Criminal Regulatory Responses to Corporate Financial Fraud: A Chilean Qualitative Approach

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Purpose:

The regulatory and legal responses to the major accounting fraud that have occurred in the world's major economies have been addressed by various authors. However, the experience from the perspective of the social reality protagonists of an emerging economy country in Latin America, which has experienced similar situations related to cases of fraud with high public impact, as is the case of Chile, is not yet known. The research tries to understand the preparation level that the country has to effectively deter corporate frauds, and to know if the experience of the European Union can be a reference to face this problem.

Design/methodology/study approach:

Exploratory qualitative study with a phenomenological design structured on the basis of in-depth interviews with key informants from the legal and academic fields, with experience mainly in criminal law, civil law and Chilean and comparative European administrative law.

Findings:

The findings confirm that the country is not yet adequately prepared to effectively modernize and reform its regulatory and legal framework related to strengthening corporate governance and deterring financial fraud. Principally, there is a lack of definition and systematization of accounting frauds according to the protected legal interest and its legal nature; a problem of conceptualization between Administrative Sanctioning Law and Criminal Law; and a need for a conscious look at the cultural reality and foreign influence to strengthen corporate governance, according to the opinions expressed by the experts.

Originality/value:

The study expands the state of the art composed mainly of quantitative studies and case analysis, revealing personal perceptions of financial fraud and regulatory responses in the different branches of law in Chile. It integrates diverse legal and cultural perspectives, contributing to the discussion

the experiences of the European Union in the prevention of this type of fraud for the adoption of best practices in emerging market countries in Latin America, as is the case of Chile.

Keywords: accounting scandals; corporate scandals; law and finance; fraud; regulation; economic criminal law; emerging economies.

Article Classification: Research paper.

1. Introduction

The accounting frauds that occurred in developed economies in the 90s and early 2000s, such as Enron in the USA, Royal Ahold in the Netherlands, Vivendi Universal in France and Parmalat in Italy have been the subject of several studies and have forced the authorities on both sides of the Atlantic to address the problems and modernize the mechanisms of regulation and control of corporate governance through collaborative work, despite their different historical, cultural, economic, financial and legal traditions (Coffee, 2005; Gornik-Tomaszewski and McCarthy, 2005; Segato, 2006; Sorensen and Miller, 2017). In this way, an attempt has been made to restore investor confidence in financial markets, improve transparency and promote the efficiency and competitiveness of companies around the world (Gornik-Tomaszewski and McCarthy, 2005).

When corporations engage in fraudulent conduct, the consequences are usually of considerable costs. Due to the above, there are more and more countries applying criminal sanctions and creating judicial regimes to deter and punish this type of corporate irregularities (Shkira, 2013). However, this remains a challenge for corporate governance in many emerging economy countries as the main conflict in these companies is between controlling owners and minority investors (Berglöf and Pajuste, 2005).

Indeed, it becomes necessary to consider that legal and regulatory reforms that concern corporate governance are related to shareholder protection and the consequent financial development of a country (Deakin, Sarkar and Siems, 2018). In this regard, Rapp and Trinchera (2017) (who concurred and cited La Porta, López-de Silanes, Shleifer and Vishny, 1998) conclude that there is a negative effect of the legal protection of shareholders on the ownership concentration and that the existence of shady legal restrictions allow large groups of shareholders to collude with management to appropriate corporate resources.

The above can be seen reflected in Chile, a Latin American country with an emerging economy - according to the classification of the Morgan Stanley Capital International (MSCI, 2022) database- and member of the OECD, where events in the corporate capital market have revealed numerous shortcomings in the supervision system of the regulatory organization (Morales and Lambeth, 2017) and commercial accounting crimes are almost exclusively subordinated to the functioning of that market (Varela, 2016). An example is the La Polar case (popularly known as "Chilean Enron"), one of the biggest business frauds in the history of Chile, evidencing a slow justice with almost tenuous penalties, shocking Chilean society and demonstrating a major failure of supervision with perpetrators practically unscathed (Barros, 2019; Clavería, 2020; Traslaviña, 2013).

Likewise, if we consider the perceptions of the general public and experts around the world on factors such as absence of corruption, regulatory compliance, civil justice and criminal justice, we observe that in those countries that have been affected by major corporate accounting scandals such as the Netherlands, Germany, Spain, France, Italy and United States, the overall score within the global ranking of the Rule of Law is favorable (World Justice Project, 2020), even Chile stands out in the global ranking, in the Latin American and Caribbean Region and among high-income countries globally (ranking 26/128, 3/30 and 25/37 respectively).

However, with respect to criminal justice, the Organization for Economic Cooperation and Development (OECD) has reported that the Chilean police are not very specialized in some specific areas related to corruption crimes, such as forensic accounting, information technology, corporate investigations and crime prevention models. In turn, other actors have expressed that specialized research units are precarious and public resources are scarce and limited (*Espacio Público*, 2019).

Taking into consideration the above and bearing in mind that the literature reviewed comprises mainly quantitative approaches and case studies related to regulatory and legal responses to major accounting frauds in the world's major economies, this study focuses on the perspective of the protagonists of the social reality of an emerging economy country in Latin America that has had similar experiences related to cases of fraud with high public impact, as is the case of Chile.

In an attempt to understand the Chilean preparation level for this problem, an exploratory qualitative study was carried out, with a phenomenological design, through in-depth interviews with legal and academic professionals with experience mainly in criminal law, civil law and Chilean and comparative European administrative law.

In order to achieve the general purpose of the research, the following specific objectives are proposed:

1. To understand the preparation level and progress to modernize and reform the regulatory and legal framework related to strengthening corporate governance and effective deterrence of corporate fraud in Chile.

2. To understand whether regulatory reforms on corporate governance in Chile have caused a deterrent effect on financial fraud.

3. To analyze whether the experience of the UE, in regulatory and legal matters to prevent corporate fraud, can be a reference for emerging economies such as Chile.

The findings confirm that the country is not yet adequately prepared to adopt the best practices implemented by the EU to deter corporate accounting fraud. Mainly, there is a need to develop a clear and systematic definition of accounting fraud according to the protected legal property, its legal nature and the clarification of legal persons as active subjects of such crimes; a conscious look at the cultural reality and foreign influence to strengthen corporate governance and consider the experience of the EU, taking into account the cultural perspective of the country and its legal traditions.

The study contributes to broaden the state of the art related to regulatory and legal responses to major accounting scandals in the world's major economies -composed mainly of quantitative and case studies- integrating various legal and cultural perspectives, contributing to the discussion the

experiences of Europe in the prevention of financial fraud for the adoption of best practices in emerging market countries in the Latin American region, as is the case of Chile.

The article offers a section with a literature review related to the object of study. Subsequently, the methodology used is presented in order to address each of the defined objectives and a section to show the results of each of them. A discussion of these results is presented below, followed by the main conclusions.

2. Literature review

Context of the study

The designation of accounting fraud may differ among authors (e.g., creative accounting, earning management, earning manipulations, makeup accounting, among others). Legal or illegal practices can also be differentiated according to the corresponding legal context (Table 1). However, there is a broad consensus in considering that it is an immoral and unacceptable act as it deprives shareholders and creditors of protection (Amat, 2017).

Table 1

Accounting fraud scope

Makeup Accounting		Real transactions	
Legal	Illegal	Legal	Illegal
Accounting that takes advantage of the alternatives provided for the legislation and legal loopholes or "regulatory flexibility" (*)	Practices not permitted by current legislation, which constitute accounting frauds.	Real and legal operations that are designed so that the accounts offer the image of interest.	Real operations that do not comply with current legislation.

Source: Own elaboration based on Amat (2017).

NOTE: (*) Regulatory flexibility is a problem of international scope.

For its part, in relation to fraud, there are many definitions and one of them states that:

> Fraud is an intentional perversion of the truth for the purpose of inducing another person to rely on it to part with some valuable thing belonging to the individual or to waive a legal right (...) Any kind of artifice employed by a person to deceive another. (Black, 1968 p. 788)

Regarding accounting fraud, the International Standard on Auditing (ISA) 240 establishes that the following are accounting frauds: the manipulation, falsification or alteration of accounting records;

the misrepresentation or intentional omission of facts or other significant information in the financial statements; and the intentional misapplication of accounting principles (PCAOB, 2020).

With respect to the criminal law of financial statements, Varela (2016) specifies that it covers all financial information, whether or not expressed in accounting form. It reserves the denomination "accounting frauds" or a specific class of crimes, carried out by concealment or manipulation of accounting information, contained in accounting entries, expressed in accounting books or that hinder its audit or control.

Regulatory responses to major accounting frauds in the USA and Europe

As is well known, the response to the accounting frauds that had been occurring in the USA was the Sarbanes-Oxley Act (SOX), whose impact abroad coincided with a variety of regulatory reforms in financial reporting in countries around the world (Camfferman and Wielhouwer, 2019).

Even though current evidence suggests that the light of the US legal system no longer shines as brightly as it did before (Whytock, 2022), in the EU the initial effect of SOX was a resistance to the applicability of the reforms towards European corporations and auditing firms. However, after a series of negotiations a cooperation agreement was reached and a set of regulations were developed and the different European countries proposed reforms to their local corporate laws (Badawi, 2005).

Thus, the differences between what happened in the emblematic cases of Enron in the USA and Parmalat in Italy -where corporate managers engaged in earnings manipulation to inflate the share price and benefit from it (in the American case) and where most of the shareholders essentially manipulated the balance sheet to expropriate corporate resources (in the Italian case)- should lead to different regulatory responses in each country (Coffee, 2005).

Regulatory responses to accounting frauds in the EU have been slower than in the USA. This is mainly because to address a problem at the EU level, a unified agreement has to be reached among its member countries and then enacted so that they can develop individual national legislation that complies with such directives (Sorensen and Miller, 2017).

An example of this was the Parmalat case in Italy, which demonstrated the need for listed entities to have an organization supervising the financial reporting and auditing process (Gornik-Tomaszewski and McCarthy, 2005). In this case, the regulatory response adopted by Italy was Law N° 262 (Law on Savings N° 262 Investor Protection Act of 2005) similar in many respects to the US SOX Act, although, as pointed out by Sorensen and Miller (2017) corporate governance abuses and the potential for accounting frauds could persist, as long as there are no significant reforms of the Italian private legal system.

For its part, in Germany, the Siemens case -publicly known in 2006- was one of the biggest corruption frauds in history. It involved systemic efforts to falsify its accounting books and corporate records to conceal corrupt practices (Nyreröd and Spagnolo, 2021). In this case, important reforms to local legislation were enacted to strengthen corporate governance mechanisms. However, according to Enriques and Volpin (2007), they were not sufficient to solve the problem of related party transactions.

Other European corporations, such as Vivendi Universal, Royal Ahold, Skandia Insurance or Adecco also experienced accounting irregularities, but these are exceptions to the rule since they were all U.S. listed corporations whose accounting problems emanated from subsidiaries based in United States or subsidiaries that had been transformed into American style conglomerates (Coffee, 2005).

Likewise, cases such as Pescanova in Spain and Wirecard in Germany, seem to be more of a trend than just examples, due to the magnitude and duration of the phenomenon and the apparent ineffectiveness of supervisory organizations (Mariño and Bustos, 2014; Nyreröd and Spagnolo, 2021).

The failure of regulatory organizations or gatekeepers; the conflict between strong management versus weak shareholders in the case of the USA and the power of majority shareholders controlled by family groups versus minority shareholders, in the case of Italy, have been the subject of several studies (Enriques and Volpin, 2007; Gornik-Tomaszewski and McCarthy, 2005; Romano and Guerrini, 2012; Sorensen and Miller, 2017; Vasquez and Vidal, 2016). However, it is still visualized a need to continue broadening the discussion to effectively prevent financial frauds and avoid, or at least mitigate, the high impact they have on society.

In relation to "regulatory effectiveness", it is highlighted the study by Hail, Tahoun and Wang (2018) who developed a time series of episodes of corporate frauds and regulation in 26 countries over 215 years to prove whether corporate frauds are related to future regulatory actions. For the purposes of this study, we looked at data collected by the authors from countries in the European Union as well as the USA and UK for reference, using the current MSCI classification to identify both developed and emerging markets (see Table 2).

Country	Legal tradition	Starting year	Total accounting scandals	Total accounting regulations
European Union Developed Market Economies				
Italy	French	1860	73	27
Germany	German	1805	64	23
France	French	1826	48	34
Switzerland	Scandinavian	1831	30	17
Netherlands	French	1828	22	14
Austria	German	1800	20	12
Spain	French	1881	20	20
Denmark	Scandinavian	1884	15	19
Portugal	French	1864	11	34
Belgium	French	1831	10	22
Finland	Scandinavian	1889	3	9
European Union Emerging Market Economies				
Poland	-	1920	19	11
Greece	French	1830	4	18
Other Developed Market Economies				
United States	English	1854	97	35
United Kingdom	English	1800	92	34

Table 2

Relationship between accounting scandals and regulations in the EU, USA and UK

Source: Own elaboration based on Hail, Tahoun y Wang (2018) and MSCI (2022)

As Hail, Tahoun, and Wang (2018) conclude the data suggest that regulatory effectiveness is determined by fundamental country characteristics such as market development and legal tradition and that regulatory activity has a strong reactive component to frauds that have attracted media attention. However, regulations do not curb corporate misconduct, in fact, current regulations predict an increase (rather than a decrease) in future corporate frauds.

Corporate governance and responses to accounting misrepresentations in Chile

The legal framework governing Chilean corporate governance is mainly based on Law 18,046 on Corporations and Law 18,045 on the Stock Market, both dating from 1981 and amended in 2000

by Law 19,705 on Takeover Bids and Corporate Governance (Clarke, 2009; Vásquez and Vidal, 2016). All of them are applicable to companies regulated by the Financial Market Commission (CMF, by its initials in Spanish) [1].

It should be noted that most of the reforms were part of Chile's integration process to the OECD in 2010, which would explain the legislator's need to make legal changes. All in all, the quality perception of corporate governance in Chile changed once some financial frauds became known (Godoy, Walker and Zegers 2018), such as the La Polar case in 2011, whose facts flooded the police and economic pages of the Chilean press (Traslaviña, 2013) and has even been called the "Chilean Enron" for being an accounting fraud with a huge social and economic impact, this in line with the definition of Hail, Tahoun and Wang (2018): "an accounting fraud is an alleged or actual financial reporting behavior of a corporation (or multiple corporations) that is publicly condemned as morally or legally wrong and causes shock and discomfort among the general public".

Four years after that scandal came to public light, the CMF begins to require the dissemination - not adoption- of information on corporate governance practices for its regulated entities. This was requested through General Rule 385 (NCG, by its initials in Spanish), which is the first explicit attempt at self-regulation regarding corporate governance standards in Chile. However, the changes have not been material nor have they implied advances in corporate governance practices, as was the stated intention of the regulatory organization (Godoy *et al.*, 2018).

Thus, in comparative terms, it could be concluded that the Enron case (USA), the Parmalat case (Italy) and the La Polar case (Chile) have coincided mainly because their top executives used accounting manipulation and misrepresentation of the figures declared in their financial statements as a means to deceive the market, large auditing firms, regulatory organizations, their own workers (as was the U.S. case), their vendors (as was the Italian case) and low-income customers (as was the Chilean case). However, they have differed notoriously in their convictions and legal responses (Table 3).

Table 3
Comparison of Enron (USA), Parmalat (Italy) and La Polar (Chile) cases

Concept	Enron (USA)	Parmalat (Italy)	La Polar (Chile)
Fraud year	2002	2004	2011
Fraud type	Fraudulent Financial Reporting	Fraudulent Financial Reporting	Fraudulent Financial Reporting
Principal(s) Executive(s) involved	Kenneth Lay; Jeffrey Skilling	Calisto Tanzi	Pablo Alcalde
Auditors	Arthur Andersen	Deloitte & Touche	Price Waterhouse Coopers
Sanctions	Sentence of imprisonment (between 24 and more than 45 years)	Sentence of imprisonment (17 years)	Administrative Fines

[1] Public service of a technical nature, responsible for ensuring that the audited individuals or entities comply with the laws, regulations, bylaws and other provisions that govern them, being able to exercise the broadest supervision over all their operations. (CMF, 2021).

Regulatory response severity	YES	YES	NO
Negative consequences stakeholders	YES	YES	YES
Media impact	YES	YES	YES

Source: Own elaboration based on Foffani (2009); Diario Financiero (2019); Britannica (2021); SVS (2012).

Going deeper into the Chilean case, it should be noted that in 2012 the Superintendency of Securities and Insurance (SVS) applied an administrative sanctioning procedure, applying the dispute of assessment of Article 30 of D.L. No. 3. 538 (which corresponds to the old text of said regulatory body), which determined that "The affected party may claim the application of the fine or its amount before the corresponding civil judge, within the ten-day term indicated in the preceding paragraph, prior deposit of 25% of the total amount of the fine, in the General Treasury of the Republic" (SVS, 2012).

For the purposes of this study, an attempt was made to ascertain whether the fines applied to the former executives were paid in full or whether they availed themselves of the aforementioned dispute of assessment. At the closing date of this research and as a result of an inquiry process carried out with the relevant Chilean agencies (General Treasury of the Republic, Financial Market Commission and Transparency Council), it was only possible to obtain the status of such claims (most of them "Finalized") since the final Resolutions correspond to contentious matters under the jurisdiction of the respective Civil Court Judges (CPLT, 2022), which suggests that they were not paid in full.

Recently, The Chilean Supreme Court sentenced in a civil lawsuit to pay historical damages for transgressing legal and regulatory duties in its work of externally auditing the corporations La Polar (Poder Judicial de Chile, 2021).

Some factors that have influenced the regulatory responses

Legal origins and level of shareholder protection

Merryman and Pérez-Perdomo (2018) propose that there are three major legal traditions (or legal families) that have spread throughout the world: common law, civil law, and socialist law. According to its definition, there is a direct relationship between legal tradition and culture, since the legal system is located as an expression of the cultural perspective (p. 3).

For example, Italy (like most continental European countries) is a civil law country. This implies that legal origin is an appropriate instrument for the position of the law with regard to a country's regulatory strategies (Enriques and Volpin, 2007; La Porta, Lopez-De-Silanes and Shleifer, 2006). Thus, common law countries have resorted to legislation to address social problems. The Sarbanes-Oxley Act is the most recent example of such financial regulation in the United States. In opposition to this, civil law countries continue to resort to "policy enforcement" solutions -in the words of a jurist- to newly emerging problems (La Porta, Lopez-de-Silanes and Shleifer, 2008).

It is worth mentioning that occasionally countries adopt some laws from one legal tradition and other laws from another, and researchers must keep track of such hybrids, but generally one particular tradition dominates in each country (La Porta *et al.*, 2008). For example, and as pointed out by Lefort and Walker (2000), the legal system of Chile is governed by the French civil system. However, the legal framework that regulates corporate governance incorporates principles inspired by the Anglo-Saxon system, which presents a difficulty when interpreting the spirit of the law.

Concerning shareholder protection, Rapp and Trinchera (2017) (who cited and concurred La Porta *et al.*, 1998) argue that it varies systematically across legal families. They agree with this and conclude that shareholder protection is higher in common law countries. This is how the main difference between the legal reforms in Europe and the USA has been related to the ownership structure of the corporations and their legal origins. In fact, in Europe, most European corporations have controlling shareholders and, in the USA, most have a wide shareholding or dispersion of shareholders (Enriques and Volpin, 2007).

In short, there is evidence that legal origins influence legal rules and regulations, which in turn have a substantial impact on the economic performance of countries (La Porta *et al*., 2008).

Ownership structures and agency issues

Different ownership systems (dispersed or concentrated) foster different fraud styles. Although both styles show evidence of gatekeeper failure by not detecting ways of earning management that are more prone in dispersed ownership governance systems and less likely in concentrated ownership systems (Coffee, 2005; Grimaldi and Muserra, 2017).

In the case of family-owned corporations, the agency problem[2] is reduced because the controlling owner and the manager are generally the same person (Enriques and Volpin, 2007).

In the case of most European companies, there is a majority shareholder or a group of shareholders (Coffee, 2005). In developing economies, ownership is also highly concentrated (La Porta *et al*., 1999), such is the case of Latin American countries, such as Chile which presents a high level of ownership concentration and a corporate structure dominated by an economic group and pyramidal structures. It generates conflicting interests between the majority and minority shareholder, and where many times the final ownership is difficult to determine due to the excessive use of private investment companies that for tax reasons intervene as shareholders (Lefort and Wigodski, 2008; Godoy *et al*., 2018).

According to Coffee (2005), in dispersed ownership systems, the villains are the managers and the victims are the shareholders, while in concentrated ownership systems, the controlling shareholders exceed the minority shareholders. Even the auditor's role differs in a concentrated ownership system. In a dispersed ownership system, corporate managers can sometimes "capture" their auditor's auditing partner (as apparently happened at Enron) but this relation does not exist when the auditor reports to shareholders in a system where there is a controlling shareholder.

In the case of Chile and according to Traslaviña (2013), the origin of the "La Polar" scandal was not that the ownership of the corporation was diffuse. The underlying problem was that part of the majority shareholders, from beginning to end, protected the directors who invented the fraudulent

[2] when the interests of a company's shareholders and its managers are different (Enriques and Volpin, 2007)

practices, while the authority in charge of auditing together with its auxiliary entities (such as auditing firms) did not act efficiently.

Regulatory and Legal Responses to Corporate Fraud in the EU

The motto "United in Diversity" of the group of 27 countries that make up the EU represents the diversity of different cultures and languages and the joint work they must do to implement all the laws and their values. Its main institutions are the European Commission (EC), the European Parliament and the Council of the European Union, which are made up of representatives from each country. Other institutions such as the Court of Justice and the Court of Auditors verify that all laws are well implemented and if EU money has been used correctly (EUR-Lex, 2021).

EU legislation has its origin in the Treaties, which are therefore called "primary law". The legislative institution emanating from the principles and objectives of the Treaties is known as "secondary law" and consists of regulations, directives, recommendations, decisions and opinions (European Commission, 2021):

- Regulations: They are applied automatically and uniformly in all EU countries, without the need for transposition into national law.

- Directives: The Member States are imposed to the achievement of a certain result, giving them the freedom to adopt measures to transpose it into national law (transposition). National authorities are obliged to communicate such measures to the European Commission.

- Recommendations: They allow EU institutions to make their views known and suggest a course of action without imposing legal obligations on those to whom they are addressed.

- Decisions: These are binding legal acts applicable to one or more EU countries, corporations or individuals. They must be notified to the interested parties and take effect upon notification. They do not require transposition into national law.

- Opinion: It is an instrument that allows the EU institutions to issue an opinion, without imposing any legal obligation on the subject to which it refers. Opinions are not binding.

For the purposes of protecting shareholders and third parties; promoting the efficiency and competitiveness of corporations; and responding to corporate fraud, the EC focused on statutory

auditing and other corporate governance measures (European Commission 2021; EUR-LEX, 2021; Gornik-Tomaszewski and McCarthy 2005) (see Table 4).

Table 4

Main responses to corporate fraud in the EU

Year	Legal act	Measures
1984	Directive	The Eight Council Directive (84/253/EEC)
1998	Communication	The Statutory Audit in the European Union: The Way Forward
2000	Recommendation	Quality Assurance for the Statutory Auditor un the EU
2002	Recommendation	Statutory Auditors' Independence in the EU: Fundamental Principles
2002	Regulation	No 1606/2002/EC Application of international accounting standards
2003	Communication	Reinforcing the Statutory Audit in the EU
2004	Directive	No 2004/109/EC Harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Amending Directive 2001/34/EC)
2006	Directive	No 2006/43/EC Statutory auditing of annual accounts and consolidated accounts (amends Directive 78/660/EEC and 83/349/EEC and repeals Directive 84/253/EEC)
2008	Recommendation	No 2008/473/EC Limitation of the civil liability of statutory auditors and auditing firms
2008	Recommendation	External quality control of statutory auditors and auditing firms which verifying the accounts of public interest entities
2013	Directive	No 2013/34/EU Annual financial statements, consolidated financial statements and related reports of certain types of corporations (amending Directive 2006/43/EC and repealing Directives 78/660/EEC and 83/349/EEC)
2014	Recommendation	No 2014/208/EU Quality of corporate governance disclosures ("comply or explain").
2014	Directive	No 2014/56/EU Amends Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.
2014	Regulation	No 537/2014 Specific requirements for the statutory audit of public interest entities (repeals Decision 2005/909/EC).

Source: Own elaboration based on European Commission (2021); EUR-LEX (2021); Gornik-Tomaszewski and McCarthy (2005).

The purpose of the 2014 initiatives was to improve statutory audits in the EU by reinforcing the independence of auditors, their professional skepticism towards the management of audited entities, to strengthen public oversight of the audit profession and to improve cooperation between competent authorities in the EU.

Regarding Directive 2014/56, a selection of those countries that have experienced cases of financial fraud was made to find out the national measures they have communicated to the European Commission (see Table 5).

Table 5

Examples of national implementation measures for Directive 2014/56/EU

#	Italy	France	The Netherlands	Spain	Germany
1	No specific measure reported	Articles 30 and 32 of Law no. 2014-1662 of December 30th, 2014.	Amendments to the Law on the Oversight of Audit Entities, the Civil Code and other specific acts	Law 22/2015, of July 20th, 2015, on Account Auditing	Act Implementing Prudential and Professional Standards (APAReG)
2		Order no. 2016-315, dated March 17th, 2016, regarding the General intervention.	Decision of December 8th, 2016 amending the Decree on the oversight of audit entities and other specific acts.	Royal Decree 2/2021, of January 12th, approving the Regulations for the development of Law 22/2015, of July 20th, 2015, on Account Auditing.	Implementing Act (Statutory Audit Reform Act)
3		Decree No. 2016-1026, dated July 26th, 2016, adopted for the implementation of Order No. 2016-315, dated March 17th, 2016, regarding the General Intervention.		Resolution of February 9th, 2021, of *Instituto de Contabilidad y Auditoría de Cuentas*, whereby the Technical Auditing Standard on the auditor's performance in relation to financial statements presented in the Single European Electronic Format, and the amendment to ISA-ES 700 (revised) "Formation of the opinion and issuance of the auditor's report on financial statements" are published.	

Source: Own elaboration based on EUR-LEX (2021).

For its part, the Criminal Law Convention on Corruption of the Council of Europe of 27.01.1999, in its Art. 14 on "accounting offenses", came to establish the obligation of every EU Member State to adopt legislative measures that regulate as a punishable act, with criminal or other sanctions, the fraudulent conduct intended to "commit", "conceal" or "disguise" by means of accounting the offenses of public and private corruption contemplated in the convention itself (Varela, 2016).

In short, the literature reviewed mainly evidences the regulatory and legal responses to major accounting frauds occurred in major world economies, such as Europe and the United States (with the exception of the study by Hail, Tahoun and Wang (2018) that includes emerging economies countries from various parts of the world), considering the influence of their legal traditions, the predominant corporate structure in their corporations and the legal framework on shareholder protection, all under quantitative approaches and case studies for the most part.

Considering the above, existing research provides a limited view on the effectiveness of regulation in preventing accounting frauds and should be complemented by a focus on measuring the remaining risk and how society should deal with it (Camfferman and Wielhouwer, 2019). In addition, and in agreement with Tett (2019) and Camfferman and Wielhouwer (2019), it is necessary to understand how people think and how society deals with this type of circumstances.

In view of the above and in order to understand the preparation level to face similar situations, through the perceptions and experiences of legal and academic experts in an emerging economy country in the Latin American region such as Chile, the following questions arise: What is the preparation level and progress of the country to modernize and reform the regulatory and legal framework related to the strengthening of corporate governance and effective deterrence of corporate fraud? Have the regulatory reforms on corporate governance in Chile had a dissuasive effect on financial fraud? Is the experience of the European Union, in regulatory and legal matters to prevent corporate fraud, a reference for countries of emerging economies such as Chile?

3. METHODOLOGY

In order to answer the research questions, an exploratory qualitative study is carried out, with a phenomenological design through in-depth interviews with experts from the legal and academic fields in Chile to understand the social reality from the perspective, experience and testimony of its protagonists (Fuster, 2019; Vargas, 2011). In this case, said social reality is related to the ways of providing regulatory and legal responses to the problems posed in a country with an emerging economy, as is the case of Chile.

3.1. Interviewees Selection

In order to conduct in-depth interviews with experts who can best answer the research question, the judgmental or purposive sampling technique explained by Marshall (1996) was applied. A sample of key informants was established and the general criteria for inclusion were defined as professionals who work in the legal and academic fields and who are related to the object of study through their experience and knowledge in criminal law, civil law and Chilean and European administrative law, the regulatory strengthening of corporate governance, accounting fraud and compliance in Chile.

To contrast the fulfillment of these criteria, the biographies of some professionals who have contributed, in different ways, to the dissemination of knowledge and discussion of relevant topics on the legal context of economic crimes in Chile and foreign experience were compiled and analyzed. After completing the collection and analysis process, a total sample of 10 key informants was determined and classified into the categories shown in Table 6.

Table 6
Classification of interviewees according to their field of expertise

Category	Quantity
Criminal Expert	5
Compliance Expert	4
Civil / Administrative Expert	1
Total	**10**

If it is considered that the appropriate sample size for a qualitative study is that which adequately responds to the research question, in order to achieve intensive, in-depth and detailed knowledge about the cases in which the phenomenon of interest takes place and that, in short, there are no rules for deciding the sample size (Marshal, 1996; Martínez, 2012), the selection of interviewees (see Table 7) was carried out considering the elements proposed by Mejía (2000): representativeness (according to the inclusion criteria), relevance (in-depth knowledge of the reality studied) and participants predisposition (acceptance and availability of time), which constitutes a group of key informants with the appropriate characteristics to understand whether a country with an emerging economy (which has lived experiences related to cases of fraud with high public impact, as is the case of Chile) is prepared to adopt the best practices implemented by the EU in the last 20 years with the purpose of deterring the commission of corporate accounting frauds.

Table 7
Participants summary by representativeness and relevance

Categories:	Criminal Expert	Compliance Expert	Civil / Administrative Expert
Code:	[a]	[b]	[c]
Education:	Lawyer	Lawyer and others	Lawyer
Interviewees:	[a-1]; [a-2]; [a-3]; [a-4]	[b-1]; [b-2]; [b-3]; [b-4]	[c-1]

NOTE: the letters in square brackets indicate the code used to distinguish each participant.

Finally, and with respect to the notion of "sample", it is worth highlighting the clarification made by Crouch and McKenzie (2006) whose article examines small samples in research based on in-depth interviews: "strictly speaking, interviewees have not been drawn (or sampled) from a "target population" but are "cases" or instances of states, rather than (just) individuals who are carriers of certain designated properties (or "variables")" (p.492-493). The above can be evidenced in certain qualitative studies using in-depth key informant interviews, such as the research article by Nordlund, Lorentzon and Lind (2022); Aslam, Ali, Qammar, Kiwan and Dhir (2021) and Cherneski (2021) with 5, 6 and 9 participants respectively.

3.2. Data collection

To obtain participants' testimonies on issues related to the object of study, semi-structured interviews were prepared to address a list of topics (McCracken, 1988; Patton, 2002) based on the deductive categories extracted from the literature review (see Table 8).

Table 8

Deductive categories associated with research objectives

	Deductive categories	Context in-depth interviews		
[1]	Regulatory aspects of corporate accounting crime in Chile	Crime classification	Level of penalties in the criminal area	Level of sanctioning in the administrative area
[2]	Regulation of corporate governance organizations in Chile to deter accounting manipulations	Strengthening of CGs	Effects of Self-Regulation (Comply or Explain)	Influence of legal origin on the regulatory framework
[3]	Effectiveness of supervisory and regulatory organizations	Strengths	Weaknesses	

The in-depth interviews were initiated with a presentation informing about the general purpose of the research and with an explanation about the confidentiality of the information and its exclusive use for academic purposes.

In order to achieve the required depth and to know the opinion and perspective of the interviewees, a model of conversation "among equals" is followed, without the need to apply a questionnaire, questions are asked openly and even without questions their opinion is requested on certain facts, or their experiences on certain issues. When necessary, experiences and life stories were contrasted

among the interviewees to achieve greater depth in a specific area. The information collected was transcribed into memos, instantly selecting the most representative aspects of the deductive categories.

3.3 Data Processing and Analysis

By achieving the saturation point, that is, when the successive examination of cases has covered the relationships of the social object and new cases tend to repeat or not to introduce new corrections (Mejía, 2000) and, taking into account in the same way Mayan (as cited in Martínez, 2012) the moment when it has been considered that something important and novel can be said about the phenomenon under study, a process of open coding was carried out and a list of open codes (words or phrases created by the researcher) and *in vivo* codes (literal words or phrases expressed by the individuals) was obtained, which are segmented through memos to then categorize them and represent the phenomenon, problem, or significant issue for the interviewees.

Through an axial coding process, the categories and sub-categories were linked and a central category was obtained. Finally, a selective coding process was carried out, synthesizing towards a conceptual unit that integrates the reality expressed by the informants.

Consequently, and from a methodological point of view, the validity and reliability criteria developed by Lincoln and Guba (1985) to support the obtaining of qualitative results are evidenced through: (1) the conversations held with people from the various branches of law, through persistent observation to identify those elements most relevant to the study, by focusing on details and during an adequate interview time in which it has been possible to verify data, analytical categories and conclusions with the interviewees themselves (credibility criterion); (2) the detailed description of the phenomenon studied and the conclusions drawn that can be transferable to other legal environments, situations and individuals (transferability criterion); (3) the consistent findings that can be repeated (reliability criterion) and; (4) the formation of the findings based on the respondents and not on the researcher's interest (neutrality criterion).

4. Results

The responses of the participants according to the guideline of topics applied in each of the in-depth interviews, based on their own experiences, perspectives and personal testimonies about the deductive categories and the context of questions detailed in Table 6, are analyzed in this section to achieve the objectives of the study (Table 9).

Table 9
Summary of results by number of responses

#	Areas of study	Deductive categories	Questions context	No. of responses
1	Regulatory framework	Regulatory aspects of corporate accounting fraud in Chile	Crime classification	4
			Level of penalties in the criminal area	8

			Level of penalties in the administrative area	5
2	Deterrent effect of reforms	Regulation of corporate governance institutions in Chile to deter corporate fraud	Strengthening of CGs	7
			Effects of Self-Regulation "Comply or Explain".	7
			Influence of legal origin on the regulatory framework	6
		Effectiveness of supervision and regulatory organizations	Strengths	1
			Weaknesses	4

4.1 Regulatory Aspects of Corporate Accounting Fraud in Chile

Crime classification

For the vast majority of interviewees, it is necessary to contextualize the concepts of scam and fraud, differentiating between crimes committed through corporations and those committed for corporations [a-1; a-2; b-3; b-4], the latter being the ones referred to in the present study.

With respect to the doctrinal definition of Antón Oneca (professor of Spanish criminal science) fraud includes elements such as deception, error, act of disposition of assets and damage and, although it is known by judges and lawyers and has worked conceptually, the fact that Chilean law does not include an exact definition (nor a description of fraud) is complex [a-1, a-2]. In this sense, articles 467, 468 and 472 of the Chilean Criminal Code establish the penalties for the crime of fraud provide a general definition of this crime and refer to all those conducts that are not included in the other articles (generic fraud or residual fraud) [a-1]. Likewise, and looking at comparative law, Article 263 of the German Penal Code does not resolve it well either, and it is believed that if there were a shared concept it would not be so complex [a-1; a-2].

In addition to the above, the question arises as to the legal right protected in this type of crime, whether it is the shareholders' assets or the economic public order for the proper functioning of the trade corporations [b-4].

Consequently, there is no *lex-artis*[3] on these aspects and the first questioning of the criminal type of economic crimes arises, a problem of proportionality and equality, since fraud and scam are the same conduct -using the same energy for its purpose- which could vary is their classification according to the amount of the defrauded amount [a-2; a-1].

However, without intending to go into this legal discussion in greater depth, the accounting crime or fraud in financial statements is not systematically regulated in Chile, so it is necessary to resort to different regulatory organizations and special laws that may contain conducts that could lead to fraud and forgery [a-1; a-5]. This situation differs from what happens in other countries, such as

[3] Adm. and Civ. Set of technical rules to which the performance of a professional in the exercise of his art or trade must conform (RAE, 2021).

Spain, for example, whose penalties for this type of crime are set forth in the Penal Code (article 290 and following) and cover both corporations and individuals [a-4; b-4].

It should be noted that the accounting crime has *sui generis*[4] legal nature and has three elements: (i) frauds, (ii) duties of truthfulness and (iii) duties of accountability. With regard to the duty of truthfulness, the duty of the accountant is particularly relevant, which is also extended to the administrators in the Chilean Commercial Code [a-5].

On the other hand, regarding the perception of accounting crimes in Chile, they are considered highly complex, difficult to investigate and with very limited resources, which hinders evidentiary activity and quality [b-1; b-4].

In short, it is perceived that in Chile there is not a deficit in the legal system, but instead there is a hyper-redundancy or it is not rationally systematized [a-2]. In addition, there is discretion in the definition of the crime, which makes it difficult to apply criminal sanctions [b-3].

Level of penalties in the criminal area

One of the criminal crimes contemplated in the Chilean regulatory framework related to accounting crimes is the delivery of false information to the market (which is found in Article 59 letter a) of Law 18.045 of the Securities Market Law (LMV, by its initials in Spanish) and could also constitute a precedent conduct for money laundering, although only applicable to companies under the supervision of the CMF [a-3].

For misrepresentations in regulated markets, the legislation seeks to protect the interest of the minority shareholder and the public through the information provided to the market [a-2; a-3]. In the case of publicly traded corporations, regulation is perceived to be adequate because it protects both the public and the regulatory organization. In contrast, for other types of regulated entities, the LMV is not very complete [a-3].

Likewise, it has been observed that in the Courts of Justice there are no sanctions for this type of conduct since the standard of proof is higher and the cases are usually dismissed due to the construction of such standard [b-3].

If we consider the La Polar case and the citizens' sense of impunity concerning the punishment of its main executives, as well as the existence of different legal organizations that sanction this type of conduct, it can be inferred that the level of sanctions in Chile depends on the decision of a Judge and if a conduct is in several legal organizations, the specialty is privileged over the conduct. This highlights the relationship between Chilean Administrative Sanctioning Law and Chilean Criminal Law, the latter as Accessory and *Ultima Ratio* (or minimum intervention, as the last way for the State to protect certain legal assets) that privileges the civil and administrative aspects to ensure a balance between efficiency and proportionality [a-2; a-1; c-1].

From a criminal standpoint, the personal experience of some interviewees with the La Polar case reveals that, although the main executives were punished for their criminal responsibility in providing false information to the market, these were not effective, that is, they were not sentenced to imprisonment. This situation is due to the fact that in Chile sentences of less than 5 years are not effective if the fraudsters do not have a prior criminal record, as established in Law 18.216, which stipulates alternative penalties to custodial or restrictive sentences [a-3; c-1]. In this sense,

[4] Loc. adj. It is referred to a thing of a very singular and exceptional genus or species (RAE, 2021).

it is thought that even when the regulatory framework is perceived as strict in terms of conduct, sanctions are light [b-3; c-1], although they have an impact on the discrediting and reputational damage of individuals [b-3].

For their part, some are convinced that increased penalties could contribute to deterrence, with prison sentences as effective punishment and directly to individuals to discourage this type of behavior beyond the corporation [b-1; c-1]. On the contrary, others believe that the solution for this type of crime is not strict penalties, nor is it to take everything to the criminal field, but rather to move forward in other areas to achieve a higher objective, by making executives aware of their actions and of responsibility that corporations have to solve social problems, beyond the State. [b-2].

In this vein, it is worth noting that the recent Law 21.314, which established new transparency requirements reinforcing the responsibilities of market agents and other matters, increased the penalties for all crimes in the Securities Market. This is perceived with real importance because it affects the Public Faith [b-3; c-1].

A look at comparative law with the EU reveals a deficit in criminal sanctioning regulation and a very restricted system of accounting crimes. For example, Art. 331 of the German Commercial Code regulates the incomplete or false presentation of financial statements, which is of general application, as it includes almost all companies and is reinforced in special laws. On the contrary, In Chile is the other way around, there are several specific types for certain contexts. On the one hand, there are those who think that the regulation should be in the penal code, on the other hand, others believe that it is possible to introduce changes in a code that is related to the scope of the conduct, not necessarily in the Penal Code [a-5].

Administrative sanctioning level

"Where there is no criminal law, there is administrative sanctioning law, where there is no regulation, the administrative entity acts" [b-4].

The sanctioning level in the administrative area is considered to be quite strict and the conducts are well typified [c-1]. In this way, it is believed that the new figure of the Anonymous Whistleblower facilitates the identification of the fraudster and encourages, but does not replace, criminal law [b-1].

Regarding the La Polar case -where there is a unanimous position on the failure of all control systems- the former SVS (now CMF) imposed drastic sanctions on the main executives, directors and auditors of La Polar [a-3]. In this context, it is considered that when faced with a violation of the regulatory framework, the CMF applies the rule and imposes administrative sanctions not for criminal behavior, but rather imposes administrative sanctions. This is basically because crimes require malice and the administrative sanction is satisfied with recklessness; it is here where a "redundant system that does not admit rational differentiation" is perceived. [a-2].

There is still a perceived need for more effective sanctioning activity in Chile. To this end, it is thought that there should be more audits, both by the Judiciary Power and the CMF. However, resources are scarce and investigations focus on economic crimes with higher risks [b-1]. In fact, there are shortcomings in the regulatory framework, penalties are not well defined and, in general, the supervisory organizations do not provide a good basis for the penalties [b-3]. In terms of legality and proportionality, Chile has a long way to go, looking at Spanish comparative law as an

example, which is more developed in this area [c-2]. It is here where a new reflection arises on the relationship between the sanctions of Criminal Law and Administrative Law, the former with the objective of re-educating and punishing, with a scope on malice or malicious intent and with greater impartiality and the latter, with the purpose of ensuring the regulatory framework, with a scope of criminal culpability and less impartiality given that the regulatory function falls on a single institution and the existence of independent units within a State Administration agency is not sufficient [c-2].

4.2 Regulation of corporate governance organizations in Chile to dissuade accounting manipulations

Strengthening Corporate Governance

Initiatives to strengthen corporate governance in Chile have been carried out under OECD guidelines. Law 20.393 on criminal liability of legal persons is an example of this, where a series of corporate crimes with criminal effects have been regulated for bad corporate governance [a-1]. However, there is not only one regulatory organization that regulates corporate governance and there is a perceived lack of interest in regulating them [b-4]. Likewise, there is the feeling that the Chilean business sector has not taken it seriously and it is only a check-list to enter the OECD. There is still a lack of a good environment and a transversal conduct between the State, the Citizenship and the Businessmen to achieve a higher objective, a need of participative Co-Construction for the social problems. Nevertheless, there is a need to improve business understanding through cultural change [b-2].

Effects of Self-Regulation ("Comply or Explain")

In Chile, the self-regulation model is considered adequate, but it can be improved and is in line with international commitments and requirements. At the same time, there is agreement that the self-regulation system is a very good tool since the state does not have the capacity to control all corporations. [a-1; a-2]

In this area, in 2015 the regulatory organization issued General Rule (NCG, by its initials in Spanish) No. 385 for publicly traded corporations to disclose their corporate governance practices to the market, which is considered -both by the regulatory organization and by some professionals- an important advance in terms of transparency. Some believe that the initiative has generated a deterrent effect and aided self-regulation [a-3; b-1; b-4]. In addition, it is believed that it is a good mechanism for the questions to have an explanation given that the mere fact of answering the questionnaire allows for self-review and the identification of gaps [a-3]. In this sense, it is an incentive for the corporations to strengthen themselves since it exposes their weaknesses, based on

the good faith of the recipients of the standard [b-1, a-4]. From the regulatory organization's perspective, the traceability of the responses remains to verify the explanations [a-3; b-1].

On the contrary, there are those who think that NCG 385 does not have a dissuasive effect since there are many requirements that are not known to be interpreted or understood by those who are part of the corporate governments and complain about the bureaucracy, which translates into something not very useful [b-2; b-3]. In this respect, it is perceived that there is a lack of a more transversal view, a common thread between the regulatory and legal frameworks. [b-2].

There is an almost unanimous opinion that Chile is behind in Self-Regulation, with an approximate threshold of 15 years, since a generational replacement is needed because Comply or Explain is something that needs convincing corporate governance [b-2; b-3]. In this regard, experience shows that people under 45 years of age believe that the solution is to apply the highest standard to prevent problems, while people over 45 years of age think it is better to solve it [b-3].

Furthermore, it is true that Chilean corporations tend to comply only with what the law says and there is a "paper compliance", which implies a challenge to go beyond [a-1]. It should be taken into account, however, that drastic decisions are very restrictive, therefore, there should be a good job of risk identification, that is, an absolute prohibition to avoid any risky transaction and not only the type of transaction [a-2]. It could be said that compliance works as a vaccine, it makes you immune to criminal liability and it is here where we reflect on whether the laws are an aid or simply the "vaccine effect" [a-5].

In short, a decalogue of good practices implies mandatory compliance and does not result in behavioral change. The legislator does not regulate every conduct; it establishes a general, non-specific behavior, since human behavior changes over time and is general. Finally, the risk of detailed and excessive regulation is that it ends up being unenforceable [a-1].

Influence of the legal origin on the regulatory framework

In the case of the Chilean Penal Code, it is understood that it has several influences from Spanish, Belgian and German law. It is worth mentioning that Belgian criminal law is very important for Chile [a-1]. For its part, the Civil Code has a French origin [c-1].

It could be said that Chilean legal culture is more German since Chilean criminal law emulates German criminal law, although Chilean commercial law emulates Spanish commercial law. German law has been a reference for law 21.121 on the modification of the penal code and other legal norms for the prevention, detection and prosecution of corruption [b-3], especially on issues related to corporate collusion and unfair administration, although it has generated a complication between theory and interpretation [a-2].

As for regulations related to corporate governance, these are of Spanish and Anglo-Saxon origin, although it is perceived that Chile did not understand correctly when the OECD established a dissuasive Compliance Model and it thought that the only way to dissuade was with a regime of criminal liability of legal persons [a-1].

Regarding the influence of the regulatory framework reforms, some do not perceive them as best practices but as a "copy and paste" or "foreign implementation", without considering the regulations and even depending on the government in power. In this sense, the reforms do not fulfill their intended purposes since they are subject to the professional education of individuals

and their own thoughts. They deny the incorporation of certain crimes due to their own liberal or minimalist positions and reveal the cultural influence of a country [a-5; b-3]. Therefore, influences from different legal systems, especially from more developed economies, are good and relevant for making better and more informed decisions, as long as they are connected with the surrounding regulations according to one's own reality [a-5; a-4; c-1].

4.3 Effectiveness of supervisory and regulatory organizations

Strengths

The audit function of the CMF is strengthened in two areas: (1) Prudential Supervision focused on safeguarding the solvency and adequate risk management of the supervised financial institutions and (2) Market Conduct Supervision to ensure the transparency and integrity of the market and the financial client protection [a-3].

The Investigation Unit (UI, by its initials in Spanish) of the CMF has its own powers based on the receipt of Internal Complaints (as a result of an auditing process) or External Complaints (such as anonymous whistleblowers, for example). With its recent establishment, the independence has been established in the final resolution of the sanction, since the UI issues a Report and the Council defines the sanction [a-3]. In this regard, it is essential to separate the functions, because there must be independence between the auditing, sanctioning and appeals functions [b-2].

Weaknesses

The CMF has made an important leap in its creation, but it still has limited supervision capacity and needs to play a more active role [b-2]. In this context, there is a perceived lack of closeness to the real world and a lack of dialogue. There is a disconnection between the regulated and the regulatory organization. There have been interpretation errors in the international standard and the regulatory organizations must go to the origin of the standard and it is necessary to look for the most appropriate tools [b-2] to increase the allocation of resources to specialize organizations [b-4].

Perceptions based on their own experience express that there is an abuse of administrative discretion (when the law leaves a certain margin of action or choice to the administration, or when the law does not regulate a certain situation). One example is the application of IFRS (International Financial Reporting Standards) and GAAS (Generally Accepted Auditing Standards), which present a problem from an administrative and criminal point of view and work is underway [b-3].

5. Discussion

The results obtained make it possible to answer the three research questions in order to understand whether a country with an emerging economy that has experienced cases of fraud with high public impact, as is the case of Chile, is prepared to adopt the best practices implemented by the EU.

For the first question: What is the level of preparation and progress in modernizing and reforming the regulatory and legal framework related to the strengthening of corporate governance and the effective deterrence of corporate fraud? The results show that within the Chilean regulatory

framework there is no clear and systematic definition of accounting crime according to the protected legal interest. There is neither a specific distinction between crimes committed by corporations and those committed through corporations nor a clear definition of the protected legal right.

Concerning the definitions of scam and fraud, there is a complexity, not only in Chilean legislation but also in Comparative Law, in this sense and in agreement with Silva (2005), there is no legislation in which all criminal types of fraud are contemplated in a closed or exhaustive manner. Thus, there is an important current of authors, especially in Europe and Latin America, who agree that legal entities can be active subjects of such crimes, since on several occasions the companies, or through them, carry out frauds (Silva, 2005).

This can be explained by the legal nature of economic crimes and the legal origin of the countries. In fact, it is discussed in doctrine whether the economic crime would be a kind of fraud or a kind of falsehood, or if on the contrary it has its own characteristics that define it independently of other crimes. This may depend on the legal tradition (Varela, 2016).

In short, there is no *lex-artis* in Chile on these aspects and the system is redundant. This would agree with La Porta *et al.*, (2008) who point out that many developing countries are highly over-regulated, partly due to their heritage of legal origin.

The social demand for more punishment of corporate crimes reflects the permanent shortcomings and gaps in the Chilean criminal justice system, which has been expressed by several authors, as Winter (2013) has indicated. In this sense, the results regarding the level of criminal sanctions show a deficit perception in regulation and a strict regulatory organization, in terms of conduct, but with light penalties even when there is damage to the individual's reputation. Similarly, there is a high level of discretion in the definition of a crime, which hinders the application of penalties. Looking at comparative law, the situation is different, since there are legal systems that establish priority for the criminal body.

On the relationship between Administrative Sanctioning Law and Criminal Law, there is an extensive Chilean literature (Cordero, 2014; Román, 2018; Viñuela, 2013) and from countries such as Germany, Italy and Spain (Cordero, 2012). However, it is here where a problem arises with the conceptualization of crimes/penalties and administrative infractions/sanctions, since it is at the discretion of the legislator to determine one or the other (Cordero, 2012). In this aspect, in Chile there has been a strong influence of the Spanish legal system without taking into account that it is different from the national one and the Chilean Constitution does not expressly refer to the subject (Enteiche, 2013).

From the administrative sphere and with respect to the powers of the CMF, it is of interest the critical analysis made by Arancibia and García (2020) on the jurisprudence of the CMF that accepts to apply a rule of a criminal nature (Article 59 letter a) of the Securities Market Law) to declare and administratively sanction conduct qualified as a crime, concluding that its application in administrative proceedings is, in addition to being unconstitutional and illegal, improper and unnecessary.

Furthermore, the question that arises with respect to the effective payment of the administrative fines imposed by the SVS (now CMF) on the former executives, former directors and external auditors of the corporation La Polar raises the question of the real deterrent effect of such sanctions.

In short, there is a lack of definition and systematization of accounting crimes in line with the protected legal interest and its legal nature, and a problem of conceptualization between Administrative Sanctioning Law and Criminal Law.

For the second question: Have the regulatory reforms on corporate governance in Chile had a deterrent effect on financial fraud? The results allow understanding that in Chile there is no perceived interest in regulating corporate governance to deter financial fraud, that self-regulation needs to convince corporate governance and the country is still far away from achieving this.

There are coincidental positions regarding the need to look at comparative law to identify if there is any deficit of the regulatory and legal framework at the country level. However, at the moment, foreign influence is seen rather as a "copy and paste" that depends on the professional training, beliefs and personal convictions of Chilean jurists or even by political decisions, rather than in the deepening on aspects such as the origin of legal traditions in Latin America, as an expression of the cultural perspective as pointed out by Merryman and Perez (2018) who relate and analyze the influence of the civil law tradition in Europe and Latin America.

Regarding the effectiveness of the supervisory and regulatory organizations, the abuse of administrative discretion is perceived as a weakness. In this regard, Morales and Lambeth (2017) state that both the literature and the comparative institutional experience and recent events in the Chilean financial market have highlighted numerous shortcomings in its supervision system and propose a change in the way of determining the regulatory perimeter to migrate towards an integrated supervision system.

It is believed that external audit corporations should report all irregular situations. In this vein, the OECD itself has reproached that auditors in Chile do not report suspicious situations of corruption to foreign public officials. In this regard, a pending challenge is the use of accounting crimes as a tool against corruption in the private sphere and other crimes in which the presence of "dirty" accounting entries is detectable (Varela, 2016). In this aspect, Chile has not complied yet with the OECD recommendations according to the latest Stage 4 Follow-up Report (OECD, 2021).

In short, there is a need to consciously look at cultural realities and foreign influence to strengthen corporate governance.

Finally, and for the third question: Is the experience of the European Union, in regulatory and legal matters to prevent corporate fraud a reference for countries with emerging economies such as Chile? The findings show that even though the initiatives in the framework of "secondary legislation" of the EU (Regulations, Directives, Recommendations, etc.) can be a reference for countries with emerging economies, especially to make better and more informed decisions, Chile is not prepared yet, since there is no connection or systematization of the law according to the country's own cultural reality, as expressed by the experts interviewed.

In this regard, economic criminal law is of particular importance, whose main precursor in the European Union was Professor Tiedemann, who led the project called "Eurocrimes", which in relation to corporate crimes, proposed the search for harmonization between the different European national systems. This could even aspire to be presented as a possible general regulatory model for those Latin American countries that also aspire to a harmonization of their criminal legislation in economic affairs (Foffani, 2019, p.39).

Theoretical and practical implications

The study contributes to scientific knowledge through personal experiences, both local and comparative, related to the regulatory and legal framework of financial fraud in the different branches of law. It also broadens the scope of legislative models and responses to this type of fraud, which contributes to the discussion of the experiences of the European Union for the adoption of best practices in emerging economies in Latin America, such as Chile.

Limitations

Since this study has required the participation of specialists in the legal doctrine of Chilean law in order to understand the problems raised, the comparisons made with certain EU legal systems have been based on the personal experience of the interviewees. Considering the diversity of legal systems present in the EU member countries, the literature review has been carried out on general EU initiatives and not at the local level of each country.

6. Conclusions

Contributing to the state of the art, mainly composed of quantitative studies and case analysis related to regulatory responses to major accounting scandals in the world's major economies and in light of the disclosures of the protagonists, the results confirm that Chile is not yet adequately prepared to adopt the best practices implemented by the EU to deter corporate accounting fraud.

The above is derived from the answers to the three research questions, obtained from the personal experiences and perceptions of experts in different branches of law in Chile, which allow us to understand that: (1) The country has a low level of preparation to effectively modernize and reform its regulatory and legal framework related to strengthening corporate governance and deterring corporate fraud. This is mainly due to the lack of a clear and systematic definition of accounting crimes and the conceptualization problem between Administrative Sanctioning Law and Criminal Law; (2) Regulatory reforms on corporate governance in Chile have not had a dissuasive effect on financial fraud because they have been carried out to meet international requirements such as those of the OECD and there is still no real conviction for Self-Regulation or "Comply or Explain"; and; (3) Even though the EU is in the process of harmonizing the economic crimes of the different legal systems of its member countries, the progress it has made over the last 20 years can be a reference for implementing a harmonization model in emerging economies, as long as the cultural perspective and legal traditions of the region are taken into account.

Guidelines for future research

Future lines of research could deepen the relationship between administrative sanctioning law and comparative criminal law to answer the question about the effectiveness of sanctions or penalties for accounting misrepresentations by regulated entities in Chile. It considers the separation of the powers of the State, the recent bill for a new Penal Code, and of course the scope of the Economic Crimes Bill, recently approved by the Constitution Committee of the Chilean Senate.

Likewise, it is considered useful to broaden the knowledge on the legal nature of technical accounting and auditing standards, considering, for example, that in Europe IFRS were ordered by regulation (that is, mandatory) and in Chile they have been required by a mere General Standard

issued by the administrative regulatory organization and there is currently no specialized technical organization to supervise and regulate accounting and auditing standards.

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