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The Information Architecture of Corporate Accountability

Inside Corporate Reporting Regimes in Global Value Chains

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What Trajectory for the Regulation of Transnational Corporate Responsibility?

The framework for transnational corporate responsibility along global value chains (GVCs) is in flux. While the legal mechanisms have generally become tighter in recent years, the development follows no uniform trajectory. With scattered, disparate, and overlapping initiatives and regulatory regimes currently coexisting, it seems an open political question which regulatory paradigm will prevail in the medium and longer term. This chapter zooms in on specific transitional moments in the regulatory evolution of corporate responsibility. The dominant narrative portrays this evolution as roughly two decades of linear progress from 'voluntary' (deemed 'ineffective') corporate social responsibility to 'mandatory' (and hence deemed more 'effective') instruments, with each stage reacting to deficits of the previous one by imposing tighter standards, leaving fewer gaps, and allowing stricter enforcement. While this sequential

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understanding of corporate responsibility with each stage implementing selective improvements indeed captures an important dynamic within corporate responsibility, it paints an incomplete picture. First, it stresses rupture over continuity and thereby distracts attention from shared and structural deficits of the regulation of corporate responsibility across its different 'stages'. Second, it assumes regulatory discourses of corporate responsibility to be largely self-referential and isolated from broader regulatory developments in other fields. These two limitations have deflected the debate from exposing certain structural difficulties in regulating complex value chains, as well as the deeper political dynamics at play in framing regulatory 'innovations'.

Against this background, this chapter examines the example of reporting regulation as deployed to address different dimensions of corporate responsibility, including modern slavery. Among the substantive goals on the agenda of corporate responsibility, curbing modern slavery is arguably the most intricate. Intrinsically linked to and sustained by the business model of offshore capitalism, modern slavery forms a 'viable management practice for many enterprises' (Crane, 2013: 49). Its prevalence in the global economy results from an amalgam of reasons at the micro and macro levels (LeBaron, 2021). It is not the absence of regulations and sanctions per se – unlike many other corporate wrongs, modern slavery is criminalized under national and international law (Jeßberger, 2016) – but a certain elusiveness that defies regulatory responses. It is precisely the ubiquity of practices of modern slavery that makes them so difficult to pin down and has made them a litmus test for any regulation of corporate responsibility. Keeping in mind how entrenched modern slavery is, it seems almost surprising that regulators around the globe saw, and still see, reporting rules as a regulatory response that matches the dimension of the problem (Salminen and Rajavuori, 2019; Bartley, 2018; Mares, 2018). Starting with early examples, such as Section 1502 of the Dodd–Frank Act (2010), the California Transparency in Supply Chains Act (2010), and the UK Modern Slavery Act (2015), reporting obligations have become an integral part of the regulatory toolkit. This is further illustrated by the French Duty of Vigilance Law (2017),[1] the German Supply Chain Act (2021),[2] and the updated EU Corporate Sustainability Reporting Directive (2022).[3] The titles of these legislative acts suggest a certain terminological disparity that requires a word of clarification for the purpose of this chapter. Policy debates often employ the terms 'transparency', 'disclosure', and 'reporting' regulation interchangeably. In this chapter, I will use 'reporting' (regulation) to denote the regulatory

mechanism, since it captures better the active construction of reported information for that purpose than the term 'disclosure'. 'Transparency', in turn, refers to the normative agenda – it is the allure of transparency as a legitimizing political ideal that serves as a normative and metaphorical substratum, despite (or, because of) its unclear contours and ambivalences (Koivisto, 2022). Reporting regulations thus claim to increase transparency and are also referred to as 'transparency regulations'.

I argue that one contributing factor to an overestimation of such regulation is that reporting regulation is an unacknowledged and ill-fitted 'legal transplant' (Watson, 1993; Goldbach, 2019) to the field of corporate responsibility. It is sustained by its prominence in other fields, notably freedom of information as a central pillar of governmental accountability, and a schematic understanding of information economics. The metaphorical openness of the concept of 'transparency' served to mystify this regulatory paradigm while at the same time obscuring the frictions that arise when introducing it to the realm of corporate responsibility.

Once demystified, the rather marginal effects that reporting regulation has had in practice can barely come as a surprise. A broad stream of literature has convincingly documented the relative absence of tangible improvements for affected communities (Monciardini et al., 2021; Phillips et al., 2018). My intention here is not to add to this critique of ineffectiveness but rather to ask what we can learn from it for both the legal-political debate, which embraces such regulation, and our regulatory conception of value chains. I argue that the shortcomings of reporting regulation are partly intrinsic to the functioning of 'transparency' as a regulatory aspiration and partly due to the complexity, design, and political economy of current value chains. As the debate presses to move to regulatory paradigms 'beyond transparency' (Rühmkorf, 2018) in the sequential understanding of corporate responsibility described earlier, the practice of 'transparency' regulation provides important insights on corporate compliance strategies in value chains – especially on lead firms' use of private governance as means of compliance. This is particularly revealing for a legal debate that still treats the 'inside' of value chains and its day-to-day operations as a 'black box', that is, that hardly investigates how value chains operate as a legal and managerial field in reaction to new regulations. Legal scholarship on governance within GVCs discusses contracting across multiple tiers (Salminen, 2020) and for flexible business models (Cafaggi, 2016). Incorporating bargaining power into contractual analysis, these works explore how lead firms

can impose conditions on lower tiers in the chain. Little, in turn, is known about how lead firms react to public regulation of corporate responsibility in their actual operations and where exactly these regulations do (or do not) gain traction. What are the concrete legal strategies by which lead firms distance themselves from rights violations and the knowledge thereof, and what role does law play in enabling such violations? Even regulatory types which – in the move from 'soft' to 'hard' law – would be labelled 'harder' because of their public origins and possible sanctions, such as due diligence and civil liability, will face similar strategies of deflection and watering down. Methodologically, the chapter suggests studying corporate responsibility as shifting from 'norms' to 'practices' (Michaels and Riles, 2020) in order to capture the micro- and firm-level dynamics and technicalities (Valverde, 2009; Riles, 2005) of corporate and value chain operations and develop more tailored and original legal tools. This also shifts the focus of legal analysis and requires a holistic perspective at the various ways in which law and legal practices 'code' value chains, that is, structure them and shield them from legal and other contestation. This perspective also foregrounds the intrinsic connection that exists in value chain capitalism between the information architecture within GVCs as affected by reporting rules and material conditions for workers. How does information on labour right infringements travel upwards in the chain, and who gets to initiate, shape, and decide on the salience of such information flow? It overcomes the dominant binary of 'promise versus pitfalls' of transparency – a binary which 'pre-empt(s) the exploration of transparency as a dynamic, situated, and sometimes paradoxical phenomenon' (Albu and Flyverbom, 2016: 2).

The remainder of the chapter will proceed as follows. In the next section, I will chart the rise of 'transparency' as a regulatory paradigm in various contexts. The subsequent section will demonstrate how regulation that draws on 'transparency' has built a legacy in other contexts whose regulatory assumptions cannot easily be translated to (transnational) corporate responsibility, especially in the context of modern slavery. Turning then to GVCs, I argue that reporting rules at present leave the operational dynamics of value chains mostly unaffected. Understanding value chains as driven by complex strategies of governance and dissociation by lead firms, I suggest that the ineffectiveness of reporting rules requires a more granular study of the manifestation of governance, in particular of the flow of information, in GVCs. The next section provides a preliminary methodological framework for such a turn. The final section concludes.

The Rise of 'Transparency' as Paradigm in Transnational Regulation

'Transparency' is a concept of the hour in many cultural, political, and legal discourses. It finds endorsement across various contexts and is at times idealized as panacea (Han, 2015), ranging from transparency as personal virtue to transparency as a maxim of organizational conduct. As a regulatory paradigm, transparency is often hailed as a solution to misconduct in complex organizations, including governmental bodies, business entities, and transnational regimes. It represents the normative vantage point behind a shift to governance of and through information as a recurrent theme of regulatory discourses, implemented through reporting duties. As a political ideal, transparency rests on the assumption of access to information as a basic feature for reason-driven public debate and as a precondition for accountability (Berliner, 2014). Recent movements around 'open data', such as WikiLeaks and related cases of 'radical transparency',[4] may serve as illustrations.

In a preliminary definitional approach, transparency can be understood as 'the degree to which corporate decisions, policies, activities, and impacts are acknowledged and made visible to relevant stakeholders' (Crane and Matten, 2010: 71). Much of the appeal of transparency as a regulatory technique comes from an abstract yet intuitive plausibility of its presumed operating logic. Once a discloser, such as a company, publicizes information (such as its initiatives undertaken to prevent modern slavery) that is deemed relevant by addressees (such as consumers or investors), these addressees will act in response to it and in return trigger a constructive response by the discloser. It is the self-justificatory impetus of this 'transparency action cycle' (Fung et al., 2007) that has allowed it to expand across so many fields and domains of regulation (Koivisto, 2022; Flyverbom, 2015). A change in behaviour of the discloser is expected based on a combination of external (market pressure and public scrutiny) and internal factors (self-reflection). Each of these factors rests on multiple conceptual and factual assumptions. Market pressure, for instance, requires a certain public sensitivity, the ability to process revelations of corporate misconduct, and the determination to react to them in purchasing decisions. Each of these elements is highly demanding in itself and adds new practical constraints and provisos to the seemingly straightforward instrumental power of transparency as a regulatory technique.

Regulation aiming at 'transparency' through reporting is particularly on the rise in transnational contexts, where it has the comparative advantage of being

less restricted to jurisdictional boundaries. Reporting requirements are employed to respond to accountability deficits of public, private, and hybrid entities alike (Schleifer et al., 2019; Auld and Gulbrandsen, 2010; Hale, 2008). Requiring, for instance, corporations to report on value chain operations confers an indirect transnational scope to this regulation without dependence on a law-enforcement apparatus in each of the affected jurisdictions (and at comparatively little costs).

In the value chain context, reporting regulation was first introduced in Section 1502 of the Dodd–Frank Act (2010) and the California Transparency in Supply Chains Act (2010). It then found its way into the toolkit of European regulators, starting with the EU Corporate Social Responsibility (CSR) Directive (2014), the UK Modern Slavery Act (2015), the EU Conflict Minerals Regulation (2017) and related national legislation, and, most recently, the EU Commission's 'Financing Sustainable Growth Action Plan', with its pillars of the Sustainable Financial Disclosure Regulation (SFDR, 2019), the Taxonomy Regulation (2020), and the Corporate Sustainability Reporting Directive (2022). Reporting also remains an element of due diligence legislations, such as in the French and German national value chain laws.[5] This is not the place to discuss the specifics of each regulation, which has been done elsewhere (Nolan and Bott, 2018; LeBaron and Rühmkorf, 2017; Steuer and Tröger, 2022). As a general feature, transparency regulation departs from previous generations of CSR by shifting from corporate self-regulatory norm-setting and communication of corporate 'values' (Groddeck, 2011) to reporting on corporate 'practices'. They require companies of a certain size (by turnover or number of employees) or with activities in a specific sector to report on their efforts related to their human rights and environmental impacts, often including at least parts of their value chain. With some variations between the different laws, sanctions for non-compliance generally played a secondary role in the earlier examples and are slowly becoming a more central feature. The California Transparency in Supply Chains Act (2010) requires companies to disclose 'to what extent, if any', they have taken steps towards the eradication of slavery and trafficking. Similarly, under the UK Modern Slavery Act (2015), a company is deemed compliant if it issues a statement of the steps it has taken regarding slavery and human trafficking – or by stating that it has *not* taken any such steps. More recently, this approach has been replaced by a 'comply or explain' mechanism that asks companies to lay out the motivations for not taking such measures (Harper Ho, 2017). Coupled with this is an increase of fines in case of failure to report. The substance of reports remains, however, largely beyond regulatory control and is hence left to civil society and other intermediaries that provide a second-order

assessment (Mantouvalou, 2018). This problem runs through to due diligence legislation, where the openness of the due diligence process inhibits effective checks on the adequacy of diligence – suggesting a considerably larger continuity between reporting and due diligence than is commonly acknowledged.

Already as a first approximation, we see that reporting obligations leave a broad leeway to corporate compliance through multiple mechanisms that make reporting requirements at best a peephole into a constructed corporate reality.

Transparency Regulation as a Legal Transplant

Even if the promise of 'transparency' as readily fostering integrity has been dampened, reporting is still on the rise. In the realm of corporate responsibility and the turn to sustainability, it has emerged as the primary legislative go-to mode of regulation (LeBaron and Rühmkorf, 2019). In the EU, for instance, reporting obligations form the cornerstone of the 'Green Deal', a recent set of policies envisioning a growth strategy in light of climate and environmental crises (Zeben, 2020). The reason for the ongoing policy support can be seen as twofold. It stems from the persistence of the conceptual abstractions of neo-classical and information economics in our collective imaginary, coupled with the positive legacy that reporting rules have gained in other fields. It is only by putting the suggestive power of 'transparency' into perspective that we can get a clearer view of how 'transparency itself can be a technique for creating opacity' (Riles, 2011: 187).

The Intuitions of Market-Based Regulation of Corporate Responsibility

The quest for 'transparency' owes its success to transparency's 'metaphorical authority' (Koivisto, 2016: 2). Its suggestive power as an easy 'fix' (Fenster, 2017) to complex problems of accountability has a long history, as illustrated by Justice Brandeis's famous account that 'Sunlight is said to be the best of disinfectants' (Brandeis, 1913). Historically, reporting rules aiming at transparency have been both a source of accountability for public administration, often associated with the rule of law, and, at least in the past 40 years, a tool for regulating markets and private economic relationships. In the private realm, reporting takes Hayek's ground-breaking insight into the role of information and its circulation as a coordinating device for markets as a starting point (Hayek, 1945). While departing thus from the premise of complete information, reporting remains

otherwise calibrated on the assumptions of neo-classical economics, that is, individual rationality, free choice, and marginal utility. In the traditional picture, reporting seeks to remedy information asymmetries between parties or within markets that would otherwise trigger adverse effects by sustaining dishonesty, as in Akerlof's 'market for lemons' (Akerlof, 1970; Coffee, 1984). This ties in with the prominent conception of earlier CSR mechanisms as being adopted only if there is the 'business case' of a reputational gain for them. Regulators like the European Union have internalized this perspective – cultivated among business – and long insisted that an economic 'win-win' scenario, not the imposition of public policies, should guide regulation of corporate responsibility (Amstutz, 2015). Even as this is gradually changing, a market-based approach prevails.

To this day, reporting has managed to maintain, at least in the dominant narrative, the facade of its neutrality and effectiveness. It has withstood both the insights from economic sociology and behavioural economics. Placing each of the neo-classical assumptions into its social context, scholars in economic sociology have shown how economic activity is embedded in social relations, institutions, and rules (White, 1981). This impacts the way signalling within markets is practiced and understood. For instance, such perspectives highlight that the exclusively positive signalling that is common for highly curated CSR reports gradually creates an overly favourable perception of corporate responsibility. In this sense, transparency comes with an angle and an interest (Hansen et al., 2015). Behavioural economics has provided challenges to the addressees' ability to identify, understand, and act upon reported information. Scenarios of information overload (Ben-Shahar and Schneider, 2014) and intelligibility of information are exacerbated in the context of corporate responsibility (Chilton and Sarfaty, 2017). The factual and organizational complexity of corporate involvement in, for example, modern slavery makes it difficult to trace concrete effects of individual corporate policies and often leads to overly general reports. Further abstraction is added by the fact that entire companies are subject to reports – not specific consumer goods or value chains as in the case of product certification. As a result, reports are crafted from a headquarters perspective that is far removed from on-the-ground factors, local dynamics, and the voice of those most affected.

Relatedly, reporting rules do not properly acknowledge the heterogeneity of reports' addressees, their diverging interests, pre-existing knowledge, and capacity of understanding. As such, they adhere to a growingly fictitious idea of a holistic, homogenous public sphere. Such a concept enjoys lasting prominence because

of its role for modern conceptions of democracy (Fraser, 1990; Habermas, 1989). Habermas, for instance, develops the public sphere as a discursive arena distinct from both the state and market rationality in which political participation materializes through the medium of talk (Habermas, 1987). As a representation of the whole of society, the 'public sphere' provides the forum for deliberations on the common good. The assumption is a shared language and involvement of various societal groups. The cohesion and good-naturedness conveyed by such an image of a 'public sphere' have become problematic in a society marked by social and epistemic fragmentation (Ladeur, 2015) and a 'network of publics' (Bruns, 2023) that also challenges the idea of equal communicative standards within and across the whole of society. Different societal groups, systems, and communities of knowledge have reached high levels of specialization that are reflected in their own vocabulary. Under systems theory (Luhmann, 2012), this is highlighted by the fact that each functional system observes its environment pursuant to its own conditions and 'code'. In contrast, the current regime of reporting rules assumes similar modes of reception across all receivers,[6] thereby inviting a standard of reporting that is either mundane and irrelevant or too complex for many receivers.

Misleading Legacies: Freedom of Information Laws and Financial Accounting

We have seen that transparency regulation builds on a model of information economics whose translation into an effective tool for corporate responsibility is more demanding than is commonly assumed. Next to this, such regulation has been 'transplanted' to the context of corporate responsibility based on certain merit acquired in other contexts, with insufficient attention paid to the peculiarities of this new domain of application. This, again, has led to an overestimation of the potential of reporting and to a lack of engagement with the way information about adverse impacts on, for example, labour conditions along value chains is generated and transmitted in the corporate sphere. Transparency regulation is seen in plain instrumentalist terms, rather than by unpacking the many preconditions it relies upon to serve as means to an end in corporate reality.

The first field of reference for which transparency regulation is being attributed merit is 'open government' laws. In the realm of public administration, transparency is deemed to enhance the acceptance of power by adding to its legitimacy. This, to be sure, has not remained unquestioned both conceptually and in political praxis. Some have noted that transparency works best as a rhetorical claim, while upon closer look, its contribution to legitimacy appears

more ambivalent, both in its conceptual underpinnings and its social practice (Curtin and Meijer, 2006). Others have criticized that 'transparency' embodies an overly harmonious, consensual, and ultimately 'post-political' narrative of conflicts of interest, mitigating diverging positions to win-win terms (Garsten and Jacobsson, 2011). Riles (2011) argues that freedom of information laws can be read as a neo-liberal 'assault on the character of technocratic knowledge' as 'constitutive of the regulatory state' (2011: 113). Pozen (2018) has coined this 'transparency's ideological drift', from a progressive tool with aspirations towards social justice, trust in public institutions, and civic empowerment to a tool geared towards a neoliberal and libertarian agenda, restricting the scope of government to the benefit of private governance. Pozen describes with a view to the US how legal developments surrounding transparency-inspired legislation together with shifts in the political climate have generated an anti-public-sector bias in how transparency rules function – a phenomenon he describes as 'at least partly … transnational' (Pozen, 2018: 124).

Landmark US legislation such as the Freedom of Information Act (FOIA),[7] the Truth in Lending Act,[8] and the National Environmental Policy Act of 1969 (NEPA)[9] pioneered the implementation of individual access to information about government documentation and policies, as well as administrative reporting duties. These laws have been copied in multiple jurisdictions and inspired other mechanisms of public accountability (Aaken, 2010), including in the EU.[10] However, rules on corporate reporting cannot be seen in direct continuation of this line, for they are ridden with additional prerequisites. While FOIA grants immediate access to *primary sources* (provided none of the exemptions related to sensitivity and personal rights apply, 5 U.S.C. § 552), corporate reporting regulations require (or allow) companies to *produce* specific reports. Reports are *secondary sources*, curated for the purpose of reporting and for an intended audience. This degree of intermediation is extended further by the fact that corporate files are less likely to contain positive documentation of malicious intentions behind corporate wrongs, simply because they can remain in the subtext of business decisions and be concealed by the economic rationality of inter-firm communication. Communication in the administrative sphere, on the other hand, is pluralistic in its ends and hence needs to specify ends and means (see Graeber, 2016; Weber, 2013), making it more significant and revealing for outsiders. Take the example of the notorious 'Torture Memos' of 2002 advising the US government and security apparatus on certain interrogation techniques and providing explicit documentation of the readiness and alleged legality to recur to such practices (Johns, 2013: 32 et seq.). While in this case, the

administrative documents show how possible state involvement in torture was actively weighed, corporate involvement in modern slavery, on the other hand, is often a more incidental, even if predictable, feature of established business models. Price squeeze and excessively short order timelines, for instance, are known root causes for worker vulnerability and modern slavery (Anner, 2020; Marshall, 2019; Shamir, 2012), but inter-firm communication around prices and orders will not usually contain specific considerations of such effects.

The second 'false friend' providing an undeserved legacy to corporate responsibility reporting comes from financial auditing. In recent years, both fields have moved towards convergence in their legal foundations (by extending the scope of financial reporting to non-financial aspects) and in practice (by allowing the big audit firms to establish and penetrate the market for modern slavery professionals) (Barkay and Shamir, 2025; Fransen and LeBaron, 2019; Haufler, 2018). This development is ambivalent, despite at first glance increasing the resources and the significance of various mechanisms that target modern slavery. The types and purposes of knowledge production that underlie financial auditing differ from that of modern slavery reporting. The *raison d'être* of financial auditing is distinctively institutional or systemic, namely, to ensure risk governance and thereby the order of financial markets. It draws essentially on quantitative data analysis. This is largely replicated, for instance, in the revision of the EU Corporate Sustainability Reporting Directive (2022), where comparable, quantitative, and machine-readable information is becoming the gold standard of Environmental, Social, and Governance (ESG) disclosure (Steuer and Tröger, 2022; Harper Ho, 2022; Johnston and Sjåfjell, 2020). This is not the most suitable type of data when it comes to detecting and mitigating practices of modern slavery, which requires qualitative analysis to identify informal dynamics (Chilton and Sarfaty, 2017; Sarfaty, 2017; LeBaron and Lister, 2015). Even if the 'S' in ESG can and should be understood so as to include modern slavery, the difficulty to map it in quantitative indicators has made it an underweighted dimension of the social pillar of ESG. When such measurements are attempted, they can hardly escape the reductionist rationale of quantification (Engle Merry, 2011).

Even if financial auditing is, in this regard, an unfitting antetype for corporate responsibility reporting, insights from auditing scholarship can be fruitfully transposed. Ever since the 1970s and further intensified after the financial crisis of 2008 (Pasquale, 2015), the legitimizing nature of auditing as expert knowledge practice has been put in the spotlight. Especially from a constructivist perspective, the claim has been made that auditing never delivers

an accurate account of its subject matter but operates as a mystified and ritualized practice (Flint, 1988; Miller and Power, 2013).[11] Just as Power (1999) and others have established for financial auditing, corporate responsibility reports result in visual, numerical, or verbal representations of reality; they filter reality rather than providing unmediated access to it (Christensen and Schoeneborn, 2017). In this perspective, the well-documented gaps between corporate reporting and the reality of corporate practice are hardly surprising and not solely due to an unwillingness to report accurately but rooted in epistemological barriers and organizational intricacies. This gap can form a point of departure for a critique of 'transparency' as a regulatory mode, exposing its deeper fundaments and practical operations, rather than taking the gap as such already as the core of the critique.

In such a perspective interested in the processes transmission and presentation of information triggered by reporting rules, the social function of auditing then is no longer to provide accurate information but to uphold the illusion that it can do so, by concealing its foundational paradox in an 'inflationary spiral of escalating trust in nth order guardians' (Power, 1999: 135). When considering the recent 'managerialization of modern slavery law' (Monciardini et al., 2021) with an exploding number of intermediaries that compile, assess, and meta-evaluate modern slavery reports, this, too, seems to have become a self-referential practice (Valentinov et al., 2019). One explanation for this escalating logic of reporting is provided by the sociology of professions. In the field of accounting regulation, the professional organizations of accountants have played a crucial role in sophisticating accounting rules, advocating for additional layers of verification, and shielding the field from outsiders (Botzem, 2011). Similarly, financial auditors are perceived as independent experts when it comes to the *substance* of their assessments, but they remain interested parties when the objectivity of the procedures themselves is questioned – and react by suggesting ever more nuanced, complex procedures. Reporting then does not necessarily reduce complexity or secrecy but reformulates it at a higher order, since many professions are dependent on trust in the practices of reporting. Power (1999) laconically concludes that the 'history of auditing reads, like the history of regulation more generally, as a history of failure. Efforts at social control, it seems, always fail, and failure is always the condition for further attempts at control' (Power 1999: 26). In fact, the higher the degree of uncertainty in a given context, the higher the appeal of and the expectations towards transparency (Ponte and Gibbon, 2005). Yet, despite transparency falling considerably short of its promises, the accuracy of reports is often overestimated – a phenomenon which

in a perspective of behavioural economics could be called a 'behavioural market failure', arising out of the attempt to remedy an informational market failure, namely the lack of information on sustainable production conditions (Hacker, 2016). This forms part of the unintended effects of reporting obligations.

Against this backdrop, the dominant critique of transparency regulation in the literature needs to be refined. While many authors see as a weakness that such rules require 'nothing but transparency' and impose no new substantive standards (what could be called a 'stringency critique'), here we have argued that corporate reporting rules are problematic not because they aim only at transparency but due to what 'transparency' in this domain means – the inner logic of transparency as regulatory mode (what could be called an 'epistemological critique'), and its uncritical transplantation to the field of corporate responsibility. In the next section, we will situate this epistemological critique within debates around governance of GVCs.

Governance of GVCs and Strategies of 'Dissociation'

As the playbook of regulatory strategies against modern slavery and other corporate wrongs along value chains is becoming more and more wide-ranging, a common challenge is how to confront the opacity, informality, and complexity of global production. Take, for instance, the example of the semiconductor chip manufacturer Intel that uses no less than 19,000 suppliers in over 100 countries to provide direct material, tools, machines, logistics, and packaging (Crawford and Joler, 2018). GVCs are not merely designed or assembled as a result of repeated 'make or buy' decisions, the distinction that in neo-classical economics favours either 'market' or 'firms' as economic organization. This view treats the market as a 'natural order' (Harcourt, 2012), a perspective that obscured how value chains are shaped by and impact upon the interplay between legal entitlements, economic opportunities, and regulatory frames. Rather, in addition to promising efficiency gains from specialization, practices like outsourcing and offshoring are enabled by a strategic play with legal niches and the blind spots of legal institutions (Sobel-Read, 2014). Consider corporate arrangements of profit-shifting for tax evasion, liability exemptions in commercial contracts, and involvement of middlemen to shield the lead firm from direct claims. Companies are engaged in practices of 'association' and 'dissociation' (Bair, 2019), understood as relational work to insulate the lead firm, its brand, and reputation from rights violations down the chain. Such practices take many

forms, some of which are legal (for example, through the use of intermediaries and by reference to privity of contract), while others may be factual (remote sourcing or no proactive inquiry about local production circumstances) or arising from corporate communication (for example, in CSR statements). Lead firms' strategies of regulatory arbitrage to dissociate themselves from their production facilities – legally, economically, geographically, environmentally, culturally, and so on – are central to the current institutional structure and geography of global production. As Anna Tsing (2012) puts it, 'supply-chain capitalism makes use of the waste spaces of capitalism and modernity' (p. 62). In this perspective, GVCs appear as an emanation of constructed ambiguity, deliberate obfuscation, or 'agnotology' (Proctor, 2008), rather than merely filling a 'governance gap' (Ruggie, 2008) or being geared towards rationality and efficiency. Corporations generate organizational complexity with the aim of undermining classical ascriptions of legality, value creation, and governance. Value chains form a largely invisible connection between sites, actors, and economic processes that need to be actively 'mapped' in order to become tangible from a regulatory perspective (Eller, 2017). As a result of these practices, even lead firms would not necessarily have active knowledge of their entire chain until the factory level. For many mass consumer goods, big intermediary platforms such as the Hong Kong-based supply chain management company Li and Fung[12] connect Western buyers to a dynamic network of tens of thousands of suppliers in Asia, effectively eliminating the need to know one's own value chain until the factory-level (Nguyen, 2023).

Law in the Information Architecture of GVCs

The significance of reporting rules for the internal flow of knowledge within GVCs becomes clear when understanding the interplay between knowledge and deliberate ignorance, between governance and the search for 'ungovernance' (Desai and Lang, 2020) as driving forces behind GVCs. The level of control and the degree of knowledge of lead firms do not coincidentally result from a certain degree of complexity of GVCs, but the degree of complexity is at least partly designed to allow a desired level of control and knowledge. Hence, lead firms are sought to report instances that do not occur in their vicinity – they are not, as in most reporting regimes, 'insiders' who report to 'outsiders', but to a certain extent 'outsiders' themselves. Lead firms' lack of information is both a strategic choice and a product of legal arrangements that allow for the compartmentalization of GVCs.

This has important implications for the analysis and the design of corporate responsibility reporting rules. We can distinguish two types of information setups which such rules affect. The first 'information cycle' is *outbound* and captures the reactions of market participants and other stakeholders to the publication of a report by the lead firm. Commonly the focus of analysis, this outbound circle describes where transparency rules are expected to take effect, that is, by influencing purchasing decisions or other actions by recipients. A second relevant 'information cycle' can be labelled *inbound*, namely referring to the internal organizational communication and knowledge-building *among chain actors*, that is, those processes that gather data input as the basis of a corporate report. This second information cycle is much less studied, but it is possibly the context in which reporting rules can be more transformative than in the 'outbound' cycle. Studying the 'inbound' circle entails asking how the flow of information among chain actors and across sites is organized, whose input and whose challenges matter, and what means exist for a lead firm to remain deliberately ignorant. We have seen earlier that for multiple reasons, the output of corporate reports is of low quality – that is, unspecific and fails to capture its intended recipients' attention – and, even if such reports are being read, they rarely trigger relevant changes of behaviour. In this sense, reporting rules in practice seem to fail all elements of the abstract information model they are based upon. This suggests reversing the perspective by asking to what extent such rules can alter the regime of information circulation between myriads of chain actors. The regime of information circulation is a central part of the strategies of dissociation and the epistemic authority of a lead firm over its value chain, both upstream between suppliers (for example, regarding the selective circulation of factory-level information) and downstream towards consumers (for example, regarding the leeway in framing products as 'sustainable' or the like towards consumers). Revising and contesting this epistemic authority might be an effective step towards increasing lead firm responsibility. Constructivist scholarship that is interested in how information is 'made', rather than 'given', has been vocal in emphasizing how knowledge generation and presentation can alter power dynamics and social orders (Jasanoff, 2004). In particular, this allows an inroad to address informality in value chains – the 'loose ends' of many GVCs involving working people without contractual connections, mini-entrepreneurs, and other workforce that is deprived of legal or actual protection of fundamental labour rights. While both reporting regulation and due diligence suppose a degree of oversight on the basis of information (for example, on labour conditions, working hours, and employment terms) that is collected

on the ground and processed for use at the level of corporate policies, many, if not most, labour rights violations occur in the shadow of such data-sets, on the informal side of value chains (Hsin, 2020). The more the 'formal' side of value chains is regulated, the bigger the gap to its 'informal' counterpart becomes. Strengthening the impact of many existing value chain regulations requires addressing this disconnect, rather than simply tightening the requirements on the 'formal' value chain.

Until now, legal debates have largely ignored the way law structures the flow of information on non-product-related aspects along the chain, such as by mandating actors to obtain certain information, setting up suitable institutions, and the like. For instance, current reporting regulations mostly focus on the presentation of information while giving little detail on their collection and generation. Examples for legal regimes that do take such a perspective are most notably product safety law with high obligations of traceability and documentation, and other regimes that require tracing of commodities, like under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Kimberley Process Certification Scheme (KPCS), the EU Deforestation Regulation (Durán and Scott, 2022),[13] or the EU Forced Labour Regulation.[14] Under the EU Green Deal and its aspirations towards a circular economy, furthermore, the planned 'Digital Product Passport'[15] envisions a new generation of standardized exchange of product-related information along the value chain, both upstream and downstream.

The role of information and cognition is a common theme in contract law scholarship, however mostly in a bilateral setup, especially with a focus on the informational basis for the negotiation and conclusion of contracts (Grundmann, 2017). In the aftermath of neo-classical approaches, contract theories have reflected the costs of gathering and processing information, and discussed the mechanisms through which parties deal with contingencies, provide for adjustments in specific circumstances, and leave their contracts deliberately incomplete for others (Eisenberg, 1995). Approaches from law and economics have devoted great attention to the effects that reporting rules have on designing parties' search for information and to alleviate information asymmetry. Far less attention has gone to the question of how contracts themselves steer (or interrupt) flows of information. To be sure, contracts can have a series of explicit provisions on this matter, such as in contracts that are geared towards a transfer of knowledge as in research and development (R&D) contracts or by means of confidentiality clauses, which restrict the use of knowledge beyond the contractual relation. Lead firms use novel standardized

procedures and information technology (IT) to negotiate, monitor, implement, and review their contracts – such 'contract management' generates new meta-data about the hundreds or thousands of contractual supplier relations (Kähler, 2013). Although such management devices have become a crucial infrastructure for GVCs, their use has for long been limited to coordinating a seamless flow of commodities and product-related information (especially product safety and quality). In other words, the information architecture of GVCs has long been biased towards efficiency and has thereby sustained corporate strategies of 'dissociation' from labour rights violations resulting from sourcing decisions and price squeeze. One firm-level path to contesting such 'dissociation' is to redress this bias and enhance the flow of non-product-related information from the capillaries of a GVC to the lead firm. The following section will outline possible paths towards this.

Taking on the Technicalities: Legal Coding Techniques of GVCs

What can be the role of law in such a shift? Looking at corporate responsibility reporting rules as altering the information architecture of GVCs invites us to broaden the scope of the current legal analysis of GVCs. A clearer understanding of the way law affects information circulation within GVCs will offer a new and important lens for discussions around the degree and spheres of leverage and governability within GVCs. The question of how far down the chain a lead firm can be expected to govern or to know is at the heart of all current regulatory attempts, be it on the reach of due diligence or a duty of care, the understanding of 'directly linked' entities under the UN Guiding Principles on Business and Human Rights or the degree of information expected under reporting duties. Legal and organizational literature has responded to the complexity of GVCs by trying to identify patterns of governance between firms (Gereffi et al., 2005; Salminen, 2020). Such patterns may be formalized in contractual terms, or they may draw on more informal institutions, such as business practices, trust, or reputation. Contract governance scholarship, however, often assumes a concentration of power at the lead firm level (Cutler, 2017) without unpacking the mechanisms that exercise power and circulate information. Legal and other scholarship has treated these governance mechanisms largely as 'black-box' for now and has not yet identified them as a source of deflection or watering down of value chain regulation.

Taking inspiration from Riles (2011), a preliminary toolkit to conceptualize the inner governance dynamics of value chains can be what might be termed

'value chain coding techniques', a set of mundane practices used by value chain insiders that animate the complexity of global production. In essence, these techniques comprise (*a*) legal doctrines (for example, privity of contract), (*b*) material documents (for example, CSR reports, order sheets, audits), (*c*) physical and digital infrastructure (for example, containers, supply chain management IT), and (*d*) professional routines of involved specialists (for example, supply chain managers, auditors). Recent scholarship in Law and Political Economy (Pistor, 2019), as well as ethnographic studies of investment banking (Riles, 2011), commercial arbitration (Dezalay and Garth, 1996), and trade (Turner, 2016; Griesel, 2021) have pointed to one or several of these elements to show how legal rules and practices work together to 'code' economic activities. These 'coding techniques' are responsible for the distorted translation between well-meaning rules and ongoing rights violations. In conventional regulatory theory, such techniques remain largely unnoticed, being portrayed as neutral devices that must 'comply with' the law. Many value chain regulations are, however, deliberately vague and leave a vacuum to be filled exactly by such practices (IGLP, 2016; Catá Backer, 2018; Sarfaty, 2021; Knop et al., 2012). Accordingly, companies and auditors are not mere passive 'rule-takers', but they shape norms and implementation. The technical allure of these 'coding techniques' conceals that those expert practices are crucial for enabling corporate actors to shield themselves (Kennedy, 2016).

The communication processes which reporting rules trigger among chain actors and within the lead firm's corporate structure can be understood as legally 'coded' bureaucratic practices around the collection, transmission, and processing of information. Studies on bureaucratic practices (Gitelman, 2014; Blau, 1955) have brought attention to the mundane patterns of formatting administrative knowledge through forms, spreadsheets, and other standardized documents and recording practices. Latour (2002) has emphasized the 'passage of law', characteristic of law's mode of existence, which takes place between the text of the legal provisions and the documents (that is, statements and case briefs) produced by parties in pursuance of and in reference to this. In this understanding, any form of documentation or audits that are requested along the chain in response to reporting obligations contribute to a legal ('coding') practice that has a recursive effect at the level of legal rules. In the GVC context, this role is played by supply chain management IT that ultimately operationalizes compliance, refers (or omits reference to) managers to compliance deficits, and provides the general steering tool for far-flung production networks (Sarfaty, 2020; Eller, 2020). Such technological infrastructures, often developed by digital

start-ups and spurred by big data, form the basis of compliance practices with all major types of value chain regulations of recent years – ranging from reporting[16] to due diligence[17] and market access rules.[18] This highlights the centrality and need for accountability of such IT.

In short, the well-documented shortcomings of reporting rules in the field of corporate responsibility suggest a reading of such rules that no longer sees their foremost objective in overcoming information deficits of consumers, investors, and other stakeholders. Rather, reporting rules may be understood (and ultimately *redesigned*) as primarily affecting the information architecture necessary to prevent, identify, and mitigate rights violations, such as modern slavery along the chain. The current reporting practice follows a culture of 'showing', that is, upholding the impression of complete lawfulness of value chain structures, and should be 'recoded' into a culture of 'knowing', that is, by adopting an inquisitive perspective that limits strategies of corporate dissociation from local incidents. Such a shift can highlight the intrinsic connection that exists in value chain capitalism between the information architecture within GVCs and material conditions for workers and tie in with broader aspirations of democratizing global production. Among the multiple possible building blocks is a more bottom-up and inclusive drafting of corporate reports that gives voice to both formal and informal workers and their representatives (remedying the current lack of worker voice[19]), a shift from reporting about 'compliance' narrowly understood to a culture of capability building of suppliers, the implementation of whistleblowing and other forms of denouncing corporate wrongs, an expanded yet prudent use of IT and traceability tools, especially those that amplify worker voice, a better connection with knowledge on local and industry-specific parameters through NGOs, embassies, Chambers of Commerce, transnational indicators, and generally a less routinized requirement for reassessment.

Conclusion

This chapter has attempted to shed light on the rapid proliferation of reporting regulations geared towards 'transparency' in the realm of corporate responsibility and especially in the field of modern slavery. Taking the widely shared disillusionment with the practical effects of such regulations as a starting point, I have argued that reporting rules draw on a combination of highly schematic models of information economics, a certain regulatory merit

acquired in other domains, and a specialized set of 'transparency professionals' in order to evade criticism of their internal contradictions as a regulatory mode for corporate responsibility. Adding to existing literature that sees the 'softness' of reporting rules as their main deficit, I have suggested that such regulations draw on self-sustaining logic and the deeply rooted appeal of transparency as societal virtue.

Against this backdrop, I have proposed to shift the understanding of corporate responsibility reporting rules from informing 'outsiders', such as consumers, investors, and other stakeholders, to the 'inside' of GVCs, by altering their information architecture. The current design of these rules is little attuned to and rarely acknowledges this dimension. Yet, it is in this direction that lead firms' strategies of 'dissociation' from rights violations down the chain can be affected most lastingly. One reason for the current absence of such a perspective in the legal literature stems from the lack of engagement with the micro- and firm-level dynamics of corporate and value chain governance, and, in particular, the role of law in the information architecture of GVCs. A reform of reporting rules needs to go hand-in-hand with a renewed focus on legal analysis of GVCs, turning 'from norms to practices' in order to expose the detailed 'legal coding techniques of GVCs', and tracing the role that information and deliberate ignorance play in the construction of corporate power. Such an analysis of the performative dimension of GVC regulation would similarly benefit modes of regulation other than reporting, in particular due diligence, that rely on and seek to impact the same information architecture to improve material conditions of production. As the debate around corporate responsibility is welcoming a veritable 'GVC turn' in recent legislations with new rules on due diligence and market access (Salminen et al., 2024), it is important to remember that those, too, will face familiar challenges of regulating GVCs and their political economy.

Notes

1. *Loi Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d'Ordre* (Law on the Duty of Vigilance of Parent and Instructing Companies) of 21 February 2017.
2. *Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten* (Supply Chain Due Diligence Act), Bundesgesetzblatt 2021 I Nr. 46 of 22 July 2021.

3. 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 (text with EEA relevance).
4. Benkler (2013: 236–41) states that the Obama Administration's project on 'Open Data' 'suggests how the rhetoric of openness and voluntarism interacts with the rhetoric of innovation, entrepreneurship, and markets, and how both can lead to obscuring, rather than solving, the public failures that led to the movement in the first place.'
5. See notes 1–2.
6. See Valentinov et al. (2019: 298): 'The ethical injunction to complete transparency therefore has to be analysed as what it is, a discourse representing a nonsystemic understanding of the universe.…'
7. Pub. L. No. 89-487, 80 Stat. 250 (1966) (codified as amended at 5 U.S.C. § 522 (2018)).
8. Pub. L. No. 90-321, 82 Stat. 146 (1968) (codified as amended at 15 U.S.C. §§ 1601–1667f (2018)).
9. Pub. L. No. 91-100, 83 Stat. 852 (1969) (codified as amended in scattered sections of 42 U.S.C.).
10. See Art. 15 Treaty on the Functioning of the European Union.
11. Miller and Power (2013: 556) see auditing as the 'most powerful system of representation for social and economic life today in many national settings'.
12. See the corporate website under http://www.lifung.com/.
13. For deforestation risks in supply chains, see, for example, the online platform 'Trase', developed by the Stockholm Environment Institute, https://trase.earth/.
14. Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937.
15. Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC.
16. Some examples of private technology solutions include Prewave (www.prewave.com), IntegrityNext (www.integritynext.com), EcoVadis (https://ecovadis.com), Altana AI (https://altana.ai), SupplyShift (www.supplyshift.net), or Osapiens (www.osapiens.com).
17. To facilitate compliance with the EU Conflict Minerals Regulation (2017/821), one of the first legislations to implement a due diligence requirement, the EU

Commission has released a document listing 'IT Solutions for Due Diligence' (1 April 2024), available at: https://single-market-economy.ec.europa.eu/system/files/2020-05/it_solutions_for_due_diligence_0.pdf.

18. The EU Forced Labour Regulation shall establish a 'Forced Labour Single Portal' operated by the EU Commission and which includes guidelines, information on bans, a database of risk areas and sectors, as well as publicly available evidence.
19. See for a detailed reconstruction of the position of workers in current paradigms of GVC regulation Marshall et al., 2023.

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