the study by J. Truñó I Gual, 'La responsabilidad social corporativa. Una aproximación en el sector bancario', PhD thesis, Universidad Autónoma de Barcelona (2016), p.27, which gives an account of its operation and structure.
It should be noted that Banco Santander is among the listed companies in Spain the one that has the highest number of commissions within the board, 7 in total, including the one already indicated.

58 Art. 42 Iberdrola Bylaws of 28 July 2022 and its art. 41 in relation to the committee on sustainable development, which also has a Regulation of 22 February 2022. See: www.iberdrola.com.

59 This company has recently approved in the General Assembly of 11 March 2022, incorporated sustainability into the Risk Commission. See: https://www.mapfre.com/junta-general/

60 Annual Report on Remuneration of BBVA Directors, financial year 2019, Report approved on 10 February 2020, p.23. See: www.bbva.com.

61 Annual Report 2021 of Banco Santander, p.261 (www.santander.com).

62 IAG Annual Report on Corporate Governance 2020, p.55. See also: IAG Report 2021, p.25 y p.39. (www.iairgroup.com).

63 Inditex Annual Remuneration Report, 2020, p.10 (www.inditex.com).

64 Iberdrola Remuneration Policy, 18 June 2021. And Report of the Board of Directors on the Remuneration Policy for directors approved at the General Meeting of 18 June 2021 and adapting to the new requirements of Law 5/2021, in particular as regards to non-financial parameters (www.iberdrola.com).

and finally in relation to the long-term variable remuneration of the executive directors, members of senior management and professionals who, due to their position or responsibility in the group, are considered to contribute decisively to the creation of value; parameters that include variables related to the environment and sustainability (reduction of CO_2 emissions, increase in the number of suppliers subject to sustainable development policies and standards, and elimination of the wage gap). Each parameter is assigned a specific weight, as well as a minimum level from which it will be considered fulfilled and another level from which it will be considered fully fulfilled, which will be reported in the directors' remuneration report.

– Also noteworthy is Red Eléctrica (REE) recent (June 2021) adaptation of its Remuneration Policy to Law 5/2021, and with specific references to the adaptation to the group's strategic plan on sustainability and the 2030 Agenda, as well as the consultations made with interested parties. Sustainability criteria are incorporated into the variable remuneration metrics of the CEO: 'indicators linked to sustainability in its social, environmental and/or good corporate governance vectors'[65].

D. Environmental or climate policy and The Climate Report

Beyond the general sustainability policy, large companies, particularly listed companies, have developed specific policies related to the environment that include climate change or has even established a specific climate policy[66]. Furthermore, as considered before, financial and insurance companies will be obliged to report on climate starting in mid 2023. There is however a trend to voluntarily do so and thus some companies have set up recently a specific report on climate[67].

E. The introduction of the 'Say on Climate'

The introduction of greater shareholder and institutional activism brought about by Directive 2017/828 raises the possibility of giving shareholders and third parties a specific voice in relation to issues related to climate change (Say on Climate).

Studies show that institutional investors put pressure on boards on ESG factors[68] with positive results that tend to correct corporate behaviors with the aim of aligning them with sustainability goals and that these investors compete aggressively with each other in relation to ESG policies[69], without prejudice to the fact that they can join in lobbyist platforms[70]. This confirms that the strategies of giving 'voice' as opposed to the 'exit' option can work more effectively in the strategy of long-term sustainability[71], to the point that a say on climate is starting to be

65 REE Annual Report on Directors' remuneration, 23 February 2021 (www.ree.es).

66 Iberdrola: Environmental Policy of 19 April 2021 and Climate Action Policy of 19 April 2021. As Iberdrola highlights: 'it was a pioneer in the world by incorporating the fight against climate change as a priority into its previous Corporate Governance System, approving in 2009 the first Policy that tackled the fight against climate change'. See: Iberdrola Climate Action Report, October 2021, p.23 at www.iberdrola.com.

67 Iberdrola Climate Action Report of October 2021.

68 For example: Morrow Sodali, Institutional Investor Survey 2021 (IIS), 2021, pp. 8–9, resting likewise (id., p.11) the priority represented by the risks' climate: 'Climate risk remains the number one engagement priority closely followed by human capital management, remuneration and board composition. COVID-19 was also a top engagement priority as were cybersecurity and supply chain management'.
The importance of ESG issues for the investor relations departments of Spanish companies, KPMG, March 2020, p.4, particularly intensely within the framework of sustainable finance. And in the doctrine: F. Möslein and A.C. Mittwoch, 'European Action Plan to finance sustainable development' (2019) 61 *La Ley Mercantil*, 1–20.

69 M. Barzuza, Q. Curtis, and H. David, **'Shareholder Value (s): Index Fund ESG Activism and the New Millennial business Governance' (2020) 93** *Southern California Law review*, 1243–1244, considering a trend to capture the generation of millennials (generation Y) who are more sensitive towards ESG issues. Id., at this point: W.G. Ringe, 'Investor-led Sustainability in Corporate Governance' (2021) 615 *European business Governance Institute – Law* 11–13, *Working Paper No. 615/2021*, Available at SSRN: https://ssrn.com/abstract=3958960.
The authors analyze the case of the elderly 'index fund operators', Vanguard, BlackRock, and State Street, which collectively come to own approximately 25 % of the voting rights of the S&P 500 companies, particularly regarding gender diversity on the board of directors.

70 Like Climate Action 100+ in which 'More than 615 investors, responsible for over $60 trillion in assets under management, are engaging companies on improving climate change governance, cutting emissions and strengthening climate-related financial disclosures', available at: www.climateaction100.org/ about/More examples in this direction: Ringe, 'Investor-led Sustainability in Corporate Governance' 23–26.

71 On this, D. Ramos, E. Cerrato and M. Lamandini, 'The EU's 'Green' Finance. Can 'exit', 'voice' and 'coercion' be listed to aid sustainability goals?' (2020) 1 *Working Paper, nº01/2020*, June 2020. *SSRN Electronic Journal*, January 2021, i.a., nº74 (DOI: 10.2139/ssrn.3824792).

seen[72]. In this sense, it is worth to recall that the information on sustainability must be approved at the General Meeting.

In the case of Spanish companies, AENA is a good example. This company has included a 'say on climate' as a matter subject to the scrutiny of the general meeting, and it has been considered as a case study and a model to follow[73], gaining the support of the large institutional investors in the USA. In this case the pressure came from TCI (The Children's investment Fund) which in 2020 launched the campaign 'say on climate'[74].

Other companies follow suit such as Ferrovial, Iberdrola y Repsol.

F. The 'purpose' of companies and the public commitments in the fight against climate change

In this review of the corporate evolution of listed companies in Spain, the assumption of that new paradigm of sustainability is also worth mentioning:

i) Modification of the bylaws to incorporate sustainability goals and relations with stakeholders, as in the case of Iberdrola[75] and Banco Santander[76], in which article 40 (creation of value for the shareholder) the social interest is understood as: 'the achievement of a profitable and sustainable business in the long-term, which promotes its continuity and the maximization of the value of the company', and the Board must ensure that it 'observes the principles of sustainability and responsible business that it has voluntarily accepted'.

ii) The definition of the 'business purpose' of the company. An innovative and recent study on the subject of listed companies in Spain[77] shows an increase number of companies that have built a clear and defined Purpose or a reason for their company's existence, which is different from their values or missions. Iberdrola stands out as it includes in its Bylaws the competence for the definition and formulation of its purpose to the Board of Directors[78].
A review of the corporate web sites of some of the listed financial entities is enough to see how**, in line with international trends originating in USA,** under Our Commitment, Our Vision or Our Purpose, some slogans are used that, subject to copyright, try to encapsulate their raison d'être. A purpose which clearly transcends pure profit and is linked to classic values of sustainability, embracing also the stakeholders. Slogans that go beyond the pure field of marketing to be integrated into the strategic plans of companies or forming part of documents accessible to the public.

iii) The assumption of public commitments in relation to sustainability in general and climate change in particular is also an interesting development as evidenced that these public commitments are approved in the General Assembly of the corporations and made public through the web sites[79].

VIII. Conclusion

Sustainability in general and particularly the concern for climate change are a priority within large Spanish companies and their board of Directors which are making a great effort in order to introduce those objectives into the full structure of the companies. A process of evolution is seen within companies and the ESG requirements: from a mere reputational instrument, as part of corporate philanthropy and subsequent Corporate Social Responsibility, to a gradual mandatory character. This development leads us to a vision of climate change as a business, financial or solvency risk, which must be fully incorporated into the business system, to which a specific business policy could or should be associated that would be separated from the general environmental policy. The fight against climate

72 Morrow Sodali, Institutional Investor Survey 2021 (IIS), 2021, p.18: 'However, it is important to note regional differences on this topic. For example, while a number of companies from Europe, Canada and Australia have already agreed to voluntarily allow a 'Say on Climate' to shareholders, including Unilever, Royal Dutch Shell, Glencore, Rio Tinto, Woodside and the Canadian National Railway, in the US, there has been considerable opposition from both corporations and asset managers (exceptions include Moody's Corporation and S&P Global)'. More details: https://www.sayonclimate.org/

73 Investment Stewardship, 31 December 2020. Vanguard, 2020 Annual Report, p.15 (https://static.vgcontent.info/crp/intl/gas/canada/documents/inv-stewardship-2021-annual-report.pdf).

74 https://sayonclimate.org/case-study/

75 Iberdrola Bylaws of 28 July 2022. Iberdrola. Purpose and values of the Iberdrola Group, 19 April 2021, section 4, p.3. And Introduction to the Second Book of Iberdrola's Purpose of 19 April 2021, No. 5. Id., nº6, available at www.iberdrola.com.

76 Bylaws of Banco Santander (www.santander.com).

77 Barometer of Business Purpose in Spain, Trascendent, 2021, p.8, available at: https://transcendent.es/wp-content/uploads/2021/07/TRANSCENDET_LOW_v2.pdf.

78 www.iberdrola.com.

79 See, for example: https://www.mapfre.com/cambio-climatico/

change is observed through the examples offered by listed companies in Spain and at the same time taking into account the regulatory changes in key areas such as the long-term perspective of the companies, the non-financial information, the corporate purposes and the remuneration of the members of the board of directors.