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Abstract

Purpose – Accounting practices vary not only across firms, but also across countries, reflecting the respective legal and cultural background. Attempts at harmonization therefore continue to be rebuffed. The purpose of this paper is to argue that different wordings in national laws, and different interpretations of similar wordings in national laws, can be explained by taking recourse to the philosophy of language, referring particularly to Searle and Wittgenstein.

Design/methodology/approach – The example of the substance over form principle, investigated in seven countries, is particularly suitable for this analysis. It is known in all accounting jurisdictions, but still has very different roots in different European countries, with European and international influences conflicting, which is reflected in the different wording of the principle from one country to the next, and the different socially constructed realities associated with those wordings.

Findings – This paper shows that, beyond accounting practices, the legal and cultural background of a country affects the wording of national law itself. The broad conclusion is that different socially constructed realities might tend to resist any attempt at harmonized socially constructed words.

Originality/value – The paper contributes to the debate surrounding the possible homogenization of accounting regulations, illustrating the theory of the social construction of both “reality” and “language” on the specific application of one common principle to various Member State environments.

Keywords Language, Accounting harmonization, Substance over form

Paper type Research paper

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1. Introduction

The Accounting Directive (2013/34/EU), which replaces the Fourth and Seventh Directives, aims at harmonizing European accounting rules, based on common principles. It has been translated into 24 languages that each has equal authority. Its implementation requires Member States to adapt national regulation, not necessarily to copy the original wording of the Directive. In total, 28 parliaments may therefore choose to implement a single concept, using different languages and different wording. Yet, this situation may not be a problem in terms of harmonization if the resulting understanding of accounting rules, in spite of different wording, is alike in all countries.

Accounting harmonization started with the Fourth and Seventh Directives, it then focused on listed companies, with IFRS adoption for consolidated accounts of firms listed on a regulated market. This common regulation left Member States free to introduce IFRS further into their local rules. Yet, local accounting rules evolved independently.

After IFRS adoption in Europe, many studies revealed that differences in application remained (Kvaal and Nobes, 2010, 2012), potentially explained by national patterns and habits (Zeff, 2007), even between listed firms supposedly less constrained by national rules. As demonstrated by recent studies (Stadler and Nobes, 2014), country factors have the greatest influence on IFRS policy choice and the fact that national patterns were observed raises questions as to the potential to achieve the initial goal of harmonization.

The paper contributes to the debate on accounting harmonization at the European level. It underlines the importance of the cultural environment in which an accounting rule is settled, where not only legal systems but also languages, history and habits may play a role in the success of harmonization.

We analyze how Member States enacted the Directive, using the example of the “substance over form” (SoF) principle. We question the existence of a European accounting community that would understand and practice – perhaps using different wordings – an accounting principle the same way, by referring to the theory of language.

The SoF principle is a particularly suitable example. In some countries, such as the UK and Germany, it has been known as a (different) way of thinking for decades. In others it has only recently come into effect. IFRS have always relied on taking into account the economic substance rather than the legal form. The Accounting Directive seems to somewhat distance itself from giving priority to the SoF principle. Article 6 includes it as one of its common principles, but also allows for an opt-out by Member States. A recent paper by Alexander (2015), consistent with Gélard (2013), shows that the stated requirements regarding substance and form are quite extraordinarily vague and flexible. Further, they appear to be explicitly different when comparing different language versions of the Directive.

We apply in our paper the philosophy of language to the wording of accounting law. We base our arguments first on Searle’s concept of social facts as collective intentionality, and second on Wittgenstein’s propositions on the determination of the meaning of words and ideas. We find that the assumption of a common principle (SoF) before accounting harmonization, as well as after, is false. Instead, different national meanings of SoF before harmonization are reflected in different wordings during harmonization and result in still different meanings after harmonization. Even before assessing whether harmonization is met *de facto*, we compare legal environments to assess whether, *de jure*, that is logically prior to the application of the law, it is taking root in wording and meaning. We find that it is not. Impediments to harmonization are therefore found not only in the varying applications of the law, but at the prior stage in the wording of the law itself and in the impossibility of “noise-free” linguistic communication of this wording of the law.

Our investigation of the enactment of the SoF principle refers to seven countries (Austria, France, Germany, Italy, Poland, Romania and the UK), with a view to the principle’s country-specific origins, the implementation of the Directive and its current interpretation.

Our sample of countries covers the cultural and political diversity in Europe, with Latin, Germanic, Anglo-Saxon and communist influences on legal frameworks, language and accounting practices.

The paper proceeds as follows. Section 2 explores the theoretical background, and our methodology. Section 3 discusses the domestic notions of SoF for seven countries against the background of European harmonization. Section 4 discusses the implications arising, exploring the divergent notions of the principle and generalizing the implications for harmonization. Section 5 concludes.

2. Theory

2.1 *Philosophy of language*

Cultural diversity creates differences in the understanding of concepts, leading to diversity in the definitions of common notions. Searle's and Wittgenstein's philosophies of language provide nuanced accounts of precisely how the meaning of accounting concepts or principles can vary according to cultural and historical context. Two ideas are especially critical for understanding the impact and meaning of the relevant principle. First, Searle's concept of social facts as collective intentionality, and second Wittgenstein's emphasis that the meaning of words and ideas varies not only according to the different cultural meaning of the words themselves, but also according to the specific social practices in which the language usage is set.

The philosopher Searle (1995) explained, based on the concept of "intentionality," how social objects come into being. In this regard, it is possible to distinguish between subjective dependent facts (i.e. dependent on individual intentionality) and social facts (dependent on collective intentionality). Searle (2006) defined a social fact as "any fact involving collective intentionality of two or more human or animal agents" (p. 16). According to Searle, people have the ability to share beliefs and desires, which – in certain conditions – can give rise to a specific type of social fact, namely, "institutional facts."

We broadly accept the idea developed in a number of recent papers (e.g. Shapiro, 1997, 1998; Alexander and Archer, 2003; Mouck, 2004; Alexander and Ionascu, 2008), not always quite consistent with each other, applying to the accounting domain the concept of institutional and inter-subjective reality developed by Searle (1995, 2006, 2009). As Alexander and Archer (2003, p. 5) argued, "By virtue of collective intentionality, ownership claims, income, and other conceptual objects of accounting can, under appropriate conditions, be institutional facts." Following this thinking, institutional facts, although ontologically subjective (as they require human practices to sustain their existence), are epistemologically objective, meaning they have an effect that is agreed upon. That is because, being inter-subjectively constructed by means of collective intentionality, institutional facts become objectified; in other words, they are not dependent on a particular human being's attitude toward them.

Consider the statement "Inventory €100 in accordance with EU-endorsed IFRS." Social constructions are legion: money, euro, cost, EU, inventory and IFRS. Physically identical buildings can be recorded, in appropriate circumstances, at "cost" (IAS 16 para. 30), at "fair value" (IAS 16 para. 31 or IAS 40), or at "the lower of cost and net realisable value" (IAS 2). So in what sense is a fair presentation "real"? Different "realities" are involved. A fair presentation must communicate the substance of the relevant inter-subjectively constructed "reality." This is impossible without collective agreement, collective intentionality, about that particular inter-subjectively constructed "reality" within the community of actors involved. And of course no collective intentionality is possible without effective communication and mutual understanding within and across the collective.

Based on this concept of social facts, both animals hunting together and the European Union Parliament issuing a Directive are examples of social facts, involving collective intentionality. Institutional facts are the result of the collective attribution by human beings of status functions to parts of reality. Indeed, human beings have the capacity to ascribe

functions to objects only by virtue of the collective assignment (Searle, 2006). For example, a yellow line on a floor can have the function of a barrier, not by virtue of its physical features, but because of the collective assignment to that line of the status of boundary marker. As Searle (2006) asserted, “status functions are the vehicles of power in society.” Human beings, by accepting the status functions, create obligations, responsibilities, duties, rights, etc., to which Searle refers as deontic powers. With “collective intentionality,” therefore, Searle (1990) maintained that human beings are able to participate in cooperative behaviors, adopting complex devices such as language or other tools based on symbolization to achieve collaborative actions and beliefs.

A necessary condition for institutional facts and internal reality is concerned with the communication of concepts between human beings – with words. Perceptions of economic reality are personal and subjective. How, if at all, can such perceptions be explained and communicated from one human being to another? According to Saussure (1973), language is a system of signs. A sign involves two elements: first, that which signifies, called the *signifiant* or signifier, e.g. a word; second, the idea signified, called the *signifié* or signified. Saussure argued that the sign is arbitrary in all of three respects: sign, signified and the connection between.

Searle (1995, Chapter 3; 2009) argued for an unavoidable relationship between institutional facts through collective representation and language. Beyond the obvious similarities regarding shared beliefs (institutional facts) and shared meanings (language) is the more fundamental point that the move from object (e.g. pebble) to status function by means of collective representation (e.g. money) is possible only if there is a mechanism for creating, and communicating, this collective representation. It is language that gives humans the capacity to represent.

So can we postulate a collective representation, in this technical sense, about SoF? We now bring in Wittgenstein who elucidated an additional perspective on language. The most fundamental difference between Wittgenstein and Searle is that Wittgenstein even questioned whether humans can actively and without presumptions collectively create sign, signified and the connection between both (e.g. Baker and Hacker, 2009). For Wittgenstein the sign provided by language is not independent from the signified reality, but it is intrinsically and inseparably linked to certain forms of life.

Wittgenstein understood concepts such as SoF in his later philosophy as receiving their meaning from the way they are used (Wittgenstein, 2005, Sections 20, 43, 421; transposed to accounting by Lias, 1993; Dennis, 2008). Wittgenstein chose this quite uncommon starting point because he considered it to be a misleading simplification to reduce the link between language and reality to one of an arbitrarily chosen and nominalist correspondence between concepts and reality (see Kenny, 1974; Baker and Hacker, 2009). This has several important consequences.

A first consequence is that one can only understand the meaning of concepts when focusing on the contexts, the language game, in which certain concepts play a certain role and the relationships through which those concepts receive their meaning (e.g. Wittgenstein, 2005, Sections 109, 471, 583). He pointed out, for example, that a stick becomes a lever only when it is used for this purpose (Wittgenstein, 2005, Section 6). This aspect expands on Searle, as it highlights that beyond the yellow line being a social fact, the process of being acknowledged as having a specific meaning is ensured by a living practice in which a particular concept plays a role. Wittgenstein denied arbitrariness because he pointed out that communication with the help of language presupposes that typical or entrenched relationships or sets of contexts/practices exist. He noted that any concept has a meaning within such a language game only because its sense is identical with or – better – is its role in the particular language game (Wittgenstein, 2005, Section 49).

A second important consequence is that the meaning of a given concept is not inherently determined. Indeed, it has no intrinsic essence beyond its use (e.g. von Savigny, 1969; Wittgenstein, 2005, Section 432). Therefore, one needs to observe what happens with a concept

in different contexts rather than assuming that a concept has a fixed and stable essence (Pitcher, 1967). Its degree of vagueness, or complexity, its stability over time, its definition, all this might change with the differing contexts in which the concept is applied in practice (see Pitcher, 1967; Stegmüller, 1989; Wittgenstein, 2005, Sections 47, 79, 87, 88, 593). Still such a concept might in all of these circumstances be perfectly serviceable (Dennis, 2008).

Despite their very different starting points, strong similarities emerge between Searle's "collective assignment" and Wittgenstein's "rules of the game."

In our context, the question also emerges what happens with concepts that are applied in other contexts than within their natural language games. One thing is clear for Wittgenstein: a concept becomes nonsense when applied outside of its language game or in the wrong language game (Wittgenstein, 2005, Sections 39, 40). However, if in given operating language games similarities exist, a concept from another language game can be compared and it assumes a meaning and it can be introduced within that language game, however, slightly changing its meaning to fit to this new context. According to Wittgenstein (2005, Section 140), understanding is nothing but being able to check whether a certain concept can be applied to a certain situation (see also Wittgenstein, 2005, Sections 145, 206, 232, 233). Explaining the meaning of a concept then amounts to providing different examples of its use (Wittgenstein, 2005, Sections 71, 72). Remembering the meaning of words, on the other hand, is nothing but remembering how this given word was applied in the past (Wittgenstein, 2005, Section 379).

Coming back to our question about an SoF collective representation, following Wittgenstein and consistent with Searle, the most likely finding can be described as follows. We can postulate a series of collective representations of SoF, each understood, despite fuzzy boundaries, by different related, but non-identical, examples of use in varying "collective representations" (Searle) or varying "language games" (Wittgenstein), both these terms being used in a precise technical sense. We explore the validity of this proposition in the remainder of the paper.

2.2 Translation issues in accounting

Translation aims at functional equivalence, such that the reader of a translation should read an exact translation of the meaning instead of a word-by-word translation. This is, of course, standard translation procedure, also applied by the Translation Centre for the Bodies of the European Union[1]. The language of first drafting EU Directives is now most likely to be one of the three official "working languages," English, French or German. Member States of all other 23 languages base their implementation on translations, which are supposed to convey the same content. This is where a problem may arise.

Relying on the Sapir-Whorf hypothesis, according to which speakers of different languages perceive the world differently, as they are influenced by their own language and culture, Evans (2004) and Evans *et al.* (2015) pointed to the fact that accounting regulations include culture-dependent concepts, like the true-and-fair-view principle. The consequence is that accounting and legal terms are understood differently in locations with different language and culture. Specific burdens in the functional translation of accounting concepts include the differences between the cultural and historical context of common law and civil law countries, or between Western and former socialist countries of Eastern Europe.

Along this line, although translators can transfer a specific term from one language to the other, readers of the translated text will not decode it in exactly the same manner as native-language speakers reading the original text. Individual culture, history and habits, used as decoder support, differ. "Equivalence" relates to a variety of possible "forms of correspondence between the source text [...] and the target text [...]" (Kettunen, 2017, p. 41; Pym, 2014). Ignoring the technical linguistics-related details here, earlier theories proposed that a "natural equivalence" should normally exist, and translation is the process

of finding it. Our theoretical framework, however, might suggest that any expectation of such unproblematic natural equivalence between languages, and therefore “automatically valid” translation, is likely to be problematic.

Transferring these considerations to the present discussion leads to the expectation that the meaning of the SoF notion depends on the language game (broadly the country) in which it is applied, unless there is a general meaning to cover all countries, i.e. with collective assignment across countries. This leads us to expect an increase in doubts in different contexts, where the notion is new or applied differently.

To summarize, we can suggest that perceptions of, interpretations of and chosen applications of a principle such as SoF can only be agreed (harmonized) as social constructs, ever-changing by definition, through collective intentionality within groups of like-minded thinkers. A necessary condition for the creation of “like-minded thinking” is effective communication of “the thoughts,” through the highly imperfect medium of language – itself an ever-changing social construct.

2.3 Methodology

We focus our analysis on the SoF principle for several reasons. First, while new in some countries, it expanded worldwide through the use of IFRS[2]. Second, the principle receives special treatment in the Accounting Directive, where Member States may opt-out. Third, the principle is undefined at the European level. We choose our countries to reflect the diversity in Europe and its impact on local regulations and the difficulties in enacting common Directives.

We identify four different country-groups, which already suggest diverse “collective intentionalities” – UK common law, France and Italy civil code, Germany and Austria tax code, and Poland and Romania ex-communist. Our investigation per country includes the presence (or absence) of the SoF principle (or a similar concept) in the respective accounting history, and before the Accounting Directive, and its integration during the implementation of the Directive. Different approaches to implementation, and different wording may result from (and in) different concepts and uses.

3. The SoF principle in European accounting rules

As a starting point, we use the recent 2013 Accounting Directive, in which the SoF principle features prominently, but is also flexible and even avoidable. We then turn to the principle in seven European countries: the UK, France and Italy, Germany and Austria, and Poland and Romania. The synthesis will show that even though there are commonalities in some countries, overall the historical/cultural background, linguistics and notions differ.

3.1 In the Accounting Directive

The final version of the 2013 Accounting Directive, taking the English wording, seems to establish the notion of SoF, albeit in a very vague way:

Article 6.1(h): “items in the profit and loss account and balance sheet shall be accounted for and presented having regard to the substance of the transaction or arrangement concerned;”

Article 6.3: “Member States may exempt undertakings from the requirements of point (h) of paragraph 1.”

The word “substance” is not defined. Further, the requirement is simply to “hav[e] regard to” the substance. “Having regard to” means that one must look at it and genuinely consider it in the overall context concerned, but one may then go against it if it is rational within that (socially constructed) context so to do. No explicit obligation to follow the undefined substance is implied. Therefore, at first glance, Article 6.1(h) implies only a vague priority of an undefined “substance,” presumably over an unmentioned, possibly legal, form.

However, the Directive then negates the requirement completely at the Member State level, as under Article 6.3 the States “may exempt undertakings” from the requirement, with no alternative being given. In other words, whether – and, if so, to what extent – to implement the “having regard to the substance” requirement is completely left to the Member States. Member States may choose to base their accounting laws on legal form only, but may also exempt only specific undertakings (e.g. small firms, specific industries). They may even choose different principles for individual and consolidated statements, as preliminary recital 35 allows[3]. It seems that Member States were not able to agree on harmonization of the principle (or its rejection) and had to compromise by allowing Member State discretion (Florstedt *et al.*, 2015). This hinders harmonization, consistency and comparability of statements among firms and countries.

While the analysis so far has referred only to the English version, the overall picture is much more complex. Details are discussed in the country sub-sections below. To highlight the key result, three of the language versions, English, French and Italian, appear to say similar things. But in the other four countries, Austria, Germany, Poland and Romania, different translations introduce the concept of “economic” (*wirtschaftlichen*, *economic*, *ekonomicznej*) in relation to the “substance.” Surprisingly, the words “form” or “legal form” do not appear – express or implied – in any of the versions.

3.2 In seven European countries

UK. Perhaps surprisingly, there is no long history of any version of the SoF concept in UK rules. In the old standards prior to the 1989 IASC Framework, the concept simply does not exist. The first formal presence in a Standard was FRS 5 in 1994, and the UK’s own framework did not appear until 1999. The reason is easy to see: there was simply no possible alternative to consider. The powerful and well-established true and fair view (TFV) principle, coupled with the virtual absence of any detailed regulations to prescribe “form,” was sufficient to ensure its automatic operation. SoF was part of the unregulated “collective intentionality.” But if legal “rules” (form) are almost non-existent, then there is little place for emphasizing the superiority of substance.

A classic example is depreciation. This was not, prior to the enactment in the UK of the Fourth Directive, a legal requirement. Yet, depreciation was almost universal, deemed necessary to give a TFV. As good Europeans, the UK introduced the Directive in full in the 1981 Companies Act. But now the TFV requirement could be used in the opposite direction: if depreciation were to fail to give a TFV, the law (and the Directive) required that depreciation not be provided. Hence, later, the UK Standard on Investment Properties, the eventual IAS 40, and the 2013 Accounting Directive (Article 8). The emphasis on substance was automatic, whether stated or not.

Now, with effect from January 1, 2015, the entire UK Accounting Standards structure, both all the Standards and the Board, has disappeared. The replacement is a series of six Financial Reporting Standards (FRS 100–FRS 105), issued by the Financial Reporting Council. Here, we address only FRS 102 which, broadly speaking, is applicable to all entities, including “public benefit entities,” which are not “small/micro,” and are not required to use EU-endorsed IFRS. The Member State option to exempt undertakings within this definition was not implemented. The Standard was issued in 2014, slightly revised in September 2015, and again in 2018.

Paragraph 2.8, regarding SoF, provides as follows: “Transactions and other events and conditions should be accounted for and presented in accordance with their substance and not merely their legal form. This enhances the reliability of financial statements.”

The UK is not at all following the wording of the Directive, and it most certainly supports the SoF principle. Although the word “economic” does not appear, the words “legal form” are inserted, but in order to be dismissed, with considerable violence. “Not merely the form” is stronger than “not only the form” would be. However, the words are taken unchanged from the IASC Framework of 1989, itself derived from US not UK sources. One could

suggest that the words are re-used here deliberately, and technically unnecessarily, in order to underscore the “Britishness” of the wording of the enactment.

The second sentence in Paragraph 2.8 is the very explicit statement that substance is necessary in order to enhance reliability. Reliability (para 2.7) requires a faithful representation of “that which it either purports to represent or could reasonably be expected to represent.” The claim is that where legal form and substance differ, the legal form necessarily fails to achieve reliability.

It is important to remember that the underlying philosophy behind UK accounting has been close to the underlying philosophy of IFRS for many decades (and of course vice versa). This means that in broad terms, the UK collective representation, or the UK language game, is not very different from the corresponding IFRS-based versions. In spite of this – or perhaps even because of it – the UK enactment can be seen as the British being British, in accordance with long tradition and practice, fully consistent with – but in no way constrained by – the published text of the Directive. In the UK case, the IFRS dimension was not new at all. Instead, the European Directive was in a sense the new and potentially threatening scenario. It was therefore rational for the UK to emphasize the continuation of its traditional “subjective reality.” So only the various “foreign” influences, both IASC/B and EU, caused the previously unnecessary formal introduction of the SoF wording, effectively as a defensive mechanism, perhaps also recently taking account of the (unwelcomed) removal of the words “TFV” from the IASB Framework.

France. Traditionally considered as the “algebra of law” (Garnier, 1947), French accounting rules were made to meet the needs of multiple users of the financial information, namely the state, management, creditors and employees (Colasse and Standish, 1998, p. 16). The National Accounting Code (*Plan Comptable Général* (PCG)) mandated that accountants be sincere in the application of rules when reporting facts[4]. An international influence started with the Fourth and Seventh Directives, mostly on consolidated accounts, then also on individual accounts until 2009 (Marion and Gélard, 2015).

Prior to the 2013 Accounting Directive, the objective of a faithful image (TFV) had been introduced, together with the override option, despite debates (Hoarau, 2003). A principle of “prevalence of substance over appearance[5]” was included in consolidation rules only. However, some treatments in individual accounts followed a substance-based analysis (Barbe and Didelot, 2012; Lebrun, 2009). In particular, since 2004 assets have been defined from a substance perspective[6]: they are now items controlled, instead of owned.

In the French version of the Accounting Directive, items “are accounted and disclosed referring to the substance of the transaction [*sont comptabilisés et présentés en se référant à la substance de la transaction [...]*]” which appears to be stronger than the English “having regard to.” The only reference to consider for a transaction is its substance. The Directive was enacted in French law and accounting rules[7], resulting in no change in the rules.

Hence, pre-existing coherence issues are now more visible, for example, regarding leases. A rental contract that ends up with an option to buy the asset is named a *crédit-bail*[8]. Banks consider it as financial debt. IFRS and French consolidation rules would generally view it as a finance lease. In individual accounts, it is booked as a rent, although there may be an asset under control (PCG, Articles 212-5). Strangely enough, accounting is not in line with tax where a substance-based analysis prevails, at least on the lessee’s side (de Brébisson, 2018). Tax law has evolved, sometimes inspired by IFRS concepts such as the substance principle (Rossignol, 2007). On the lessor’s side though, tax law retains a formal approach, which allows for a fiscal deficit over the first years of the contract. For lessors – who are by law financial institutions – the formal treatment leaves a tangible asset on their balance sheet, instead of a financial asset, which is not neutral as per French application of the Basel II agreement. However, Basel III recommendations are turning to a substance-based approach.

The current accounting system shows a discontinuity between individual and consolidated accounts (Hoarau, 1995) and too much influence from taxation that tends to divert accounting from its original information goal (Tort, 2012). There is also a discontinuity between principles and rules. Indeed, the substance principle exists in consolidation; in individual accounts some rules follow the principle, too. But it is not clear whether the PCG is consistent with the Directive. Formally, the principle is neither enacted nor rejected.

The situation may not induce misunderstanding of SoF which is known in consolidation, and may be involved in individual accounts, even if not formally acted on as a principle. However, the persistence of formal approaches to transactions such as leases, where law, tax and practice have little doubt on its substance, may reveal a debate over the role of accounting information. The formal treatment bounds accounting to a property-rights approach, whereas under a substance-based analysis, items with conditional or incomplete property rights appear. Some authors supported a substance-based analysis of law (Raybaud-Turrillo, 1995), noting that the Civil Code already pointed at substance. Article 1188 explains that “the contract is interpreted based on the common intention of the parties rather than by stopping at the literal meaning of its terms[9].” Hence, some form of SoF principle exists in the Civil Code, not fully applied in accounting. This may reveal disagreement between lawyers and accountants over the collective assignment given to accounting information. Whereas consolidated accounts tend to present an economic patrimony, individual accounts are still in the middle. Supposed to produce a faithful image, with an economic definition of assets, they keep formal treatments for specific contracts.

Italy. The SoF principle was introduced in Italian law in 1992 (Decree Law 87/92 Article 7 (4)), but only for banks. The Decree Law 6/2003 introduced reference to “economic function” (*funzione economica*)[10] to the Civil Code, together with some rules for specific transactions. These treatments were not all complying with what the application of the SoF principle would suggest. For instance, lease payments were expensed, with information on the substance only in the notes (Civil Code, Article 2427 para. 1, number 22). In 2007, amendments implementing Directive 2003/51 did not change this situation.

The introduction of the phrase “economic function” in the Civil Code in 2003 was criticized. Considered ambiguous, it was suggested to refer to the principle of SoF (OIC 1, 2004, p. 8) as in the law for banks and at the European level. As the Civil Code considered the economic function only for valuation issues, it was not clear if it was a valuation criterion or if it was referring to the SoF principle. The definition in the Italian accounting standards was considered more appropriate (OIC 11, 2005): “The economic substance of the operation represents the main element for the reporting, valuation and representation of the event in the financial statements, in order to assure the clear drawing up and the true and fair representation [...]” The SoF principle under the Italian rules was mainly perceived as an expression of the TFV principle stated by Article 2423 of the Civil Code. No definition of the SoF principle or substance is contained in the new draft of OIC 11 issued in October 2017.

The Italian version of the Accounting Directive, translated back into English, states in Article 6(1)(h) “accounting and presentation of the items in the profit and loss and balance sheet take into account the substance of the transaction or of the contract concerned.” Paragraph 3 states:

Member States may exempt the companies from the requirements of point (h) of paragraph 1.

Decree Law 139/2015, effective from January 1, 2016, implements the Directive and modifies Article 2423-bis of the Civil Code as follows: “In the drawing up of the financial statements the following principles should be observed: [...] 1-bis) accounting and reporting of the items is made considering the substance of the transaction or the contract[11].” Therefore, the previous “economic function,” was replaced by “substance of the transaction or the contract.” Thus, the

SoF principle is explicitly introduced with a wider scope: both the presentation and the reporting of items need to refer to the substance of the transaction or contract. Still, under the Civil Code, the rules for leases are unchanged. This appears to be a departure from the new Article 2423-bis 1-bis. But, in case of conflicts with a specific form-based rule, the latter prevails and, as stated by OIC 11, “all the elements and data (complementary information) appropriate to express substance must be disclosed in the notes.” Hence, albeit enacted, SoF may be disregarded by detailed rules.

Despite being enacted, SoF suffers a flexible applicability, limited by specific rules. The principle does not work as a general principle overarching the individual valuation criteria. This may result from the philosophy behind the Italian Civil Code, where law defines practical application *ex ante*. The application of the SoF principle is limited by strictly regulated bookkeeping rules, reducing the role of professional judgment. This is linked to the economic and cultural Italian context where the main source of financing is the banking system rather than capital markets. The key objective of safeguarding creditors influenced the role of accounting information and supported the primacy of property rights. In this respect, the legal approach has prevailed even over the Italian economic doctrine. Following Wittgenstein, this explains also the initial ambiguity of the first introduction of the principle in Italy due to its different language game root, and its limited use in practice, which still remains after the implementation of the Directive.

Germany. The Accounting Directive was implemented in Germany in 2015[12], but no explicit norm on “having regard to the substance,” or any other reference to SoF, was implemented in the German commercial code or any other law (Arbeitskreis Bilanzrecht Hochschullehrer Rechtswissenschaft, 2014a, b; Lüdenbach and Freiberg, 2014). German parliament (*Bundestag*) explains that explicit implementation is not necessary, as the principle has been and will be part of German accounting rules anyway:

Fundamental changes in the Accounting Directive also include stronger anchoring of the general principles in a separate chapter. Emphasis should be placed on [...] “the principle of an economic view” (Art. 6 para. 1, littera h and reason 16). Th[is] principle [...] was previously included in specific rules in Directives 78/660/EEG and 83/349/EEG and they are already implemented in German law when one takes into account the German *principles of orderly bookkeeping* [*Grundsätze ordnungsmäßiger Buchführung*, emphasis added]. The new central placement in the second section of the Directive shows the significance of these principles. However, changes in content were not intended[13].

A meaningful change of vocabulary demonstrates that a notion of a different language game is naturalized in the German language game. The German version of the Directive refers to “economic substance” (*wirtschaftlicher Gehalt*), whereas the German parliament refers to the “economic view” (*wirtschaftliche Betrachtungsweise*). The latter is a long-held notion applied under the German legal system, which originates in tax law and is equally valid in German financial accounting. The economic view was first codified in 1919 in Article 4 of the German Empire’s Tax Code. Explicit codification was eliminated in 1977, while its continuing central role of the economic view was highlighted:

Also in future the [...] sentence is valid that the economic view has its place there, where a law might mention certain legal events but does not mean their juridical appearance but instead their legal impact[14].

In this statement, the economic view is understood to be part of the legal system and only to exist within the context – and therefore, language game – of the legal system. The consensus today is that the economic view is a general juridical method of teleological interpretation of law (e.g. Beisse, 1981; Florstedt *et al.*, 2015). Moxter (1989) held that “The economic view takes care of the real purpose of the legal norms while mere application of rules might miss the real purpose because it relies on structures of law that hide the real purpose of the legal norms.”

This is a direct reflection on the fact that for different users, different substances may exist, but that the legal system is required to pin down a clear meaning of substance. In other words, in the German system the production of an institutional fact that reduces a multitude of collective intentionalities to one “acceptable” is delegated to jurisprudence.

Such broad notion of economic view, combined with a close book-tax link, includes its application in accounting law (Breidert and Moxter, 2007; Tipke and Lang, 2010). However, the telos-based application of the economic view in tax law and in financial accounting is not always identical (e.g. Wüstemann and Wüstemann, 2012).

Ultimately, the two notions of “economic substance” in the Directive and “economic view” in the German tradition mean the same, at least in the likely operationalization within the German language game. The purpose of a legally coherent determination is prevailing over the information purpose of any other kind. Accordingly, the Arbeitskreis Bilanzrecht Hochschullehrer Rechtswissenschaft (2014a) stated for Germany that the Directive’s SoF principle may not be applied according to its international meaning, but instead requires that, at all times, any appraisal of a transaction takes due regard of the legal structures (i.e. of the local language game). However, at the same time, the traditional German language game is challenged by some scholars who argue that the German economic view and the UK SoF concept, while comparable, differ insofar as SoF can lead to the override of a given legal framework (Zwirner, 2014).

Austria. The Austrian perspective on SoF is to some extent comparable to the German one, albeit with differences. While the historic roots of an economic view are the same, “economic view” is still explicitly part of Austrian codified law, unlike in Germany. Paragraph 21 of the Federal Tax Act (1961), still valid today, states: “For the evaluation of tax issues, in an economic view the true economic substance instead of the outer appearance of the facts is decisive[15].”

Contrary to tax law, accounting law, until 2014, never explicitly mentioned any version of economic view or SoF. Yet, the economic view has been generally accepted and used, as part of uncodified generally accepted accounting principles[16] (Fraberger *et al.*, 2010, §195 Rz 14; Nowotny, 1992, §195 Rz 14; Seicht, 1989).

The vocabulary differs, i.e. the Austrian economic view is determined as true economic substance over outer appearance of the facts, instead of (economic) substance over (legal) form. However, the interpretation of the principle does not differ in essence. Austrian literature (Fraberger *et al.*, 2010, §195 Rz 14; Lüdenbach and Christian, 2010, §196 Rz 23; Rohatschek and Schiemer, 2015) confirms (in contrast to the German scenario) that, until 2014, the Austrian economic view, codified in tax law and equally generally accepted in accounting, has been interpreted as equivalent to the UK notion of SoF.

The implementation of the Accounting Directive in 2014 has brought a change. The Rechnungslegungsänderungsgesetz 2014 (Accounting Amendment Law) includes the new Section 196a of the Commercial Code, which reads as follows (authors’ literal translation): “Items in the financial statements are accounted for and presented having regard to the economic substance of the transactions or the arrangements concerned[17].” No undertakings are exempt from this requirement.

The wording under the Austrian law relates to *wirtschaftlicher Gehalt* (i.e. economic substance), instead of merely “substance.” This is in line with the German language version of the Directive. In other words, it can be safely assumed that substance for a UK reader is equivalent to *wirtschaftlicher Gehalt*/economic substance to a German reader.

The notion of “economic view” has not been influenced by the increasing use of IFRS. Accounting rules in the Commercial Code have never been amended to better comply with IFRS. The individual accounts as well as the consolidated accounts of non-public interest entities still rely on a tax driven, conservative tradition.

To summarize, the Austrian implementation of “having regard to the substance” is in line with the Accounting Directive. Undertakings are not exempt. Further, the explicit codification of the SoF principle is a continuation of the prior general acceptance of economic view, therefore the notion of the principle has not changed. Regarding the Austrian “collective representation” (Searle) or “language game” (Wittgenstein), the concept of economic view has not changed during the past decades, and in particular with the implementation of the Accounting Directive. Different stages of tax-only codification, accounting non-codification and accounting codification, with different choice of words, are generally understood to all reflect the same meaning of the concept of economic view.

Poland. In Poland, the SoF principle was introduced in the Accounting Act in 2000 (Article 4.2): “Events, including business transactions, should be recognized in account books and disclosed in the financial statements according to their business significance[18].” Article 6(3) has not been used. A new Article (4.1.1b) was introduced, allowing preparers to depart from some prescription of the Act in extraordinary circumstances if it would not allow to accurately present the entity’s situation.

The Act does not use “substance.” Instead, the words used are officially translated as “business significance” (whereas a literal translation is “economic content”). To date, this wording remains unchanged. In the Act, as in the Directive, there is no reference to the “legal form.” The lack of an explicit opposition of these two approaches may make it easier to accept that the business significance of the transaction or agreement generally remains in line with its legal form. What is meant by “business significance” is left to the individual.

Furthermore, the Polish wording of the SoF principle differs significantly from the Directive, using “events, including business transactions” instead of “items in the profit and loss account and balance sheet.” Hence, a business event is a concept broader than a business operation, and one business event may include several business operations. A comparison of the wordings reveals that in the Act the emphasis is on the recording role of accounting (bookkeeping), while the Directive focuses on the presentation of information (financial reporting). It also indicates a shift from looking into the business with the lenses provided by bookkeeping, to looking at business events and then adequately representing them with the available accounting tools.

In accordance with the Polish language version of the Directive, items in the profit and loss account and balance sheet “shall be accounted for and presented.” In the Act, the events, including business transactions, “should be recognized in account books and disclosed in the financial statements.” The Polish word *ujmowanie* is translated in English as “recognized in account books” (in the Act) and “accounted for” (in the Directive), while *prezentowanie* (“presented”) is synonymous with the *ujawnianie* (“disclosed”). In the Act, the phrase “according to their business significance” is stronger than the Directive: “having regard to the substance.”

The situation could be explained by the historical and cultural contexts of the development of accounting in Poland (Kosmala, 2005; Kosmala-MacLulich, 2003; Wojtowicz, 2015). This history includes the times of governmental interventionism, with emphasis on credit protection and tax collection (Second Republic 1918–1939), including significant German influences. During the centrally planned economy period from the late 1950s, accounting was reduced to bookkeeping based on the legal form of the transactions. The financial statements were used for national statistics, measurement of achievements of centrally planned targets and price setting (Jaruga and Bailey, 1998 as cited by Wojtowicz, 2015). In 1989, the non-communist government embarked on a program of reconstruction of a free market economy. The 50-year break in the functioning of Polish capital markets resulted in the absence of relevant laws and institutions. In practice, it implied a lack of experience and unwillingness to take decisions on one’s own. This resulted in detailed accounting laws

leaving little room for individual judgment. Transfer of part of the decision-making authority to an individual under the SoF principle increases individual freedom in the performance of tasks. However, this requires much more effort and knowledge than the simple use of a law.

SoF appeared as a result of bringing Polish accounting closer to the IAS-based accounting system founded on a different language game. SoF was intended to be used in exceptional cases. It was controversial and contributed to difficulties in both the accounting theory and practice. Changes in the Accounting Act following the Directive reflect the need to stress its importance. This seems an excellent illustration of the proposition in Section 2.1), that “if in given operating language games similarities exist, a concept from another language game can be compared and it assumes a meaning and it can be introduced within that language game, however, slightly changing its meaning to fit to this new context.”

Romania. Under communism, Romania’s accounting system was rather “an adjustment of the Soviet accounting system” (Bailey, 1995; Richard, 1995 cited by Deaconu, 2011). Similar to Poland, form overruled substance. The redefinition of the accounting system after the fall of communism was of French inspiration (Albu *et al.*, 2011), motivated by “essentially political and cultural (not technical) reasons” (Richard, 1995) and “close cultural and economic ties between Romania and France” (Albu *et al.*, 2011).

In 1991, the Accounting Act 82 was issued and became the backbone of the Romanian accounting regulations. Specific instructions have subsequently been provided by Orders of the Ministry of Public Finance (OMPFs), to bring the former socialist country closer to Western Europe. The first step was made in 1999, toward both the Fourth Directive and IAS. Until then, no reference to SoF could be identified in the Romanian regulations, but ever since 1999, observing SoF has been required. Codified as “the prevalence of the economic over the legal[19],” SoF was defined as “the principle according to which, in order for the accounting information to be credible, it was necessary that the represented events and transactions be reflected according to the economic reality and not only to their legal form[20].”

Between 2005 and 2015, the national regulation was further harmonized with the Fourth and the Seventh Directives[21]. Two regulations referred to SoF, still codified as “prevalence of the economic over the legal.” However, up to 2009, smaller companies were required to observe SoF only in their consolidated accounts. Deviations from the principle were allowed in exceptional cases.

Currently, the accounting of unlisted companies, for both individual and consolidated statements, is regulated by the enactment of the Accounting Directive[22]. Listed companies follow IFRS.

The new Order retains the content of the substance principle, but eliminates the phrase that had been familiar for 15 years: “prevalence of the economic over the legal.” The description of SoF is close to the official Romanian version of the Directive: “the accounting for and presentation of the items in the balance sheet and the profit and loss account having regard to the economic substance of the transaction or arrangement concerned[23]”. Some examples include, among others, lease contracts, the recognition of deferred expenses and income, and the classification of discounts as trade or financial discounts.

A new imperativeness of the SoF principle appears: for the first time in 15 years, no possibility of deviating from the principle is added. In fact, a legal document is explicitly mandated to be prepared as to reflect the economic substance or nature of the transaction. Should it fail to do so, the entity would account for the described transaction according to its economic substance.

To summarize, Article 6(1)(h) of the Directive has been adopted *ad litteram* and resolutely: exemptions are not possible, as Article 6(3) has not been used. Moreover, the legal form of a document must reflect the economic substance of the described transaction, so that discrepancies between form and substance can be expected to be very rare.

The current status should be understood as the result of a fifteen years long process. SoF was introduced nine years after the fall of communism, through Romania's concern to get closer to Western Europe. The principle was taken over by a system that was fundamentally different. The earlier Romanian system had been accustomed rather to a strictly regulated bookkeeping than to professional judgment, and had chosen the Civil-Code-based French accounting as a post-communism model. SoF was part of a different language game, that is why a more exact delimitation of the concept was needed. Under these circumstances, we can reasonably assume that the functional translation prevalence of the economic over the legal was needed to explain what kind of substance and what kind of form were meant.

The shift in 2015, including the dismissal of exceptions from SoF, brings Romania closer to the context SoF belongs to. The elimination of the economic-legal balance from its translation can be regarded as an adaptation of the language to the change of the language game.

3.3 *Synthesis*

From the country analyses, several issues emerge. The first observation is the divergence in the implementation of the Directive. A synopsis in English (authors' translations) of the different versions of the SoF principle in local enactments reveals the differences as shown in Table I.

While the different versions of the SoF principle back-translated into English are taken out of context and may suffer from the individuality, and possible idiosyncrasies, of the different authors, still they clearly show that wordings differ. Instead of "substance," "business significance," "economic substance" and "economic substance or nature" are used; instead of "form," "legal form" and "appearance" are used, or no reference is made to any kind of "form" at all. The UK speaks of "transactions and other events and conditions," whereas the Accounting Directive uses "transaction or arrangement," Poland refers to "events, including business transactions," etc. This after the different language versions of the Directive itself already presented differences in wording.

All countries have some way of including an SoF requirement in their accounting principles, explicitly or implicitly. No country within our survey claimed to opt out.

Generally, the local enactments attempt to follow the local translations used for the Directive, unless a close concept was already present under local rules and was not changed, due to local tradition or previous implementation. Italy has quite deliberately changed the wording of its enactment from the previous "economic substance," to "substance," exactly following the wording of the Directive in Italian. Romania has maintained its previous usage of "economic"

Accounting Directive	Items in the profit and loss account and balance sheet shall be accounted for and presented having regard to the substance of the transaction or arrangement concerned
UK	Transactions and other events and conditions should be accounted for and presented in accordance with their substance and not merely their legal form
France	Individual statements: no explicit codification Consolidated statements: "prevalence of substance over appearance"
Italy	Accounting and reporting of the items is made considering the substance of the transaction or the contract
Germany	No explicit codification
Austria	Items in the financial statements are accounted for and presented having regard to the economic substance of the transactions or the arrangements concerned
Poland	Events, including business transactions, should be recognized in account books and disclosed in the financial statements according to their business significance
Romania	The accounting for and presentation of the items in the balance sheet and the profit and loss account having regard to the economic substance of the transaction or arrangement concerned

Table I.
Substance over form, as implemented in Member States, translated back to English

substance (derived from earlier incorporation of IFRS terminology), with the explicit support of the Romanian version of the Directive. Poland also maintains the general thrust followed since 2000, of “business significance,” with a variety of different and individualistic changes in terminology, but not following the wording of the Directive in its Polish version – deliberately changing “having regard to” to the much more definitive “according to,” for example. The UK has very much ignored the detailed wording of the Directive, deliberately – almost provocatively – bringing in “legal form” in order to contemptuously dismiss it.

Germany refrained from an explicit introduction of the concept into its accounting laws under the claim that the national regulations already fully contained the requirement. German practice – and its courts – indeed follows an economic substance concept. Yet, it is one entirely constructed as an expression of the teleological method of civil law – in this case historically mostly focused on the needs of tax law and not on the needs of investors or other stakeholders as far as these go beyond principles that are already part of the legal system. France seems more obscure, perhaps vague, in its enactment. Prior wordings are very much retained, and the (French) wording of the Directive seems deliberately and totally ignored. Finally, there is no overall substance principle, which the Directive proposes, but former sincerity (*sincérité*) remains, for which the Directive gave no requirement at all. There is, however, a case-by-case “substance-based” treatment of a number of specific types of transaction, although with contradicting rules.

When looking for common features among the respective concepts, it appears that France and Germany both consider an explicit implementation of any kind of SoF at this time as unnecessary, and both would claim to have fully enacted the contents of the Directive. Poland and Romania both have an accounting history which is rooted in statistical requirements of the communist economic regime, where there was no room for any notion of SoF. Subsequently, both countries readily implemented the principle with a view to IFRS. Germany and Austria both have a strong tax background in their respective SoF principles, and a tradition of non-codification; the almost literal implementation of the Accounting Directive in Austria, however, is in contrast to the non-explicit implementation in Germany. This suggests consistency with the proposition of overlapping/conflicting social realities/language games as developed in Section 2.

Considerable differences in accounting for leases or own shares, for instance, illustrate that in areas where accounting for the substance rather than the form is frequently required, still no harmonization exists for countries. Finance leases are expensed in France and Italy; own shares are shown in assets in France and Poland. Despite a common principle generally enacted – even if not exactly named the same way – the consequent booking rules are different.

Within our sample of seven countries we demonstrate that, in spite of all applying the principle, there is an astonishing degree of diversity in the reactions to the wording of the Directive (Table II). The social construct of SoF may be agreed through collective intentionality within groups of like-minded thinkers, but these groups are distinct per country, and not uniform across Europe. There is little consensus, and less “harmonization.”

4. Discussion

4.1 *Only a question of translation?*

Our sample of countries is definitely diverse: seven countries, representing both common law and civil law systems; two former communist countries; and five different translations of the English version of the Directive. A relevant illustration of the cultural influence in translation is the need of some civil law regulators to define the term substance more precisely, either by adding the adjective economic (Germany, Austria and Romania), or by using a different term (business significance in Polish). This is a functional translation, which helps the reader understand the meaning of the translated concept, by connecting it to a common correlation,

	UK	France	Italy	Germany	Austria	Poland	Romania
Enactment	Explicit	Not formally yes in consolidation/ no in statutory	Explicit	Not formally	Explicit	Explicit	Explicit
What is accounted?	Transactions and other events and conditions	–	Items	–	Transactions or the arrangements concerned	Events, including business transactions	The transaction or arrangement concerned
... booked according to their rather than their ...	Substance Legal form	Substance Appearance	Substance –	Economic view –	Economic substance –	Business significance –	Economic substance Legal form
Is substance defined?	Not defined	Common intention of the parties	Economic essence of the fact, its true nature	–	Specified as economic substance	Not defined	Specified as economic reality
Can substance/form differ?	Yes	Rarely	Yes	Yes	Yes	Yes	Rarely
Who assesses the substance?	Individual	Not explicit	Accounting rules	Coherence of the legal system	Individual or tax law	Individual	Individual
Can rules be overridden?	Yes	Yes	Complex (not all rules)	Yes, by a combination of other rules /principles	Yes, by a combination of other rules /principles	Yes	Yes

Table II. Synthesis of substance over form's enactment after the implementation of the accounting directive

delivered by the cultural background of the three countries: economic vs legal in Romania and Poland, and economic naturally being determined legally in Germany.

Using the philosophical lenses, we actually question the common understanding of the SoF principle. The use of different wordings, especially when these wordings existed before the Directive, the lack of any definition at the European level and the resulting variety in practical rules, all tend to confirm that different communities within Europe share different frames of social and institutional facts. They are, however, overlapping between countries, such as the tax background of the principle in Austria and Germany; the communist past in Poland and Romania; civil law in Austria, France, Germany and Italy. There is no common European (accounting) community yet, but there is a variety of differently overlapping sub-communities, which goes across different countries. This situation, and not merely bad translation, represents a significant obstacle to harmonization.

4.2 Where is the principle defined?

The origins of the international and British SoF principle (meaning the idea rather than the precise wording) appear to lie in practice, in procedures adopted and applied in concrete cases without explicit argumentations (Rutherford, 1988), which could explain the undefined meaning of the principle today.

Despite its technical aspects, accounting remains about social facts. Notwithstanding a now more than 60-year construction, Europe has not managed to build a common (accounting) language game. One reason could be that in the Directive, the main missing point is any definition of the concept itself. Without any common description of (economic) substance and/or

(legal) form, each country had various options: craft its own definition, regulate the principle without official definition or use a supposed close concept taken from local roots. The result could only be diversity. Perhaps, however, the omission of any “common description” simply recognizes the permanent inevitability of the implications of our theoretical underpinnings. The social constructions, across both country communities and across user group communities, are perhaps too multitudinous, ever-changing and too diverse to allow any other result.

4.3 *Why should substance and form differ?*

The objective of SoF is of course to obtain a TFV, in all the countries in the sample, although given the subjectivity and institutional specificity of both these concepts this is little more than a legalistic truism. Certainly the conclusions as regards the rules quite differ.

The TFV induces a potential override of any rule that would prevent it, at least in the UK, France and Romania. In Italy, however, the override is limited to exceptional cases, suggesting that the rules should normally be “fair” enough to be followed. The case reveals that the principle comes with an objective to inform the reader on an economic patrimony, instead of a pure property rights approach, but this is introduced in a system where codified norms and the legal classification of transactions and contracts prevail.

In France, some authors supported a substance-based analysis of law (Raybaud-Turrillo, 1995), noting that the Civil Code already pointed at substance. Like Romania, France considers that the legal form should not disguise the substance. The accounting principle could even be redundant: the question is whether to include it formally in accounting rules, as redundancy may lead to interpretation issues (a view similar to the German one).

In Germany, the “economic view” suggests that no rule could be valid if it goes against this principle. A civil law notion, the potential basis of a transaction between parties, may have economic consequences determined under law. The figure arising from a particular legal form can indeed be changed to an equally legally determined substance figure, but only in accordance with legally established practice, not by the individuals concerned. The only overriding option in Germany is limited to the legal sphere: the interpretation of transactions made available by law is supposed to be fair in the end. In Austria, by contrast, the economic view does override the mere substance for tax law as well as for accounting purposes. The Austrian economic view therefore goes beyond application of the teleological interpretation of the law. The different notion of economic view in Germany and Austria, in spite of common roots at the beginning of the last century, makes another case for the social construction of legal realities.

4.4 *Who defines the substance?*

We show that similar concepts following close objectives ultimately have opposite consequences on the authority of accounting rules. The question is to understand who should define and reveal this substance to the users of financial information.

Under common law systems, rules are derived from the recognition of practices, observed in the field. The civil law system names, defines and classifies the notions, to give individuals a framework to interpret their own business. Germany and Austria have maintained their traditional approach. Romania and Poland underscore the importance that differences between substance and form be kept exceptional, with Romania asking the preparer of contracts to align form to substance. This is perhaps the easiest way to implement SoF in a system where the traditional “collective representation/language game” was very different from that inherent in SoF. Since accountants are used to following the legal form of a document, then it is necessary to avoid any conflict between the legal form and the economic substance. Besides, in each country the “legal form” is likely to carry with it unavoidable rights and obligations, often unstated but automatically embraced. Italy modified the Civil Code to include the notion, while France did not, as the substance-based intention of parties should already be formal. Both attempt to define the accounting

consequences of a civil law concept, having one accounting rule per transaction, but they fail in some cases that should be reviewed, or distinguished. In this sense, those six countries show a civil law way to integrate this principle, while the UK only acknowledges a concept already taken for granted. We find here the traditional opposition between civil law environments, where the telos is under central hands (law, tax and judge), and common law systems, where the substance should be revealed by either party in a contract.

4.5 *The question of users*

Finally, the situation may also reveal different uses throughout Europe and even inside each country, of accounting information. In our sample of countries, it is not clear that accounting information has been given the same collective assignment, according to Searle's concept. Accounting information can be used in tax calculation, in some legal procedures (dividend distribution, litigation and liquidation) and also to inform various users on the performance and financial situation of the firm. Contrary to IFRS standards, local rules in Europe may not formalize the role of accounting information, especially for individual accounts. If the role of information differs significantly, then the subjectively determined "substance" behind that information can logically be expected to differ too.

5. Contribution and conclusions

At the end of Section 2.1), we "postulate a series of collective representations of SoF, each understood, despite fuzzy boundaries, by different related, but non-identical, examples of use in varying 'collective representations' (Searle) or varying 'language games' (Wittgenstein), both these terms being used in a precise technical sense." We believe that our analysis validates this proposition.

The paper contributes at two levels, theoretically and practically. The first contribution, on the theoretical level, is that the "fuzziness," which we describe in Section 2.1), is consistent with the Wittgenstein dictum, that explaining the meaning of a given concept amounts to providing different examples of its use (Wittgenstein, 2005, Sections 71, 72). Our chosen application, SoF across seven European nations, all ostensibly following policies consistent with the same centralized (Directive) requirements, demonstrates every aspect of the above. It is perhaps important to underline that, from the viewpoint of either a regulator seeking consistent ("harmonized") interpretations of the regulations, or of a practitioner who seeks absolute confidence in the validity of his practices, this theoretical message is extremely unwelcome. For accounting concepts such as SoF (or TFV, fair presentation), exploring and understanding the exact operational details and context are essential. Implications are widely unperceived, or ignored. They call for discussion of the concept of SoF, its underlying idea and its use and application, in a given country, independent of the status of its respective (non-)codification.

A second practical contribution is to consider the detailed implications of the theory in the specific application of SoF in EU Member States. The paper adds to the debate around the existence of a Pan-European accounting community. It questions its very existence, or at best highlights its fragmentation, using the experience of the Accounting Directive and its supposed introduction of common accounting principles into national standards. The example of the SoF in seven Member States, exemplary for 28 countries, 24 languages and different political, economic, and legal backgrounds, showed apparent discrepancy in the understanding and use of this concept. The omission of any centralized description of this principle favored the diversity in practices in the different countries. But differences in understanding and use are rooted in the above-mentioned differences in the national patterns characterized by different cultural environments, legal systems and history. Not only do the local wordings to integrate this principle differ, but the results tend to show that the underlying (socially constructed) meaning of the principle may itself differ from one country to another, in line with the theory of language.

These differences do matter. As our theoretical framework shows and explains, they are unavoidable. But ignoring them will not work. A way out of this malaise could be to be much more attentive to the national differences and similarities and in accepting that harmonization can only take place in identical or at least similar language games. There are perhaps similarities which are best described by Wittgenstein's metaphor of family resemblances (e.g. Baker and Hacker, 2009). Even in civil law countries such as Austria, we find borrowings from the UK SoF principle, and as Poland with Germany, and Romania with France and Russia demonstrate, there were identical developments at certain times in history. Taking up such similarities and differences would require the building up of epistemic communities around shared meanings across Europe, and sensitivity to the area of application and the boundaries of a certain language game for certain concepts covering several countries in Europe.

It should be emphasized that “form” (rules) do not arise out of nowhere and out of nothing. They are also part of a language game. They will always emanate from some explicit or implicit attitude, belief or framework (substance in some sense). The user of the resulting financial statements must try to make sense of them, through the fog of subjective uncertainty which our theoretical exposition demonstrates. Comparisons between the results of different subjective uncertainties, which investors and other decision makers crucially have to make, will in the general case be even more difficult if the mind-set (perceived or unperceived substance) of the rules is unfathomable. The complexities inherent in our country studies and the resulting discussion surely show the difficulties of meaningful comparison across country/language epistemic communities.

Our final broad conclusion therefore is that harmonization of different socially constructed realities is more important than harmonization of different socially constructed words. But as our theoretical framework, through the exposition of social construction and language games, demonstrates this is also logically impossible. The only way to achieve harmonization is to change one or more socially constructed realities until they become identically constructed. The underlying conceptual understandings are likely to differ across communities, including communities of different user groups arising from the different perceived purposes of financial reporting in the first place. The means of trying to communicate the various understandings are also likely to be interpreted differently by the recipient as compared with that envisaged by the sender. The socially constructed “reality” (signified) is communicated by means of socially constructed language (signifier). The scope for flexibility and miss-communication through multiple layers of localized social construction is multiplicative rather than additive. Our detailed exposition of the SoF principle illustrates this perfectly. But we end by underlining the generality of our position. The most we can achieve is a greater understanding of the inadequacies of the language medium and the translation process across such media. Forewarned is forearmed.

Notes

1. Translation Center for the Bodies of the European Union: “Translation is the rendering of the meaning in the source language into the target language [...]” <https://cdt.europa.eu/en/services> (May 9, 2018).
2. Frequent examples of application are lease contracts.
3. “Recognition and measurement principles applicable to the preparation of annual financial statements should also apply to the preparation of consolidated financial statements. However, Member States should be allowed to permit the general provisions and principles stated in this Directive to be applied differently in annual financial statements than in consolidated financial statements.” Recital 35 – Directive 2013/34.
4. PCG Art. 121-3: “La comptabilité est conforme aux règles et procédures en vigueur qui sont appliquées avec sincérité afin de traduire [...] la réalité et [...] l'importance relative des

événements enregistrés. [Accounting complies with rules and procedures in force that are applied with sincerity so as to transcribe [...] the reality and relative importance of the events they record].”

5. “Prédominance de la substance sur l’apparence,” Rule CRC 99-02, Section III, para. 300.
6. Rule CRC 2004-06.
7. Rule 2014-03, Autorité des Normes Comptables; Ordonnance 2015-900 modifying the Code de Commerce.
8. The name literally associates the words “loan” with “lease.”
9. “Le contrat s’interprète d’après la commune intention des parties plutôt qu’en s’arrêtant au sens littéral de ses termes.”
10. Authors’ literal translation: Article 2423-bis, para. 1: “[...] 1) the valuation of the items should be made according to prudence and from the perspective of the going concern, and also considering the economic function of the considered item on the assets side and liabilities side.”
11. Authors’ literal translation: “Principi di redazione del bilancio. Nella redazione del bilancio devono essere osservati i seguenti principi: [...]; -bis) la rilevazione e la presentazione delle voci è effettuata tenendo conto della sostanza dell’operazione o del contratto.”
12. Bilanzrichtlinie-Umsetzungsgesetz; Gesetz zur Umsetzung der Richtlinie 2013/34/EU des Europäischen Parlaments und des Rates vom 26. Juni 2013 über den Jahresabschluss, den konsolidierten Abschluss und damit verbundene Berichte von Unternehmen bestimmter Rechtsformen und zur Änderung der Richtlinie 2006/43/EG des Europäischen Parlaments und des Rates und zur Aufhebung der Richtlinien 78/660/EWG und 83/349/EWG des Rates.
13. Deutscher Bundestag 2015, BT-Drs. 18/4050, pp. 42-43.
14. Deutscher Bundestag, 1975, BT-Drs. 7/4292, pp. 15-16; see also Arbeitskreis Bilanzrecht Hochschullehrer Rechtswissenschaft (Working Group of Law Professors) (2014a, b). Surprisingly, to the knowledge of the authors, no reference to true and fair view was ever made in the context of the discussions on SoF in Germany. This was probably because true and fair view had been considered historically (and still today) a rather meaningless general clause.
15. §21 Bundesabgabenordnung: “Für die Beurteilung abgabenrechtlicher Fragen ist in wirtschaftlicher Betrachtungsweise der wahre wirtschaftliche Gehalt und nicht die äußere Erscheinungsform des Sachverhalts maßgebend.”
16. Nicht kodifizierte Grundsätze ordnungsmäßiger Buchführung.
17. “Die Posten des Jahresabschlusses sind unter Berücksichtigung des wirtschaftlichen Gehalts der betreffenden Geschäftsvorfälle oder der betreffenden Vereinbarungen zu bilanzieren und darzustellen.”
18. “zdarzenia, w tym operacje gospodarcze, ujmuje się w księgach rachunkowych i wykazuje w sprawozdaniu finansowym zgodnie z ich treścią ekonomiczną”; The English quotation is from the translation of the Accounting Act by Adamczyk (2010); the translation is not an official document, but widely used.
19. Prevalența economicului asupra juridicului.
20. “Prevalența economicului asupra juridicului este principiul conform căruia informația contabilă, pentru a fi credibilă, trebuie ca evenimentele și tranzacțiile pe care le reprezintă să fie reflectate în contabilitate în concordanță cu realitatea economică și nu numai cu forma lor juridică” (OMPF 403/1999, Chapter 5, para. 34, respectively, OMPF 94/2001, Chapter 5, para. 36).
21. OMPF 1752/2005; OMPF 3055/2009.
22. OMPF 1802/2014.
23. “Contabilizarea și prezentarea elementelor din bilanț și din contul de profit și pierdere ținând seama de fondul economic al tranzacției sau al angajamentului în cauză” (OMPF 1802/2014, para. 57 (1)).

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