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GENDER DIVERSITY IN THE BOARDROOM

Volume 1: The Use of Different Quota Regulations

Gender Diversity in the Boardroom

Cathrine Seierstad • Patricia Gabaldon •
Heike Mensi-Klarbach
Editors

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Foreword

The year 2017 marks not only the 60th anniversary of the 1957 Treaty of Rome, by which the European Communities were instated; it also marks the beginning of the European commitment to gender equality. From a modest equal pay for equal work provision in the 1957 Treaty, protecting only economic agents, grew a broad and transversal European attachment to equality, that was enshrined in the Treaties as a fundamental value of the EU (cf. Article 2, Treaty on European Union [TEU]). This makes that today the European citizen is among the most protected in the world against any form of discrimination, with among others the right to equal pay for equal work, a right to parental leave, equality of access to social security, and a right to equal treatment in the labour market.

This is a European success story to which I am honoured to have contributed as Vice-President of the European Commission in charge of Justice, Fundamental Rights and Citizenship. In this capacity I undertook to break the glass ceiling and increase the representation of women on company boards. Study after study clearly indicated the (economic) added value of gender diversity on company boards. Initially I encountered the same arguments over and over: supposedly there just were no qualified women available to fill openings on company boards. A first step to shatter

the glass ceiling was to shatter this myth. Business schools and professional women helped to build a worldwide database with "Board Ready Women": there are thousands of highly qualified women capable of taking responsibility.

At the same time I challenged companies to pledge their commitment to more gender-balanced company boards, by the voluntary Women on the Board Pledge. Progress, however, was not forthcoming. Convinced of the necessity for Europe, beset by a financial crisis, to tap into the huge pool of talented women out there and unlock the added value for a European economy in turmoil (NB: the European Institute for Gender Equality estimates more gender diversity in the workforce will contribute to a 10% rise in gross domestic product [GDP] per capita in 2050), I tabled a legislative proposal in late 2012 setting an objective of 40% of the underrepresented sex on boards of public listed companies by 2020—to the astonishment of many. In early 2017, the time of writing, this proposal is still to become law. The European Parliament backed the proposal enthusiastically, but a blocking minority in the Council of Ministers keeps dragging its feet. Nevertheless, society has decided not to wait for politics. Since the Commission has set the issue of gender balance on company boards high on the European political agenda, we have seen considerable progress in Europe: over the period 2010–2016 the representation of women has doubled, from 11.9% to 23.9%. We are still far away from the intended 40% (so far only four Member States, namely Finland, France, Italy and Sweden, have at least 30% women on the boards of large companies), but we are going in the right direction. Moreover, there is a stark contrast between those Member States who have adopted binding measures (e.g. Belgium, Germany, France and Italy) and those who did not. In the former the representation of women rose from 9.8% to 33.7%, in the latter only from 12.7% to 20.3%. I leave it to the pages of this publication to shed more light on this remarkable discrepancy. But it is clear that an evolution on company boards is accompanied by a revolution in people's mindsets. It is a tribute to what deliberate political impulses can achieve.

But we cannot rest on our laurels. Many old challenges persist, while new frontiers emerge. For example, 60 years since Treaty of Rome also means 60 years that the EU has failed to close the gender pay gap—

notwithstanding its early commitment enshrined in the Treaties. Throughout Europe women still earn on average 16.3% less than men for every hour worked. At the current rate of change it will take another 70 years for this gap to be closed—an unacceptable perspective for girls born today. We owe it to them to be bolder for change.

At the same time, we have to push against new frontiers. The digital economy harbours huge potential, but we cannot allow the digital skills gap to translate into a new gaping gender gap. In 2013 on average merely 29 out of 1000 women held a degree in computing or related activities, and only four of them actually choose to pursue a career in information and communication technology (ICT). We cannot but realize that structural problems need to be tackled to get more women in digital careers. We cannot afford to keep wasting talent: the European digital economy is projected to lack 756,000 ICT professionals by 2020, and the added value of more women in digital careers is estimated at a €9bn/year boost to European GDP. What are we waiting for?

Unfortunately, a word of warning also has its place here. The progress we have achieved can be undone—if we take it for granted. An American President who got elected in spite of repeated misogynistic comments, a Russian law decriminalising (and thus trivializing) certain forms of domestic violence, and even within the EU we are witnessing pushbacks at the level of regressive national laws and women bashing in political speeches. They are but a few instances of progress threatened to be rolled back. We have to remain vigilant and keep condemning inequality wherever it persists—or re-emerges.

From the Commission's 2017 report on equality between men and women emerges a continent with disparities in equality. Progress differs hugely among Member States in areas such as the gender pension gap; women employment rate (ranging from 48% to 80%); politics (the share of women in parliaments ranging from 9.5% to 45.8% and of women in governments ranging from 0% to 50%); gender pay gap; and women on boards (ranging from 41% to a mere 4.9%). I hope this study will contribute to our understanding of the underlying dynamics responsible for these discrepancies, as well as point out ways to bridge these gaps. We have the required expertise. Europe counts the world's frontrunners in equality among its Member States. We now need to find ways to unlock

synergies to distribute best practices. I hope this timely publication can be instrumental in this sense.

Viviane Reding
Member of the European Parliament
Former Vice-President of the European Commission

Preface

Welcome to *Gender Diversity in the Boardroom—Volume 1: The Use of Different Quota Regulations* and *Gender Diversity in the Boardroom—Volume 2: Multiple Approaches Beyond Quotas*, which are the result of an international symposium on "Women on Boards" at the Annual Meeting of the Academy of Management in 2015 in Vancouver, British Columbia, Canada. The editors participated in the symposium, which was finally awarded the Emerald Best International Symposium in 2015. From this success and from the inspiring discussions before and throughout the symposium, the idea to publish a book was born, and several of the contributors of the symposium were eager to contribute further to this edited book. In fact, the great interest among the contributors resulted in two volumes of the original suggested book. Many discussions circled around different approaches in different countries and researches, and politicians and practitioners likewise were keen on learning from each other. Hence, we realized that there was a need for a comparative collection that provided a holistic overview of national contexts and policies.

Since finalising this book: On 23 June 2017, Portugal approved the government proposal submitted in February with gender representation regulations (quotas) for both state-owned and listed companies.

The two edited volumes in this project developed out of the research, teaching and consulting work of experts from 16 different European countries in the field of women on boards and from one international team commenting on the case of women on boards beyond Europe. It is a collaborative effort intended to provide an overview of different legal frameworks and country approaches that aim to increase the share of women on boards. The main goal is to understand how and why different approaches and solutions regarding female underrepresentation on corporate boards in different countries came about. Europe is a perfect context to study how cultural, political and historical differences affect policies and thus the issue of women on boards. Even though the European Union intends to provide a general framework for many politically relevant issues, there is currently no binding European regulation with regard to women on boards. Thus, as can be seen from this project, different countries have developed different strategies and policies. Hence, we divide the two volumes based on countries' policy approaches intended to increase the share of women on boards. Volume 1 includes eight European countries (Norway, Spain, Iceland, France, Italy, Belgium, the Netherlands and Germany) with different types of quota regulations, while Volume 2 explores the situation and approaches in eight other European countries that do not have quota regulations to date (the UK, Portugal, Slovenia, Austria, Sweden, Denmark, Switzerland and Hungary). Volume 2 furthermore includes one international chapter illustrating different types of approaches to increase the share of women on boards beyond the European context.

In this regard, *Gender Diversity in the Boardroom* Volumes 1 and 2 follow two distinct aims: First, we aim to provide an overview of these substantially different approaches and regulations to increase female representation on boards in European countries; second, we aim to discuss how these different approaches and regulations came about. We believe that the rich insights into cultural, societal, political and historical factors are relevant to understand these respective differences. We hope to thereby offer much food for thought to enrich the ongoing scholarly,

political, media and practitioner debates on how to increase female representation on boards.

Cathrine Seierstad
Patricia Gabaldon
Heike Mensi-Klarbach
(*The editors have contributed equally to both volumes and both first and concluding chapters.*)

Acknowledgements

We would like to express our appreciation to all those who helped with this project. We owe our special gratitude to all the participants of the book and the symposiums, whose contributions were essential for this book. Thanks to Audur Arna Arnardottir, Morten Huse, Ruth Sealy, Evis Sinani, Siri Terjesen, Throstur Olaf Sigurjonsson, Florence Villesèche, Gillian Warner-Søderholm, Elena Doldor, Susan Vinnicombe, Mariateresa Torchia, Bari L. Bendell, Jillian Gould, Shruti Sardeshmukh, Ruth Mateos de Cabo, Lorenzo Escot, Ricardo Gimeno, Stephan Leixnering, Deirdre Anderson, Doyin Atewologun, Aleksandra Gregorič, Jesper Lau Hansen, Anna Wahl, Charlotte Holgersson, Daniela Giménez, Alessandra Rigolini, Sara Falcão Casaca, Sonja A. Kruisinga, Linda Senden, Emmanuel Zenou, Isabelle Allemand, Bénédicte Brullebaut, Abigail Levrau, Anja Kirsch, Aleksandra Kanjuo Mrčela, Beáta Nagy, Henriett Primecz, Péter Munkácsi and Lauren Trombetta.

Furthermore, we would also like to acknowledge with much appreciation the essential role of the Academy of Management's anonymous reviewers and colleagues who encouraged us to bring together and edit this tremendous book.

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Abbreviations

ABI	L'Associazione Bancaria Italiana
AFEP	Association Français des Enterprises Privées
AG	Aktiengesellschaft
AGG	Allgemeines Gleichstellungsgesetz—Law
AGM	Annual General Meeting
AktG	Aktiengesetz—Law
ANIA	Associazione nazionale fra le imprese assicuratrici
BDA	Bundesvereinigung der deutschen Arbeitgeberverbände
BDI	Bundesvereinigung der deutschen Industrie
BGleiG	Bundesgleichstellungsgesetz—Law
BGremBG	Bundesgremienbesetzungsgesetz
BPW	Business and Professional Women
BV	Besloten Vennootschap
BW	Burgerlijk Wetboek
CAC	Cotation Assistée en Continu
CBS	Centraal Bureau voor de Statistiek
CCD	Center for Corporate Diversity
CDWI	Corporate Women Directors International
CEO	Chief Executive Officer
CNMV	Comisión Nacional del Mercado de Valores
CONSOB	Italian Stock Exchange
CSR	Corporate Social Responsibility

CV	Curriculum Vitae
DAX	Deutscher Aktienindex
DGB	Deutscher Gewerkschaftsbund—Union
DIHK	Deutsche Industrie- und Handelskammer
DIW	Deutsches Institut für Wirtschaftsforschung
djb	Deutscher Juristinnenbund
dlv	Deutscher Landfrauenverband
DrittelbG	Drittelbeteiligungsgesetz—Law
EEA	European Economic Area
ENA	École nationale d'administration
ENI	Ente Nazionale Idrocarburi
ENSAE	École Nationale de la Statistique et de l'Administration Économique
EU	European Union
EUR	Euro
EWMD	European Women's Management Development International
EWOB	European Women on Boards
FidAR	Frauen in die Aufsichtsräte
FKA	Women business leaders in Iceland
FTSE	Financial Times Stock Exchange
GDP	Gross domestic product
Gepi	Gestioni e Partecipazioni Industriali
GPC	Governance Professionals of Canada
HEC	École des hautes études commerciales
IBEX	Iberia index
IFA	French Institute of Directors
IND	Indulgence index
INSEE	Institute of Statistics and Economic Studies
IRI	Istituto per la Ricostruzione Industriale
ISA	Israel's Securities Authority
LTD	Limited company
LTO	Long term orientation index
M&A	Merger and Acquisition
MAPFRE	Name
MAS	Masculinity index
MDAX	Mid-cap DAX
MEDEF	Mouvement des Entreprises de France
MitbestG	Mitbestimmungsgesetz—Law

NAF	Employers' federation
NASDAQ	Association of Securities Dealers Automated Quotations
NHO	Federation of Norwegian Enterprise
No.	Number
NUES	Norsk utvalg for eierstyring og selskapsledelse
OECD	Organisation for Economic Co-operation and Development
PAN	Animals/Nature-friendly Party—Portugal
PhD	Academic doctor degree
PLC	Public limited company
PSOE	Partido socialista España
PTF	Publicly traded firms
R&D	Research and development
SCP	Sociaal en cultureel Planbureau
SDAX	Small-cap DAX
SEO	State-owned enterprises
SME	Small and medium-sized enterprises
SPD	Sozialdemokratische Partei Deutschland—Political Party
TecDAX	DAX technologie
TMT	Top Management Team
UAI	Uncertainty avoidance index
UK	United Kingdom
VdU	Verband deutscher Unternehmerinnen
WEF	World Economic Forum
WoB	Women on Boards
ZDH	Zentralverband des deutschen Handwerks

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Setting the Scene: Women on Boards in Countries with Quota Regulations

Heike Mensi-Klarbach, Cathrine Seierstad, and Patricia Gabaldon

Introduction

The underrepresentation of women on corporate boards in Europe and across the world has received increased attention, especially over the last 15 years. Moreover, during this period we have witnessed an amplified

Since finalising this book: On 23 June 2017, Portugal approved the government proposal submitted in February with gender representation regulations (quotas) for both state-owned and listed companies.

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focus on what can be done to increase the share of women in senior positions. Although there is an overall consensus that increasing the share of women in areas of power and influence is important for a number of reasons—which range from utility and business case arguments to justice and equality—there has been much debate, both between and within countries, over the best manner in which to accelerate the process.

In terms of the use of strategies to increase the share of women on boards, Norway was the first country to propose and later introduce gender balance regulations (quotas) for board positions in 2002 (implemented from 2006 with a two-year grace period). This approach was considered radical and was viewed with scepticism both within Norway and from other European countries when proposed and later introduced. Nevertheless, within just a few years, a number of other countries (e.g., Spain, Iceland, France, Italy, Belgium, the Netherlands and Germany) followed similar paths and introduced some forms of quota regulations. Other countries (e.g., the UK), on the other hand, opted for more voluntary measures via targets while other countries again (e.g., Portugal and Slovenia) are currently in the process of designing initiatives. Moreover, from the European Union (EU), the debate about how to increase the share of women on boards received momentum when the former vice-president of the European Commission, Vivian Reding, proposed a directive of a minimum representation of the underrepresented sex of 40% among non-executive directors of companies listed on stock exchanges in 2012. Nevertheless, the planned law failed to obtain sufficient support within the EU and has been put on hold for now. Nonetheless, today, most European countries do have policies in place with the aim of increasing the share of women on boards, while other countries are currently having debates about this issue. Interestingly, despite the collective focus on women on boards in Europe, there is a considerable diversity of approaches, viewpoints and motivations between countries. This is the result of a wide range of factors, including history, contextual aspects, cultural and institutional characteristics, as well as the role of actors.

Literature and studies within the field of women on boards and diversity on boards have flourished over the last decade. While we have observed a convergence in terms of countries putting women on boards and the use of strategies on the agenda, we have seen a divergence in terms of choices of strategies. As a response, over the last few years, a wide range

of studies have set out to make sense of and/or explain the situation for women on boards or the use of and/or choice of strategies to increase the share of women on boards. Some studies argue that specific institutional factors are key for explaining the spread and/or choice of national policies (including quotas) and/or the share of women on boards (e.g., Grosvold and Brammer 2011; Iannotta et al. 2016; Terjesen et al. 2014; Terjesen and Singh 2008). Indeed, these studies enrich our understanding of the importance of contextual factors and national differences, yet, while they demonstrate important contextual elements, they do not fully capture cross-country differences. Another body of literature has tried to explain the situation of women on boards and the choice of strategies that focus on the role of actors and politicking within countries (Doldor et al. 2016; Seierstad et al. 2017). Again, we recognise that this is an important dimension to acknowledge, yet it is complex, and no studies have yet been able to provide a sufficiently comprehensive understanding of what is, and has been, happening in terms of actors, enabling/hindering forces and politicking within the different European countries.

In addition, when discussing the use of strategies, the reach of regulations and their consequences and effects, we observe that the situation is complex and multifaceted. There are several reasons for this. First, there are variations between the policies of countries, including countries that are often "clustered" together in terms of policy. For example, while Norway, Spain and Iceland are consistently listed as countries that employ quotas, the use, reach and consequences of their specific quota laws vary significantly. In particular, while Norway has quotas for public limited companies' (PLCs') non-executive boards with penalties for non-compliance, the Icelandic quota includes publicly traded firms and private limited companies with 50 or more employees yet with no punitive sanctions for non-compliance. Both countries fulfilled the quota targets. Spain, on the other hand, was the first of the EU countries to introduce a quota in 2007, yet it did not introduce any penalties for non-compliance, and very little political support was given after its introduction; consequently, the 40% quota in Spain has not been met (the suggested implementation period was by 2015). Hence, it is evident that the concept of quotas—what it entails, where it regulates and how it is enforced—varies greatly. With regards to voluntary approaches and

so-called soft laws, we also witness differences among countries. Some voluntary approaches contain targets, such as the Lord Davies Review (and later the Hampton Alexander Review) in the UK or the Portuguese Corporate Governance Code, which recommend 33% representation of each gender. By contrast, other countries, such as Austria, set targets for state owned companies, while they recommend privately held companies to adopt appropriate consideration of the issue of diversity (e.g., gender). The same holds true for Switzerland, where the Swiss Code of Best Practice for Corporate Governance also contains a passage on "appropriate" diversity among board directors. In the case of Denmark, for instance, there is a definition of what "underrepresentation" of one gender means—it means less than 40% of one gender represented; yet Denmark requires companies to set their own targets freely. The case of Hungary furthermore shows that due to the political history, any type of quota regulation is considered as inadequate interference of state with private companies (For detailed descriptions of country cases not having gender quotas, please see vol. 2).

Second, international studies and data about the situation in relation to gender balance and boards and the effects of policies often contain rather different and sometimes confusing information. This occurs for a number of reasons: it is rather complex and difficult to obtain national-level data about gender balance on boards; there are differences in terms of types of company that are included in the statistical data; and there are differences regarding the extent to which the companies included are actually those affected by the policies.

Consequently, with an increased focus on women on boards and the use of substantially different strategies among countries, we argue that that there is a need for a better understanding of what is happening within the European setting in relation to women on boards and the use of strategies to increase their representation. In response to this challenge, the two edited volumes provide a structured and in-depth analysis of the women on boards debate and the situation in 16 European countries, with one outward-looking chapter which focuses on the international picture. The different country cases are written by highly experienced researchers working on the topic in their respective countries. Moreover, the country cases include a reflection from an actor (i.e., politician, practitioner or policy-maker) that are heavily involved in the women-on-boards debate in

the different countries. Taken together, the two volumes offer an opportunity to gain a comprehensive and comparable understanding of the strategies and approaches found within European countries and will consequently be of use to policy-makers, politicians, practitioners, academics and anyone interested in the topic of women on boards. Hence, the volumes are designed as guides and resources for all those interested in understanding how different European countries deal with the issue of increasing female representation on boards. In order to provide comparability within this book and for ease of readership, all of the chapters are structured in a similar manner. Structures only vary in cases where the contributing authors felt that a slight change would be better suited to the particular circumstances of their country.

Volume 1: The Use of Different Quota Regulations

Gender Diversity in the Boardroom—Volume 1: The Use of Different Quota Regulations consists of eight country cases and a conclusion. Specifically, this volume includes chapters from Norway, Spain, Iceland, France, Italy, Belgium, the Netherlands, and Germany, all countries that have introduced some sort of quota regulations in the period 2003–2015 (see Fig. 1.1).

Nevertheless, what is apparent from the evidence is that although quotas have been introduced in all eight countries, there are substantial variations in terms of the design and regulations of the laws. This includes the set quota ranging from 30% to 40%, the types of companies affected, the length in terms of implementation period, whether there are sanctions

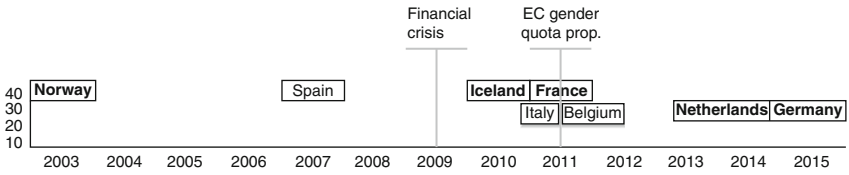

Fig. 1.1 Introduction of gender quotas on boards' timeline

for non-compliance, and whether the law is permanent or time-specific. There are also key differences in terms of Corporate Governance Codes and other regulations. Moreover, there are key differences between the countries in terms of how the law was introduced, which actors were advocating the introduction of the law, how the law fits with other institutional factors and how the law is perceived after the introduction.

Furthermore, in the eight countries discussed in this volume, we also observe great differences in terms of the overall share of women on boards, the development of women's representation on boards and to the extent to which it is the quota law that has resulted in the suggested changes. In fact, by utilising data from the European Commission at four points in time (2003, 2010, 2013, and 2016) about the presence of women on the largest listed companies in each country, we observe great variation among countries indicating the need for further in-depth discussion of the different country scenarios (see Fig. 1.2).

Hence, while there are similarities between the eight countries in terms of their introduction of a quota law to increase the share of women on boards, there are great variations in terms of nature of the law, the process of introducing the law, and the effects and consequences.

Krook (2007) suggests, investigating the diffusion of quotas to increase the share of women in the political setting, that there are often no clear patterns with regard to the origin, approach and outcome of the different

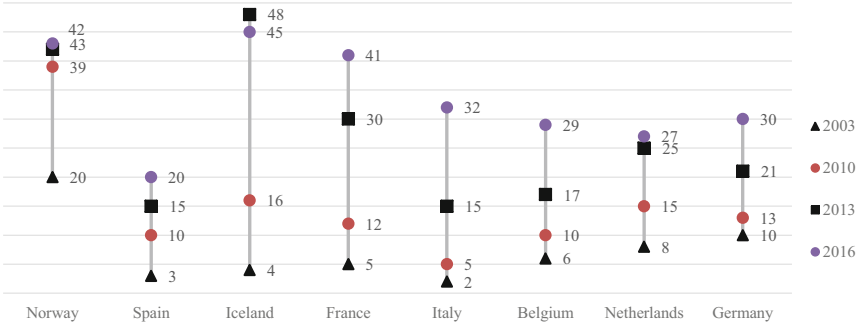

Fig. 1.2 Evolution of the presence of women on boards in the largest publicly listed companies in each country (*Source*: Main elaboration based on data from the European Commission (2016))

policies and that there are different "stories" in different countries. In particular, she argues that there is great diversity in terms of the actors pushing for laws, their motivations, and the different contexts which should be acknowledged when making sense of diffusion of quotas in politics. We echo her arguments and argue that there is a need for further systematic investigation in relation to the use of quotas on boards at the individual country level in order to understand more about the diffusion of quota policies for board positions, the similarities and differences we can observe between countries, and also the different "stories" at country level we observe and how we can make sense of this at a comparative level. In fact, through a systematic and comparative analysis of the different country approaches to increasing the share of women on board, we are able to develop the women-on-board literature/debates which have until now been dominated by either specific country focuses or have focused on specific dimensions.

The Structure and Content of the Book

Gender Diversity in the Boardroom—Volume 1: The Use of Different Quota Regulations consists of eight chapters, each of which is structured as follows:

- *Introduction*, setting the scene of each chapter and framing the national context.
- *General background*, highlighting particularities of each country regarding political and economic system and, in particular, the governance structure.
- *Discussion of national policies* to increase female representation.
- *Enabling and hindering forces* that support or hamper female representation on corporate boards.
- A *critical reflection* on the case that takes into account the whole content of the chapter.
- *Actors' reflection*, where a relevant actor from each country discusses or reflects on the national case.

The rest of the book is structured as follows. In the second chapter, entitled "Gender Quotas on Corporate Boards in Norway: Ten Years Later and Lessons Learned", Cathrine Seierstad and Morten Huse present the Norwegian case, where the process building up to the introduction of the first quota law for boards, including a detailed discussion on the role of actors and their motivations are presented. Moreover, the authors discuss some of the key effects, consequences and lessons learned a decade after the introduction of the law and highlight how the law has successfully challenged the underrepresentation of women on boards. It goes on to point out, however, that wider effects in terms of increasing gender balance in senior positions have been modest. In the third chapter, entitled "Gender Diversity on Boards in Spain: A Non-mandatory Quota", Patricia Gabaldon and Daniela Giménez discuss how in the Spanish case, the non-mandatory quota has increased the share of women on boards, yet the set quota has not been met. The authors highlight several important factors in this regard, including resistance from corporations, the pipeline of women, a temporary downgrading of the focus on equality focus resulting from the recent global recession and the overall economic situation. In "Gender Diversity on Boards in Iceland: Pathway to Gender Quota Law Following a Financial Crisis", Audur Arna Arnardottir and Throstur Olaf Sigurjonsson describe the Icelandic experience. The authors discuss how the financial crisis in Iceland fuelled a discussion about the roles of boards with strong legislative changes for different types of companies as well as an increased focus on gender equality and board diversity. Next, Emmanuel Zenou, Isabelle Allemand and Benedicte Brullebaut present the case of France in the chapter "Gender Diversity on French Boards: Example of a Success from a Hard Law". The authors present characteristics with the Cope Zimmermann Law introduced in 2011 and changes following the introduction of the law. Next, Alessandra Rigolini and Morten Huse present the case of Italy with the chapter "Women on Board in Italy: The Pressure of Public Policies". They discuss the introduction of the so-called "Golfo–Mosca Law", which was implemented in Italy in 2012. The authors argue that since the introduction of this law, Italy has been one of the most successful countries in terms of increasing the presence of women on corporate boards. They highlight the interesting peculiarities with the law that are

characterised by strong pressure through a sanction system but with temporary validity. Abigail Levrau presents the case of Belgium in the chapter "Belgium: Male/female United in the Boardroom". The author discusses the law introduced in 2011 and argues that, although useful progress has been made, there is a need for further action to increase gender diversity. This should include a more open recruitment process, training, mentoring, and diversity management as well as the need to change people's minds about the value of women in senior positions. In the following contribution, Sonja Kruisinga and Linda Senden discuss the case of the Netherlands. They highlight how multiple steps and different policies have been introduced in the period 2013–2017 in the chapter "Gender Diversity on Corporate Boards in the Netherlands: Waiting on the World to Change". In the last of the country case studies, "Women's Access to Boards in Germany—Regulation and Symbolic Change", Anja Kirsch discusses the situation in Germany, where a legally binding quota was implemented in 2015 and brought into effect in 2016. The author highlights how there has been a resistance to substantial change in the German business community and discusses how the case of Germany provides an interesting view due to the scope of the recently introduced regulations.

Finally, Patricia Gabaldon, Heike Mensi-Klarbach and Cathrine Seierstad highlight the key points highlighted the chapters and provide some concluding points gleaned from the impressive information and knowledge provided within this book. Hence, the final chapter summarises the most important issues, concepts and practices identified in the course of the book, while a index of key terms can be found at the end.

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2

Gender Quotas on Corporate Boards in Norway: Ten Years Later and Lessons Learned

Cathrine Seierstad and Morten Huse

Introduction

When the Conservative Minister of Trade and Industry, Ansgar Gabrielsen, proposed the introduction of gender representation regulations for boards in Norway in 2002, claiming to be "sick and tired of the *old boys'* club dominating the Norwegian private sector" (VG 2002), few could imagine that this would be the start of a global trend to address the lack of women on boards (WoB), diversity on boards and the use

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of policies or instruments (both voluntary and compulsory). The proposed legal requirements for gender balance on boards in public limited companies (PLCs) were ratified by the Parliament (Stortinget) in 2003 and were implemented in January 2006 with a two-year grace period, which ended in January 2008. The law, although considered controversial when introduced, had significant repercussions beyond the Norwegian context.[1] The case of Norway is often presented and/or referred to as an "example to follow", and similar policies have been introduced in several other countries around the world. Moreover, a wide range of other countries have introduced softer initiatives and/or targets with the aim of increasing the share of WoB and in senior positions. Hence, it is evident that there has been a diffusion of corporate board legislation with the aim of increasing the share of WoB both within Europe and beyond (Teigen 2012). The Norwegian quota law can therefore be said to have had a "snowball" effect (Machold et al. 2013).

Ten years after its introduction, it is possible to comment on some of the (early) effects of the quota law in Norway. It has been extremely effective in terms of creating gender balance in the boardroom after the introduction of the law with sanctioning for non-compliance. Moreover, women are recruited in the same way as men, that is, through professional and social networks. In particular, after the introduction of the law, recruitment involves a more systematic search within the networks for directors, indicating that a wider pool of candidates are now utilised on boards (Heidenreich 2010). Nevertheless, despite the achievement in Norway of increasing the share of women on PLC boards from approximately 7% in 2002 to 41% in 2016, leading the country to often be highlighted as a "success story" and an exemplar, we are cautious of presenting the case of Norway as a recipe for how to increase gender diversity in senior positions in the private sector. Although it was not directly stated in the quota law, it has been indicated in political, academic, and private sector circles that one desired and expected consequence of the law would be the further increase in the number of women in senior positions in the private sector. In fact, however, the results have so far been more modest in terms of observing more women in chair, deputy chair, executive and CEO positions and on other types of boards not affected by the law. Actually, despite Norway's general position,

which is currently ranked as among the most gender-equal countries in the world, patterns of vertical sex segregation in the private sector have been sustained. This is a point often ignored when discussing the case of Norway and their experience with quotas on boards.

In this chapter, we set out to describe some of the contextual factors and processes that were important leading up to the introduction of the quota law in Norway. Moreover, we discuss some of the effects, consequences, and lessons learned from the introduction of the law a decade after its introduction, building on the voluminous body of research that has emerged in the post-quota period.

The rest of this chapter is organised as follows. First, we present a general discussion of Norway, including a focus on gender equality and the current status of women in the labour market. In addition, the section includes a description of the corporate governance system. Next, we present the development of the quota law in Norway and discuss some of the effects of the law. The next section offers a discussion of enabling and hindering forces and critical actors in the Norwegian context. This is followed by a reflection from Valgerd Svarstad Haugland, one of the actors most heavily involved in the political process of introducing the quota law in Norway. Finally, we present our concluding remarks.

General Background

It is important to understand history, the contextual setting, and preconditions within countries that might affect the introduction, suitability, and acceptance of specific policies. Norway is a small country in northern Europe. By the end of 2016, it had 5.3 million inhabitants (Worldometers 2016). Norway is a monarchy, and although it is not a member of the European Union (EU), its European Economic Area (EEA) membership involves a close relationship with the EU. This includes following initiatives and regulations through the single market and the four freedoms (i.e., free movement of goods, people, services, and capital). Norway has close historical ties and similarities with the neighbouring Scandinavian countries Denmark and Sweden.[2] Norway's employment rate was 79.1% in 2015, and the unemployment rate was less than 5%

(Eurostat 2016).[3] Norway was, in comparison with most other OECD countries, relatively unaffected by the 2008–2009 financial crisis, and the country has experienced a strong growth in average income as well as low income inequality in the post-recession years (OECD 2014).

This section presents some of the national preconditions that are important to understand in order to make sense of the introduction of the quota law and how it fits with the history and contextual setting in Norway. In particular, it presents two key areas that are important in understanding the introduction of the quota law: the current status of women in the labour market and the corporate governance system in Norway.

Status of Women in the Labour Market

Norway is considered to be one of the most gender-equal countries in the world. According to the Global Gender Gap 2016, it is the third most gender-equal country globally, beaten only by Iceland and Finland (WEF 2016). In fact, Norway has been ranked among the three most gender-equal countries every year since 2006 (WEF 2015). With regard to educational attainment, it is evident that 60% of the students at the university level (bachelor's and master's degrees) are women—a figure that has been relatively stable for the last 15 years (SSB 2015). In 2014/2015, for the first time, more women than men obtained PhD degrees (SSB 2015). Norwegian women gained the right to vote in 1913, and the first female prime minister, Gro Harlem Brundtland, was elected in 1981. Since the mid-1980s, the share of women in the Parliament has been greater than 35%, and more than 40% of the members of the Cabinet have been women. Since 2009, the share of women among Cabinet members has ranged between 47% and 53%, and as of 2016 the share of women is 47%, with the prime minister also being female (Regjeringen 2013, 2016). This progress is largely a result of the use of voluntary quotas in the majority of the political parties since the 1980s. Nevertheless, despite Norway's position as a gender-equal country, it has been characterised by strong patterns of both vertical and horizontal sex segregation (Seierstad 2011). In fact, by looking beyond the overall Gender Gap ranking and looking specifically at the country score in relation to

legislators, senior officials and managers, Norway is ranked only 39th (WEF 2016).

There have been significant changes in the women's labour market pattern over the last 50 years. In Norway, several factors have affected women's work patterns in the development from an industrial society to a post-industrial society (Jensen 2004). These have included de-industrialisation, the expansion of the welfare state, the development of the educational system as well as cultural changes related to equality and emancipation. In Norway, it was not until the 1970s that there was a sharp growth in employment rates among women (Raaum 1999). It is apparent that since the 1970s, the position of women in the labour market has been strengthened, and today the economically active population in Norway is gender balanced. The change in the labour market participation of women has been strongly influenced by two key factors: the expansion of a social democratic welfare state with comprehensive childcare provision and parental leave and public sector employment (Ellingsæter 1995). Nevertheless, despite the increase in female labour market participation since the 1970s, the Norwegian labour market has been highly segregated, both horizontally and vertically; furthermore, typical 'male'- or 'female'-dominated areas continue to exist, women are underrepresented in senior positions, and more women than men work part time (SSB 2015). Hence, while women and men appear to have relatively equal possibilities in Norway, an assertion which is also supported by equality rankings and the share of women in higher education, Norway paradoxically has had some of Europe's most gender-segregated labour markets (Ellingsæter 2013).

The country has also seen the development of what have been referred to as "woman-friendly" policies, which affect the labour market and the status of women. This can be traced back to the ideas and influences of state feminism, which describes the political alliance between feminist groups and the political arena (Hernes 1987). As argued by Hernes (1987, p. 11), 'Scandinavian state feminism is a result of the interplay between agitation from below and integration policy from above.' There is a wide range of initiatives that can be put in place in order to challenge occupational sex segregation and increase equality. There are two key areas in which state interventions can be used to influence the status of women in

the labour market and thereby challenge the patterns of occupational sex segregation (both horizontally and vertically) (Chang 2000). The first is related to "equality of access", which means policies that focus on the public sphere, such as equal pay, anti-discrimination, equal opportunity, and affirmative action policies. The other area, "substantive benefit", focuses more on the private sphere and includes "the provision of services for working mothers that facilitate the combination of work and motherhood" (Chang 2000, p. 1663). The following section will discuss some of the specific initiatives that have been important in the case of Norway in relation to equality-of-access initiatives in the labour market as well as substantive benefits.

Equality Initiatives

Over the last four decades, a wide range of policies aiming to promoting equality in the labour market have been introduced in Norway. The Norwegian Gender Equality Act (referred to as the Equality Act hereafter) was adopted in 1978 and implemented in 1979—it has been amended several times since, with the latest amendment in 2013. The Equality Act sets out to "promote equality irrespective of gender" with a "particular objective of improving the position of women" and aim that women and men should be given equal opportunities in all sectors of society, including in education, employment, and cultural and professional advancement (Equality Act 2013). The Equality Act also provides guidelines and suggestions regarding what can—and should—be done to increase equality within both public and private sector organisations. The Equality Act states that public authorities shall make active, targeted, and systematic efforts to promote gender equality across all sectors of society (Equality Act 2013). Moreover, the Equality Act states that employers shall make active, targeted, and systematic efforts to promote gender equality within their enterprise. In addition, the Equality Act suggests that employees and employer organisations shall have a corresponding duty to make such efforts in their spheres of activity.

It is evident that the Norwegian approach to equality includes policies of what Jewson and Mason (1986) refer to as either a liberal (positive

action, focusing more on the ideas of equality of opportunity) or a radical (positive discrimination, focusing more on equality of outcome, such as quotas) nature and include examples of preferential treatment, promotion procedures, and minimum representation rules (i.e., quotas). Moreover, the policies are of both compulsory and voluntary natures. Policies in the nature of legally regulated quota arrangements (a radical approach) were first introduced in 1981. In that instance this was in relation to the regulation of the gender composition of publicly appointed boards, councils, and committees. The Equality Act states:

> When a public body appoints or elects committees, governing boards, councils, boards, delegations, etc. both genders shall be represented as follows: If the committee has two or three members, both genders shall be represented. If the committee has four or five members, each gender shall be represented by at least two members. If the committee has six to eight members, each gender shall be represented by at least three members. If the committee has nine members, each gender shall be represented by at least four members, and if the committee has a greater number of members, each gender shall be represented by at least 40 per cent of the members (Equality Act 2013, p. 3, §13)

For 25 years, the 1981 regulation for public bodies was the only kind of quota procedure that was compulsory and subject to legislation (in politics, the use of quotas in five of the seven political parties is of a voluntary nature). As will be explored further, the introduction of gender representation regulation on boards in PLCs is found in the Public Limited Companies Act, rather than the Equality Act. Nevertheless, the regulations in relation to quotas for PLC boards are very similar to the section in the Equality Act about gender composition for public boards. Moreover, the political discussion of gender balance on PLC boards was, as will be discussed later in this chapter, also developed and heavily supported within the Ministry of Children and Equality from the 1990s and until the law was introduced in 2006. In fact, before the introduction of the law, there was a political discussion about whether or not PLC board regulations should actually be implemented in the Equality Act. Hence, the introduction of the quota law for boards happened in a

context which had a strong focus on "equality-of-access" initiatives and a relatively comprehensive Equality Act with clear strategies for increasing gender balance and equality in the labour market.

Welfare/Substantive Benefits

Another key characteristic influencing the status of women in the labour market in Norway is the specific welfare approach. Like the other Scandinavian countries, Norway follows a social democratic welfare approach (Esping-Andersen 1990). One of the key aspects of the Norwegian social democratic welfare approach is the principle of an egalitarian society with universalism and decommodification of social rights for all (Esping-Andersen 1990). In fact, the idea of the Norwegian social democratic welfare state is to promote equality of the highest standard—not just the equality of minimum needs which is found in some of the welfare approaches adopted in other countries (see Esping Andersen 1990, 2002). This can be achieved by the state being committed to a social service provision to support families as well as provide women with the opportunity to work outside the family. These ideas and initiatives are also found in Hernes' (1987, p. 15) nearly 30-year-old description of what constitutes a woman-friendly state:

> A woman-friendly state would not force harder choices on women than on men, or permit unjust treatment on the basis of sex. In a woman-friendly state women will continue to have children, yet there will also be other roads to self-realization open to them. In such a state women will not have to choose futures that demand greater sacrifices from them than expected of men. It would be, in short, a state where injustice on the basis of gender would be largely eliminated without an increase in other forms of inequality, such as among groups of women.

The social democratic welfare state has been important for women's increased participation in employment. The Scandinavian welfare states are characterised as being service intensive (Esping-Andersen 1996, p. 35), with areas such as healthcare, education, and day care either free or affordable, and hence available to all regardless of financial

circumstances. Esping-Andersen (2002, p. 13) argues that that "the Scandinavian welfare model is internationally unique in its emphasis on the government pillar. In particular, it has actively 'de-familiarised' welfare responsibilities with two aims in mind: one to strengthen families (by unburdening them of obligations) and, two, to strive for greater individual independence." There is, according to Esping-Andersen (2002, p. 94), a broad consensus that there are some specific strategies that form parts of women-friendly policies. This includes affordable daycare and paid parental leave as well as provisions for work absence when children are ill. In Norway, affordable day care and paid parental leave (including maternity, paternity, and general parental leave) as well as provisions for work absence has been part of the state's welfare support for decades. Maternity leave was introduced in 1977 and dedicated paternity leave was introduced in 1993. As of 2016, parental leave includes a potentially equal distribution of parental leave between men and women, where ten weeks are earmarked for the mother, ten for the father, and the remaining 26 or 36 weeks are to be shared based on individual preference (and with a support of 80% or 100% of salary) (Nav 2016). Some 90% of the fathers entitled to parental leave make use of it (Horne 2016). These initiatives support the ideas of dual-career/-earner families. Nevertheless, the uptake of the shared component of the parental leave is still predominantly taken by the mother. Hence, while the policies in place are considered means of promoting gender equality and the status of women in the labour market, parenting has remained largely a female responsibility, indicating that Norwegian women also experience pressures with regard to the work–life balance (Seierstad and Kirton 2015).

This section has identified that although Norway is characterised by a wide range of strategies that promote equality and the status of women in the labour market, there remains a paradox, since Norwegian women are highly underrepresented in areas of power and influence, especially in the private sector. This paradox was an important factor leading up to the introduction of the quota law.

Corporate Governance in Norway

There are certain particular features that characterise the Norwegian corporate governance system (see Rasmussen and Huse (2011) for an introduction). Corporate governance in Norway is regulated by several laws. They include Aksjeloven (Limited Liability Companies Act), Allmennaksjeloven (Public Limited Companies Act), various acts about other types of companies, and various acts about competition, accounting, employees, etc. The special Norwegian features include: (a) Norwegian traditions and particular corporate governance episodes or experiences; (b) the division between PLC and LTD companies; (c) the concentrated ownership of the Oslo Stock Exchange; (d) the importance of governmental and municipal ownership; (e) the compulsory delegation of executive tasks (a two-tier system); (f) corporate co-determination; and (g) regulations about gender balance in the boards.[4]

Norway follows the civil law corporate governance tradition, and boards are (as are most countries in Europe) regulated by *ex ante* developed laws. In Norway, as well as in most other countries, there is an increasing focus on codes of best practice for boards and corporate governance. During recent years, they have typically been developed through shareholder and investor perspectives (Huse 2007a, pp. 181–189). This is also the case for Norway. The development in Norway started with imitations of similar codes in other countries, but they were adjusted after strong criticism from Norwegian scholars in the areas of finance, management and law (Huse 2002, pp. 52–60, 2007b, pp. 59–69). The code that in Norway is adopted by and co-developed by the Oslo Stock Exchange was initiated in 2001 by the Norwegian Shareholders' Society. This initiative was during the coming years joined by various associations of owners and the Oslo Stock Exchange. This code has been labelled NUES.[5]

Boards typically consist of independent directors, and there is a compulsory delegation of executive tasks from the board to a separate management. Corporate governance recommendations from common law traditions—relating, for example, to CEO duality and increasing the

number of non-executives outsider ratio—may be of limited relevance in Norway.

In the Norwegian civil law system, there exist various forms of incorporation—for example, private limited companies (LTD), PLCs, general partnerships, sole companies, Norwegian companies registered abroad, and various other forms. The most common way to organise a business in Norway is by establishing a private limited company (LTD).

Owners

Norway is a small country that houses only a few large corporations. When understanding the Norwegian corporate governance arena, it is important to identify and understand Norwegian history and its most important actors. The actors are usually easy to identify, and the Norwegian state is clearly the main actor. The Norwegian state acts as both law makers and as owners. However, there are also various other actors in the arena that define corporate governance. Most of the largest Norwegian corporations have main-state ownership, and the main corporate governance debates in large companies have thus been related to the role of the state—often with a political overtone, shareholder activism, and discussion about women directors. Within the small Norwegian business community, there have also been strong relations (positive and negative) between business leaders and investors, where emotions and power games often take place. Such relations may be even stronger in small societies than in large ones. There are few traditional family companies, and, as a consequence, Norway has had a tradition for integrating various owners in active boards (Huse 2009). This has also been the case in small and medium-sized companies.

The Norwegian government is by far the largest shareholder on the Oslo Stock Exchange. The shares are owned directly through the Norwegian government's holdings of shares or owned indirectly through the Government Pension Fund—Norway.[6] As a large owner, the Norwegian government has the opportunity to influence corporate governance practices on national as well as international levels. The Norwegian state as an owner has generally tried to avoid direct intervention in the PLCs where

the state is the main owner, but they do influence the choice of their board members. The Norwegian Minister of Trade and Industry has recently, for example, clearly put pressure on companies to get women as board chairs in the largest companies with major state ownership, e.g., Telenor (a telecommunication company) and DnB (a bank).

Corporate Boards and Governance Structures

Norwegian companies have a governance structure that is more complex than in many other countries. One reason for this complexity is the Norwegian tradition of co-determination and the existence of the corporate assembly. Co-determination in corporate governance is typically related to board members being elected by employees. In general, the Norwegian corporate structure is built on four distinct levels of governance:

- the shareholders' meeting/general meeting;
- the corporate assembly (co-determination body);
- the board (supervisory body);
- the CEO (executive body).

The shareholders' meeting/general meeting is normally the corporate body that represents the interest of the shareholders. Through the general meeting shareholders have the authority to elect the majority of the members of the corporate assembly. The employees may generally elect one-third of the members. The corporate assembly has a long tradition in Norway, and it generally has three main tasks: electing board members, representing the core stakeholders (including shareholders, employees, and other important stakeholders), and electing board members. The election of board members is done by the corporate assembly. There are, however, only about 20 corporations in Norway that have a corporate assembly, and its future is disputed. There are various reasons for why many companies have chosen not to have a corporate assembly. These reasons include international adaptions, a reduction of bureaucracy, and an increase in shareholder supremacy philosophy. There are important

corporate governance actors that see the corporate assembly as an unnecessary formal body, while others do not see the importance of the voice of employees. Corporations have thus gained some freedom to choose to have a corporate assembly. Active shareholders often want to have more direct control of the company. If a corporate assembly does not exist, the general meeting will then, according to the Norwegian company acts, directly elect the majority of the board members.

Co-determination is an important part of the Norwegian corporate governance model—see, for example, Hagen and Huse (2007). The Norwegian Company Acts state that in the case of both PLCs and LTDs, employees elect one board member if the company has more than 30 employees and one-third of the members if the company has more than 50 employees. These regulations are formulated in the acts about PLCs and LTDs (see Lovdata 2015). The election is by and among all employees, and all board members are formally supposed to represent the company rather any particular stakeholder group. The board of directors has the highest decision-making authority in the company, but the Norwegian corporate governance system is based on a compulsory delegation of executive charges from the board to an executive body which is in charge of daily management. The executive body can be compared to an executive board, but in most cases it consists, as in France and the other Scandinavian countries, only of the CEO. The Norwegian boards can thus formally be compared to the supervisory boards in Continental Europe, while the CEOs' charges can be compared to those of executive boards. CEOs may also be a board member in Norway, but in practice CEOs in Norwegian PLCs are almost never members of the board of the same company. Norwegian boards of PLCs have an average of between six and eight members.

Employee Participation and Co-determination

Employee-elected board members are a part of the industrial relations system in Norway. This dates back to 1935 when the Basic Agreement was concluded between the main employee federation (LO) and the main employers' federation (NAF/NHO)—see, e.g., Basic Agreement

2014–2017 (NHO 2014). This agreement laid down collaboration rules, including the rights to collective agreement at the workplace, the rights to strike and the labour peace guarantee, the rights to elect shop stewards, etc. (Hagen and Huse 2007, p. 162). This collective (basic) agreement has been considered the foundation of Norwegian working life. The notion of what corporations in reality are, and that employee participation and co-determination are important tools in business development, may be traced back to the first collective (basic) agreement.

The Norwegian company acts make it possible for a company to enter into an agreement with its employees to not have a corporate assembly. In return, the employees are given a greater representation on the board. In these circumstances, the majority of the duties of the corporate assembly are transferred to the board of directors. The experiences with employee-elected board members vary. In some companies, they make significant contributions to company value creation. They will most often have a better understanding and knowledge of the activities of the company, company resources, and the employees, but in many companies, the potential in the employee-elected board members is not properly utilised (Huse et al. 2009). Nevertheless, due to corporate governance strategising and power relations, in many cases employee-elected board members are not fully included in board decision-making and activities even though they have the same charge and responsibility as the shareholder elected board members, that is, to make decisions in the best interest of the company.

Over the last decades, we have experienced an increased focus on corporate governance in Norway. What has been the main reason for the increased board attention and development in Norway? It is not only the development of Corporate Governance Codes—these efforts may even have negative effects on some of the value-creating potential of boards—but possibly even more the discussion about women directors. The requirements and discussions have led to consideration about the qualifications of board members, and the introduction of women has led to the revitalisation of effective board practices.

The Gender Quota Law

As illustrated in the introduction of this chapter, in 2002, the Norwegian Minister of Trade and Industry announced the suggestion of a law that would require a gender balance of a minimum of 40% of each sex on boards in Norwegian PLCs. As stated earlier, the law was ratified by the Parliament (Stortinget) in 2003 and was implemented in January 2006 with a two-year grace period that ended in January 2008. Valgerd Svarstad Haugland, the previous Minister of Equality and Family, had sent out a law proposal hearing years prior to this regarding a 25% quota on boards in both private and public limited companies (Odelstingsproposisjon 97 2002–2003). Her initiative was followed up by Prime Minister Kjell Magne Bondevik in his second cabinet. Laila Dåvøy, the new Minister of Children and Family, and Ansgar Gabrielsen, the Minister of Trade and Industry, were given the task to collaborate on developing this further. Mr Gabrielsen announced the law in 2002, and on 13 June 2003, it was agreed that Norwegian companies within two years should have a gender balance (40% rule) on their boards. The proposed law was intended to be applied to all state enterprises, state-owned companies, and PLCs. The ratio of WoB in PLCs was only around 8% at that point, compared with more than 45% in the state enterprises. The law for PLC boards was controversial and heavily opposed and debated, in particular, among key actors from the business sector, including the Confederation of Norwegian Enterprise (NHO) who also reacted negatively to the proposal of the law. As a result, it was decided that there would be a proposal of a "sunset law"—a law that should never rise. The NHO established resources and created the Female Future Programme to make the Norwegian PLCs reach these requirements before a law was ratified by training and preparing women for board roles ("fixing the women").[7] The voluntary compliance was to be evaluated by 1 July 2005. At that time, the annual general shareholders' meetings including the selection of board members should have already taken place. The evaluations used figures from the public Norwegian Company Register (Foretaksregisteret), but the results of the registrations of new board data would not be finalised until approximately 15 August. The requirement were not reached by 2005,

and the law was consequently proposed again and implemented in January 2006 with a two-year grace period.

The Norwegian discussions about why and how to increase the number of women on corporate boards can be traced back more than 30 years. Several initiatives and innovations have been made to increase the number of women on boards and to achieve gender diversity in power positions in society. In Norway, policies were, as discussed earlier, introduced to increase women's representation in the public bureaucracy, governmental committees, and on the board in state-owned enterprises. Several political parties also made a commitment (in the nature of voluntary quotas) to have women in leadership positions, resulting in a relatively large ratio of women in top political positions in Norway. Yet, despite these initiatives, the share of WoB and in senior positions in the private sector have remained low, indicating a glass ceiling in the private sector. It is evident that various specific initiatives and programmes were also considered and developed over the last 30 years to increase the share of WoB. They included political discussions, the development of women's networks, the financing and dissemination of research, courses, and education for preparing women to board work, mentorship programmes, and data registers of board-ready women. Suggestions for making requirements about the number of women directors through soft as well as hard policies were also promoted. The different initiatives and share of women on boards in the period 1990–2008 are illustrated in Fig. 2.1 (building on earlier work of Huse 2011).

Figure 2.1 illustrates the development of different initiatives and their effectiveness by looking at the percentage of WoB. It is evident that the percentage was almost constant at a rate of near to 5% from 1990 to 2002. However, in the period from 2002 to 2008, there was a vast increase—from about 6% to 40%. This increase is a direct effect of the introduction of the gender quota law. Hence, while many initiatives have taken place since the early 1990s, little increase occurred until the quota law was introduced with sanctions for non-compliance. The enforcement of the law began at the beginning of 2008, but by then all PLCs (with very few exceptions) had met the requirement of at least 40% of each gender. The quota law in Norway definitely achieved what other initiatives failed to

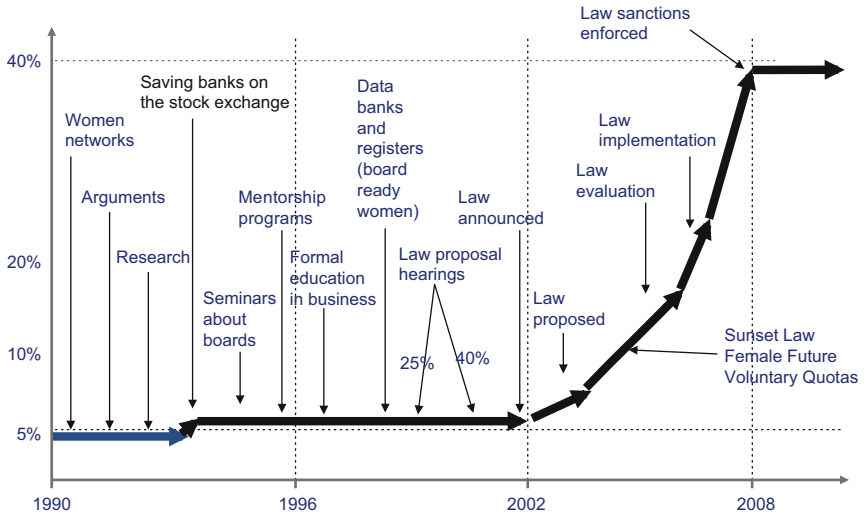

Fig. 2.1 Percentage of women on PLC boards and different initiatives and events in Norway

achieve, and as long as the law exists (with strong penalties for non-compliance), the percentage of WoB will not drop far below 40%.

Reflections on the Gender Balance Law: Ten Years After the Introduction

As the law was implemented in Norway about a decade ago, it is possible to comment on some important changes and effects that have been brought about by the law. There is now a voluminous multidisciplinary body of literature investigating the effect of the introduction of the gender quota law in Norway. In this section, we will present some of the key findings that we consider to be the most important.

Narrow Compliance

It is evident that after the law was fully implemented in 2008, PLC boards complied with the law. Nevertheless, there was a need for penalties

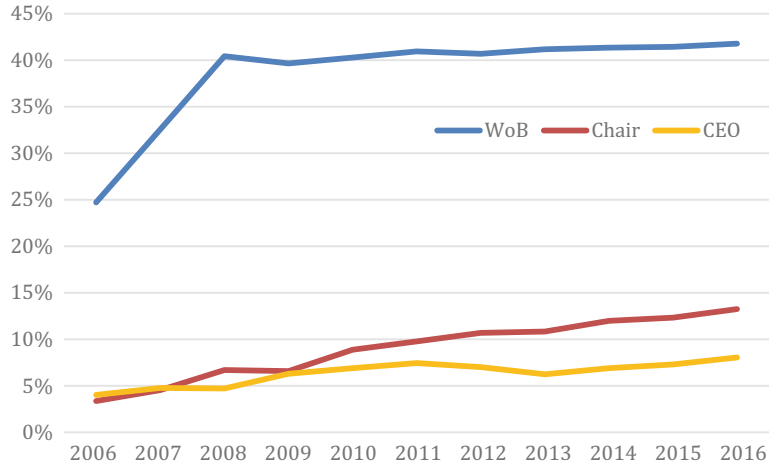

Fig. 2.2 Percentage of women on PLC board in chair and CEO positions

for non-compliance, PLC boards did not increase the share of women sufficiently during the "voluntary" period. In addition, the share of women has, since 2008, not increased beyond the required minimum. An ongoing research project by Seierstad et al. (2017b) is investigating changes on boards in the period post-introduction of the quota law. Their findings indicate that the share of WoB is still around 40%, leading them to question whether the quota target has become the new ceiling. Moreover, research indicates that there has only been a modest increase of women in chair and CEO positions, and hence, the effects and changes beyond the boardroom has been modest (Fig. 2.2).

Decline of PLCs

A factor that has received attention after the introduction of the quota law in Norway is the reduction of PLC companies. When the law was suggested in 2002, the number of PLCs were around 650. In 2006, there were around 450 PLCs, and, by 2016, this was reduced to around 200 PLCs. There are several reasons behind this reduced number of PLCs in Norway, and the gender quota law is one of them. While Bøhren and

Staubo (2014) claim that the introduction of the quota law was a key reason for PLCs re-registering to LTD, Heidenreich and Storvik (2010) argue that while 31 of the companies in their study mentioned the quota law as one reason for re-registering, only 7% of the companies listed the quota law as the only reason. Nevertheless, it is evident that some investors did not want to follow a law reducing their freedom to choose the board members, and this argument has been highlighted in the public debates. Moreover, Seierstad et al. (2017b) found, by analysing the gender balance on boards that changed form from PLC to LTD between 2006 and 2016, that the share of women among this group has actually decreased from 20% in 2006 to 15% in 2016. This is indicating little support of the law or the business case arguments presented for increasing the presence of women on boards.

Recruitment Procedure: Criteria Widening

An interesting factor in the debate leading up to the introduction of the quota law in Norway is related to whether or not there was enough qualified women interested in being directors. In particular, there was a discussion about "how to find the women". Heidenreich (2010, 2013) investigated the characteristics of male and female directors and found that women have, on average, a higher formal education than their male counterparts. Heidenreich further investigated the recruitment procedure to PLC boards after the introduction of the law. She explored whether the recruitment process for board positions has changed following the introduction of the quota law and to what extent there are gender differences in this process. Her findings indicate that after the introduction of the law, women have not been recruited through family ties, databases, or headhunters; instead, they have been recruited in the same way as men—through professional networks. In particular, this involves a more systematic search within the networks for directors, indicating that a wider pool of candidates is now utilised by boards. An interesting question has been raised after the introduction of the law: Why were these women not given board positions prior to the law (Seierstad 2016)?

Who Are the Women?

In the period after the introduction of the law, several studies have investigated changes among the group of directors, and we observed an increase of women having multiple directorships. By focusing on prominence (directors having more than one directorships), Seierstad and Opsahl (2011) found that there have been changes in terms of gender among the group of directors. In 2002, seven of the 91 prominent directors were women. Shortly after the end of the implementation period, in 2009, the group of prominent directors were balanced with 107 women and 117 men having multiple directorships. By redefining prominence as having a minimum of three directorships (in PLC), they found that the share of women increased to 61.4, hence more women than men had three or more PLC directorships in 2009. Looking at the small group of directors having seven or more directorships, Seierstad and Opsahl (2011) found that all were women. Hence, their study found that a consequence of the law has been the increase of women among the group of prominent directors; also, the larger the prominence, the higher the share of women. This small group of women has been referred to as the "golden skirts". There has been a lot of interest both in the media and among academics regarding the "golden skirts". Huse (2011) investigated the characteristics of the "golden skirts" and identified four key clusters of well-educated and qualified women entering the boardroom. These include the following:

- younger women with experience from consultancy, well-educated, highly knowledgeable, and with supporting mentors;
- highly experienced businesswomen without non-executive experience actively seeking directorships;
- women with broad experience from national and international politics;
- experienced women with past pre-law broad experience, both executive and non-executive.

Nevertheless, research (e.g., Seierstad et al. 2017b) indicate that we have seen a reduction of "golden skirts" over the last couple of years, and

this consequently seems to be an immediate and temporary pattern only.

Company Performance. The Effects and the Need Look Beyond the Narrow Understanding of the Business Case

In the period after the introduction of the gender quota law in Norway, there has been a wide range of quantitative studies that have focused on different aspects of financial performance who are either "(re)producing or challenging the business case" (Seierstad 2016, p. 399). The widely cited work of Ahern and Dittmar (2012) found, by investigating the 248 PLC listed companies from 2001 to 2009, that as the share of women increased on the boards, Norwegian PLC companies lost market value, their boards became younger with less experienced directors, and there was a deterioration in operating performance. The conclusions from Ahern and Dittmar's study are mainly based on reactions in the capital markets to the appointment of women and not on the performance of women as board members. By comparing the financial data of PLCs in Norway with a sample of unlisted firms and firms in Scandinavia, Matsa and Miller (2013) found that there was a decline in corporate profitability after the introduction of the quota law. In a similar vein, Bøhren and Staubo (2016) found that in addition to reduced firm value, there was an increase in board members' independence in the period after the introduction of the quota law in Norway. Nevertheless, these effects—as well as the studies investigating them—have been challenged. In fact, Ferreira (2015) evaluate two of the most highly cited papers in the field—Ahern and Dittmar (2012) and Matsa and Miller (2013)—and put forward the argument that "there are too many problems with the 'causal' evidence on the effect of quotas on performance. It's fair to say that we don't really know whether and how quotas affect the financial performance of firms" (110). This leads Ferreira to conclude that, in general, within the field of literature that have investigated the effects of quotas, the results are mixed. In fact, Ferreira (2015, p. 110) concludes that "current research does not really support a business case for board gender quotas. But it does not provide a case against quotas either...". Hence, it might be valuable to

broaden the discussion about WoB and the effects in Norway beyond the narrow focus on the business case and rather look at wider consequences for society and individuals to really capture changes and effects.

Several studies (e.g., Huse 2014; Seierstad 2016) have criticised the narrow and short-term focus on the business-case-dominated WoB research, arguing that the business case for WoB cannot properly be understood without defining value creation and understanding the characteristics of the actual board members, their identities, and the dynamics inside the boardroom. Moreover, it is also important to understand the lagged effects between the appointment of the women board members and the board and company performance as well as the wider effects beyond the boardroom.

Critical Actors and Enabling and Hindering Forces

Several authors, including Mandel and Semyonov (2006) and Melkas and Anker (1997), have identified a paradox: while Norway (and the Scandinavian countries) facilitate women's access into the labour market, they have been proportionally underrepresented in the most senior and powerful positions, especially in the private sector. The paradox of comprehensive social democratic welfare initiatives, a substantive Equality Act, and a very high position in the equality rankings while also exhibiting a strong pattern of vertical sex segregation was important in the Norwegian debate, leading up to the introduction of the gender quota law. Outlining factors and enabling and/or hindering forces are important for understanding the introduction of quotas (or other strategies) on boards and is often done by pointing to institutional factors. Terjesen et al. (2015) argue that there are three institutional factors that are important enabling factors for introducing quotas. These three enabling factors are female labour market and gendered welfare provisions, left-leaning political government coalitions, and path-dependent policy initiatives for gender equality. In the case of Norway, we see that these enabling factors were to

a large extent in place in the period leading up to the introduction of the quota law.

Seierstad et al. (2017a) argue that in addition to institutional factors, understanding political games, politicking, and the role of actors is also important for understanding strategies and initiatives in various countries. Building on the work of Krook (2007), Seierstad et al. (2017a) argue that in order to understand the introduction of quotas (or other strategies), there are often important actors at civil society, business, state, and international/transnational levels involved in the process. Moreover, they argue that the actors and motivations vary between (and within) countries. In the case of Norway, there was a wide range of actors involved in the process leading up to the introduction of the gender-balance law (Seierstad et al. 2017a).

The law in Norway was introduced before WoB was a debate at the EU/European level. Nevertheless, as mentioned earlier in this chapter, Norway has close similarities and ties with the other Scandinavian countries. Sweden had a similar debate about quotas in the late 1990s early 2000s, and the Swedish debate fuelled the Norwegian debate and eventual introduction. At the business/corporate level in Norway, actors were mainly working to increase the share of WoB, such as illustrated in Fig. 2.1 by introducing different events and training courses ("fixing the women"), and not supporting the use of quotas but providing a business case for increasing the share of WoB. In fact, in the corporate world, we observed the highest resilience to the introduction of the law in Norway. At the state level, most political parties and leaders were supporting the law and they have, in that respect, been very important. Rationales used within politics have focused on both justice and utility logics, but the law was eventually introduced based around utility and the business case for diversity. Civil society actors were highly important in pushing for the law in Norway. In particular, individual politicians, civil servants, etc. have been key, and the majority of these actors relied on justice logic and feminist values. We will in this section highlight and discuss the role of some of the core actors in greater detail as we consider these to be key for the introduction of the law.

The conservative Norwegian Minister of Trade and Industry, Ansgar Gabrielsen, has been presented as the most critical actor behind the

Norwegian quota law (Dysthe 2013). Gabrielsen definitely played an important instrumental role in the political game leading to the introduction of the law. However, there were many champions and important actors on the political arena working for a law to increase the share of WoB. Valgerd Svarstad Haugland (previous leader of the Christian Democratic Party and Minister of Children and Families) and Kjell Magne Bondevik (previous prime minister) were presented as the "grandparents of the law", while Laila Dåvøy (previous Minister of Children and Families) and Ansgar Gabrielsen (previous Minister of Trade and Industry) were labelled the "parents of the law" (Machold et al. 2013). Karita Bekkemellem was the person that formally introduced the gender balance law as the Minister of Children and Equality in 2005 and was also important in the process leading up to the introduction.

Kjell Magne Bondevik was prime minister in two separate periods: 1997–2000 and 2001–2005. The Bondevik I Cabinet was a centre coalition (comprising the Christian Democratic Party, the Centre Party, and the Liberal Party), while the Bondevik II Cabinet was a centre-right coalition (consisting the Christian Democratic Party, the Conservative Party, and the Liberal Party). Karita Bekkemellem from the Labour Party was Minister of Children and Equality 2000–2001 and 2005–2007 during the Stoltenberg I (Labour) and Stoltenberg II (the Labour Party, the Socialist Left Party, and the Centre Party) Cabinets.

Both Svarstad Haugland during the Bondevik I Cabinet and Bekkemellem during the Stoltenberg I Cabinet had sent out public hearings about quota law proposals, and they both prepared quota regulations. The background and results of the hearings are presented in Odelstingsproposisjon 97 (2002–2003). Both the Christian Democratic Party and the Labour Party, including the prime ministers from both parties, were positive to a quota law. However, they encountered strong opposition from the Progress Party (FRP) and, to a certain extent, from the Conservative Party and Norwegian industry with NHO (the Federation of Norwegian Enterprise) in the forefront. The political dynamics thus changed as it was the Bondevik II Cabinet Minister of Trade and Industry from the Conservative Party that made the gender balance law his crusade. It is evident how, in the case of Norway, a wide range of both politicians and political parties were heavily involved in the process

leading up to the introduction of the law. In fact, the only political party that did not provide support to the law was the Progress Party (Fremskrittspartiet).

However, while political parties and individual people in politics were publicly visible, there were also many other core actors behind the law. The Norwegian tradition of state feminism and quotas in the public sector and political parties were important, and several women and women associations were pressing for change. Their efforts were supported by research and researchers. Even NHO had women in leading positions that strongly promoted getting more women on corporate boards, and various programmes to reach this objective were developed. The state-owned development organisation Innovation Norway and the National Association of Directors (StyreAkademiet) placed it on their agenda at the end of the 1990s to get more women on boards, and, despite some negative reactions from Norwegian industry, the hearings sent out by Svarstad Haugland in 1999 and Bekkemellem in 2001 received considerable support.

The civil servants in the Ministry of Children and Family Affairs, and particularly its director general Arni Hole, had considerable impact in orchestrating the politics and process behind the quota law. She was several steps ahead of the politicians in pushing the quota agenda (Dåvøy 2013, p. 17). Arni Hole was also the main architect behind the implementation of the law, but initiatives from various other actors were important.

Female Future was the programme developed by NHO to respond to the law—both to avoid it and to fulfil it. Training programmes were developed by BI Norwegian Business School and Innovation Norway (Standal 2013). Elin Hurvenes and Turid Solvang established the Professional Board Forum as a tool to pair the demand and supply side of women for boards (Hurvenes 2013). Center for Corporate Diversity (CCD), along with Marit Hoel, was commissioned by the Ministry of Trade and Industry in 2004 to analyse the PLCs under the quota law, and CCD published the following year's detailed numbers about women on boards—they also compared figures with the other Scandinavian countries (Hoel 2008, p. 84). Since 2013 Mari Teigen and the Centre for Research on Gender Equality (CORE) has followed the long-term

consequences of the women quota law on behalf of the Ministry of Children, Equality and Inclusion (Teigen 2015).

Today, the quota law is generally accepted in business and in politics in Norway. There are, however, some exceptions. Some criticism of the law has been raised in relation to the lack of spillover effects. The increase in the number of women being board chairs and women being CEOs is insignificant, and the number of women being board members in LTDs have by far not followed the increase in women on boards in PLCs.

Reflection from an Actor

Valgerd Svarstad Haugland

Valgerd Svarstad Haugland, a previous politician with the Christian Democratic Party and the Minister of Children and Family Affairs (1997–2001) and Minister of Culture and Church Affairs (2001–2005), was one of the most important actors that worked for the gender quota law to be introduced in Norway. During her time in the former role, the Gender Equality Act was evaluated, and there was a debate as to whether there should be an amendment to the Equality Act with regulations for PLC boards. "For me, I have seen and experienced that gender balance has been important in politics and in politics we have quotas. To me, it was a good idea to introduce quotas in the private sector as well. The private sector and the NHO (Confederation of Norwegian Enterprise) was against the idea, they had for a long time claimed to be able to do this by themselves. After years of claiming this, with nothing to show for, I believed it was time for a change and using the quota tool in the private sector setting as well."

For Valgerd Svarstad Haugland, a wide range of arguments and rationales were important in her work for increasing the share of WoB and using quotas as a tool. "I believe equality and a fair society is important. Norway is proud of their work, history and ranking of equality. In addition, it makes sense. Women are half of the population and possess half of the intelligence and competencies. We need multiple voices and we need them in the private sector as well."

In Norway, the discussion of gender balance and quotas on boards was originally an equality discussion. Nevertheless, when introduced, it was from the Minister of Trade and Industry, and it became an amendment to the Company Act. At the time of the suggestion of the law in 2002 Valgerd Svarstad Haugland was neither the Minister of Trade and Industry nor the Minister of Equality. This indicates an important point. In the case of Norway, the introduction of the law received support from a wide range of politicians and political parties from the time of first discussions and hearings to the final proposal and introduction of the law. In fact, only two political parties were against the use of quotas for boards. One of these was, ironically, the Conservative Party, the party of Ansgar Gabrielsen, who was the Minister that proposed the law in 2002. "When Ansgar proposed the law, The Conservative Party were taken off guard. We had a meeting with the Government shortly after he proposed the law, several of his colleagues were sceptical to say the least... I was thrilled. I was the Minister for Culture and Church Affairs at this point and his bold move saved the law. The fact that Ansgar proposed the law without official support from the Conservative Party was important and brave. If he did not do so, there is a big chance the law would not have happened. The law had great support in the Christian Democratic Party and also the Labour Party, but in the Conservative Party the use of quotas for board positions was controversial. Ansgar did not do the "leg work" in terms of preparation and hearings of the law, but his role was, in addition to Laila Dåvøy (the Minister of Children and Equality) and others crucial, and I am very grateful and happy for that, the result was a much needed law. Ansgar got a lot of publicity after the law and that is ok, for me the most important is that the law was introduced, not to get the credit."

In 2016, 14 years after the law was suggested and ten years after it was introduced, it is time to reflect on the effects. "What we have seen is that we are no longer just recruiting men for board positions, the gender balance on boards is achieved. We have put in place initiatives related to increasing the share of women, made lists/ business registers where potential directors are listed—that is good. In addition, it is now more diversity in terms of background and experience in the boardroom. Looking at women in executive positions on the other hand, the change

is slow and I would have hoped we had, by now, also increased the share of women in executive and CEO positions."

To what extent there is a need for further strategies to increase the share of women in senior positions is unclear. "To introduce quotas for boards worked, we had the mandate to do so. To introduce quotas for executive/chair/CEO positions on the other hand is problematic. Nevertheless, there is a time and place for an assessment/evaluation of the law. When this happens, I believe it will be crucial to put a focus on what we didn't achieve which is an increase of women beyond the boardroom. Whether or not we will see more regulations beyond the boardroom is unsure and I am not sure this is desirable, but to evaluate the law and the effects and to continue to put the lack of women in senior positions and equality on the agenda is essential."

Concluding Remarks

In this chapter, we set out to discuss the introduction of the quota law for board positions in Norway and some of the consequences and lessons learned a decade after its introduction. We have commented on the law's "fit" with its contextual setting and discussed the process and the way in which the law was introduced. In addition, we have used a wide range of studies from the case of Norway to comment on the experience.

We argue that the law is, to a certain extent, in line with the history of equality and the use of policies in the labour market. Yet the law marked an important shift by introducing quotas also in the private sector, an area which was until 2003 not affected by radical strategies from the national level.

It is evident that institutional factors (such as the ones identified by Terjesen et al. 2015) were important enabling forces in Norway. Moreover, the importance of key actors should not be underestimated. Many actors, especially women politicians and civil servants, were important. Multiple politicians and political parties were involved, and this was also visible in terms of differences in how the law and issue was discussed. This ranged from justice and fairness to utility and the business case. Moreover, we acknowledge the importance of Ansgar Gabrielsen in the final stage of getting the law introduced. Although several female politicians did the

majority of work behind the scenes, the fact that the law was eventually introduced by a male—a conservative Minister of Trade and Industry introducing amendments to the Public Limited Companies Act—was important for the (reluctant) acceptance in the private sector. Hence, his role as the "champion of the law" was important. In the case of Norway, we now see broad support for the law from a wide range of actors, and today, it is widely accepted in politics and business.

A decade after the law's introduction, it is possible to comment on some of its (early) effects. The law is seen as being a success as it did make boards more balanced. Nevertheless, the results of creating more diversity (or equality) beyond the boardroom is more unclear. Ellingsæther (2013, p. 514) found that there has actually been a change over the last few years with Norway moving from the group of "highly segregated" to "moderately segregated" countries and that this is to a large extent due to an increase in the share of women in senior management and board positions after the introduction of the quota law.

There are a wide range of studies that have investigated different aspects, changes and consequences of the Norwegian gender balance law. Nevertheless, the results and effects are mixed, and we argue that it is still early in terms of really understanding changes both for WoB, diversity on boards, and the wider consequences beyond the boardroom as well as boardroom dynamics. Hence, there is a need for further studies within the field to really capture the effects, changes and lessons learned. Nevertheless, perhaps the most important effect of the quota law in Norway today has been the effect beyond the Norwegian border. We argue that if the law had not been introduced in Norway, we would most likely not have seen the trend we observe in Europe (and beyond), in which the use of quotas and targets has become natural in the diversity discussions at both political and organisational levels.

Notes

1. In the rest of this chapter we shall refer to the legal requirements as the quota law. Formally, they were an adjustment to an existing law.

2. There are three Scandinavian countries: Norway, Sweden and Denmark. The Nordic countries includes the Scandinavian countries as well as Finland and Iceland.
3. Among people between 20 and 64 years of age.
4. The main difference between a private limited companies (LTD—AS in Norwegian) and public limited companies (PLC—ASA in Norwegian) is that the boards in LTDs must approve the sales of shares, whereas this is not required in PLCs. Companies listed on stock exchanges thus cannot be LTDs. There are thus also stronger requirements about public information in PLCs than in LTDs.
5. The present version can be downloaded at https://www.oslobors.no/ob_eng/Oslo-Boers/Listing/Shares-equity-certificates-and-rights-to-shares/Oslo-Boers-and-Oslo-Axess/Corporate-governance-CG/The-Norwegian-Code-of-Practice-for-Corporate-Governance
6. The responsibility for the various state enterprises rests generally with the various functional ministries, direct state share ownership rests generally with the Ministry of Trade, Industry, and Fisheries, the responsibility for the Government Pension Fund—Norway rests with the Ministry of Finance, and the responsibility for Government Pension Fund—Global rests with the Norwegian Central Bank.
7. Female Future is a programme held by the NHO—Confederation of Norwegian Enterprise (the main representative body for Norwegian employers). The main goal of the Female Future programme is to mobilise female talents into leadership positions and boardrooms ("The Confederation of Norwegian Enterprise: Female Future." http://www.nho.no/ff).

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3

Gender Diversity on Boards in Spain: A Non-mandatory Quota

Patricia Gabaldon and Daniela Giménez

Introduction

In 2007 Spain became the first country within the European Union to introduce a gender quota law. This law suggested that private and/or listed companies should have at least 40% of their boards of directors composed by women by 2015. Even though this quota was not mandatory and there were no legal sanctions for non-compliance, the law allowed a positive recognition and other rewarding aspects for those companies fulfilling the quota, as they would receive preferred treatment with regard to government contracts. At the time of the law's introduction, among the listed companies, the average number of women on boards was only 2%, as few

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as ten women of 478 board members in 35 companies. The Equality Act's goal was not fulfilled, and even at the time of writing, in 2016, the presence of women on boards has stagnated at around 20%; yet we cannot deny that there has been an improvement in numbers since 2007.

Although the Equality Act from 2007 is still valid, from 2013 the government adopted a new approach. This new strategy offered companies support to implement tailored strategies to increase the number of women on their boards. Moreover, the new Corporate Governance Code for listed companies, launched in 2015, recommended a share of at least 30% of women on boards, a goal that was to be achieved before 2020. In the meantime, other countries within the European Union, such as France or Germany, incorporated more restrictive regulations to incorporate women on boards and even the European Commission debated the adoption of a similar regulation. In this chapter, we will see how Spain, despite its relative increase in women's representation on boards, still has a long way to go in terms of achieving gender equality on boards.

The chapter is structured as follows: we first provide a general overview of the economic situation and the Spanish labour market. After that, the next sections focus on the country's corporate governance regulations. Subsequently, we outline a description of the current situation of women on boards as well as the assessment of public policies promoting the nomination of women to boards. We follow with an analysis of the different actors, and enabling and hindering forces for gender quotas and the chapter finishes with a critical reflection on the case and an actor's point of view.

General Background: The Spanish Economy and Women in the Workplace

The country of Spain is located in the South of Europe, sharing a peninsula with Portugal and surrounded by the Mediterranean Sea and the North Atlantic Ocean. On a landmass of around 500,000 km^2, around 46.4 million inhabitants live in the country. Though a very old country with a long and important history, Spain is also one of the youngest European democracies. The country was under the dictatorship

of General Franco until 1975. Since that date, Spain established a representative monarchy, where two parties, the socialist (PSOE—Partido Socialista Español) and the conservative (PP—Partido Popular), have been alternating in government (De Cortazar and Vesga 2009). Since 2012, the recession, coupled with several corruption scandals, have brought new parties into the political limelight.

The present-day Spanish Constitution, introduced in 1978, represents the framework for the political system. The main fundamentals of the Spanish institutional system are the acknowledgement and protection of the democratic grounds of a social market economy, where citizens' rights are preserved to maintain and foster equality, the absence of discrimination, freedom of ideology, religion, sexual orientation, meeting, association, political, and corporate, to name just a few. Spain is a parliamentary constitutional monarchy (Gobierno de España 2004). Since his accession in June 2014, King Felipe VI has been the head of state and since December 2011, the head of government (president of the government or acting prime minister) has been Mariano Rajoy, of the PP.

Spain is structured into 17 autonomous regions that are organised in a federal system. This implies that the central government gives a certain degree of independence to these regions in the provision of some public services, such as health or education. Corporate regulations and laws have a national orientation and are defined by the central government (Gobierno de España 2004). In line with this, the country offers a high welfare coverage via social democratic capitalism (Rhodes 1996).

The Spanish Economy

The standard of living in Spain has increased substantially since the 1970s: in constant terms, the GDP per capita has risen from $14,228 in 1975 to $24,220 in 2014 (World Bank 2015). In 2015, Spain had the world's 13th largest GDP, with approx. €1.19 billion. One of the main reasons behind this growth is the integration of Spain in the European Community in 1986 and subsequently, in 2002, into the European Monetary Union, and its adoption of the euro as its official currency. Being part of the EU has secured for Spain growth, trade and also stability.

Tourism is currently the country's most important industry, producing around 11% of Spanish GDP. Tourism was also one of the first sectors to recover from the recession, due to the benefits of weather, location and political stability. Car manufacturing is also an important contributor to Spain's GDP, contributing 10% of total GDP and close to 20% of national exports. Construction has been the most affected industry hit by the recession yet it still represents 5% of total national production.

Since 1992 the Spanish GDP has grown constantly year on year, reaching levels of growth of 5.29% in the year 2000. In 2008, following sixteen years of constant growth, the economic crisis had a deep impact on Spain. In 2014, Spanish GDP started to recover slowly (an increase from −1.34% GDP in 2013 to 1.66% in 2014). This recession had its roots in different causes, namely credit contraction by the banking sector, fiscal austerity, and, consequently, low levels of both household consumption and investment (Banco de España 2015).

This breakdown has been accompanied by very high unemployment rates. In 2007, unemployment rates were reaching a historic low of 8.4%, however since then and up to 2015, unemployment has continued to increase, reaching its maximum of 26.3% in 2013. In 2007, barely 20% of the unemployed were considered to be long-term jobless and this rate reached a peak of 50% in 2013. Having fewer people contributing to the social security system in conjunction with restrictive fiscal policies caused the Spanish welfare state to fall into serious debt. In economic and social terms this also represented a rise in income inequality; the Gini coefficient moved from 32.5 in 2005 to 35.9 in 2012 (against an EU27 average is 30.7).

Since 2014, the Spanish economy has been back on track and in 2016 was the fastest growing economy in the European Union. Exports and the touristic sector together with increasing labour productivity, lower labour costs, and a very expansionary monetary policy by the European Central Bank have positively influenced the Spanish recovery.

Women in the Workplace

Nowadays, the Spanish population is relatively gender equal in numbers, showing no significant difference in the formal education between men and women (Cebrian López and Moreno Raymundo 2008; Fernández et al. 2011). Indeed, gender equality in Spain, according to the gender gap index by the World Economic Forum is 0.73 in 2015, positions Spain as the 29th country in the ranking of most equal countries. The same index in 2007 was higher (0.74) due to the importance of gender equality in the political arena (see Meier et al. 2005). The considerable drop in the list happened in 2012 when a new conservative party entered power and the presence of women among policy makers was reduced (World Economic Forum 2015).

According to the Eurostat data, the gender pay gap in Spain was 16.7% in 2007 and only slightly reduced to 14.9% in 2014. Therefore, Spain shows a lower gender pay gap than the European Union average that reached 17.2% in 2007 (respectively 16.7% in 2014). However, when it comes to the labour market, the labour force participation rate of men and women in Spain although converging, still offers an observable gap (Davia and Legazpe 2013). The female labour participation rate is 53.67%, while male is 65.83% in 2014, according to the OECD data (OECD 2012). This gap of 12% used to be 35% back in 1990 (see Fig. 3.1). This difference is not that much reflected in salaries, as the gender pay gap between men and women is not that high −8.6%.[1] As references, this difference in Germany was 13.38% and 7.01% in Norway.

There are clear signs of horizontal segregation in the Spanish labour market (Campos-Soria and Ropero-García 2016; Ojeda and Gutiérrez 2012). In 2014, 89% of the working women were located mainly in the service sector (only 65% of men were in this sector). Women are still present in traditionally female-dominated sectors, mainly in retail and commerce (more than 55% of the total employment in the sector), health and social services (77%), education (65%) and real state (62%) (INE 2015).

The welfare coverage of maternity is still a burden for Spanish women. Maternity leave is composed of 112 days of fully paid salaries for mothers.

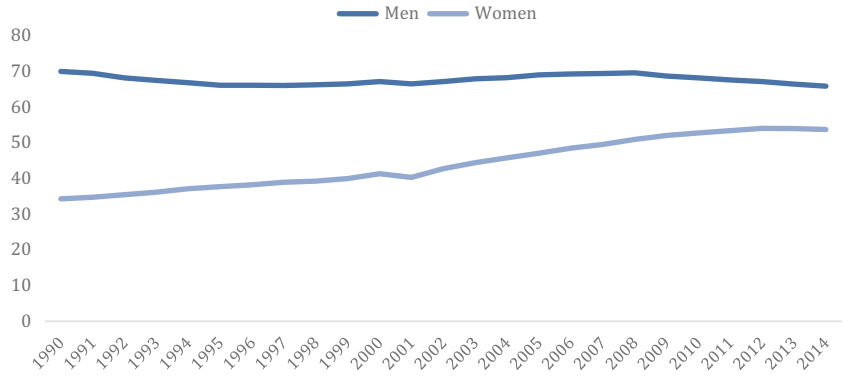

Fig. 3.1 Labour force participation rate by sex, 15–64 years old in Spain (*Source*: OECD data)

Of these, 42 days (six weeks) are not transferrable to the father. Although the remaining days are transferable, this sharing is hardly used by couples. Paternity leave was extended to four weeks since January the 1st 2017. Moreover, there is a limited public provision of childcare. The Spanish government spends 0.6% of the GDP on childcare of children under the age of kindergarten—three years (Eurostat 2016). The overall situation has not only affected the female labour market but also the size of families; the fertility rate in 2013 is 1.3 children per woman, the lowest in the Spanish history and lower than the European mean (1.5 children per woman).

There are also differences in the proportions of men and women reaching the top corporate positions. The presence of women in managerial positions has hovered at around 3% of the total female labour force since 2011, whereas the male ratio occupying these stood at around 5.6% in 2014. Among the corporate leaders, in 2013 only 9% were in executive positions in the top 35 listed companies (IBEX-35). When it comes to board members, merely 17% were women (Instituto de la Mujer 2016).

Unsurprisingly, unemployment was the biggest macroeconomic challenge faced by the Spanish economy (see Fig. 3.2). In 2013, not only were more than one in four labour force participants unemployed (unemployment rate was 26.3%), but so were more than half of the young people seeking employment. This dramatic situation affected female workers to a

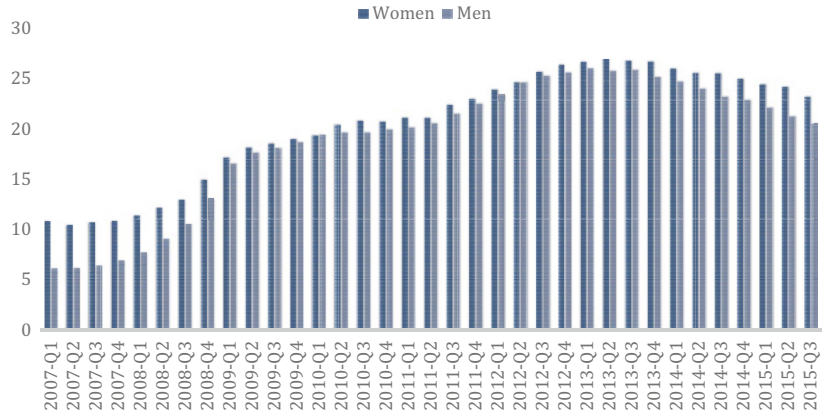

Fig. 3.2 Unemployment rate by sex in Spain (*Source*: OECD data)

higher extent than males. For example, in 2014, 26% of women were unemployed, while among men the figure was 23.7% (World Bank 2015). Yet, during the deepest times of the recession, between 2009 and 2013, these differences between male and female unemployment rates were less pronounced and rather similar. In 2015, the difference was again evident, and women faced an unemployment rate of 23.22%, while men faced a rate of 20.54%.

In the aftermath of the recession in 2014, high female unemployment rates were accompanied by a low level of women working part-time (23%), well below the EU-27s average of around 30%. In addition, women were receiving more temporal contracts (Ojeda and Gutiérrez 2012). Among all contracts offered to female workers, 24% of these contracts were temporal in 2014 (OECD 2016).

Spanish Corporate Governance

The Spanish legislation is based on civil law and a legal system of supporting the establishment of private companies, further codified in the 2010 Companies Law. The body in charge of dealing with corporate governance issues in listed companies is represented by the CNMV

(Comisión Nacional del Mercado de Valores). Accordingly, corporate governance rule in Spain is organised by a soft rule called the Code of Corporate Governance of Listed Companies approved in 2015 (CNMV 2015). This code includes the international standards and recommendations on good governance practices in corporate governance and also sets out national recommendations. These recommendations are voluntary, however, and intended to follow the principle of "comply or explain", that is, companies can decide whether or not to follow the recommendations but if they should not do so, they are obliged to account for this in their annual corporate governance report. Listed companies, in their annual corporate governance reports, should inform and explain not only practices, measures, and actions but also provide information with regard to the composition, director selection processes, independence, etc.

Spanish companies are embedded in the Anglo-American tradition of a one-tier board structure. The Board of directors can be independent, proprietary or executive and, according to the Corporate Governance Code, there should be a balance among the numbers of these on the board. Directors are considered internal or executives, or external such as representatives of proprietaries or independent with no links or relationships with the company. External directors complement and control firm strategies, actions, and processes. Internal directors are selected by the executive officers on the board based on their expertise and internal knowledge of the company.

Since there is only one board for supervisory and executive decisions, companies usually have an executive committee to deal with the more day-to-day operation of the firms. Creating this smaller version of the general board is a voluntary and sometimes informal decision in the company, as this "executive board" is a reduced version of the general board and, in practice, it needs to maintain full communication and information to the general board.

Nevertheless, it is mandatory for public companies to have two types of committees: the audit committee, and the nomination and remuneration committee, which each have to be chaired by an independent director. While the audit committee deals with the supervision of financial and auditing information, the nomination and remuneration committee considers the selection and appointment of directors. Directors' liability is

based on two duties: to act diligently (duty of care) and to act in the company's best interest (duty of loyalty) (Law 31/2014, New Text of the Corporate Law for better Corporate Governance).[2]

Board Composition and Board Members Selection

In the Code of Corporate Governance of Listed Companies 2015 is stated that general boards should have at least three members, which can be individuals representing shareholders or organisations. It is likewise recommended that boards have between 5 and 15 members, in order to maintain a balance between external and internal directors. According to this Code, one-third of the board should be independent. Shareholders form groups in order to be represented on the board by members in proportion to the percentage of share capital that each group holds.

The chair of the board has a key role within the board by calling meetings, setting the agenda and promoting as well as encouraging the participation of all directors in the company's decisions. In many cases, the CEO is also the board chairperson. In order to preserve independence in the board's decisions, a senior independent board member is commonly appointed to counterbalance power differences within the board, and by simultaneously complementing and supervising the chairperson's actions on the board. Directors of Spanish listed companies are appointed for a term of up to four years, and independent directors should not hold office for more than 12 years.

Boards need to have a majority of independent members in order to avoid moral hazard and to aim for intrinsic good decisions for the company. Therefore, independent directors are likely to be prestigious and recognised professionals with no previous links to either the company or its executives. Independent directors are expected to attend all meetings, as they are considered to be professional members of the board.

During the Code of Good Governance 2015, the Spanish Commission for the Stock Market (CNMV) has tried to strengthen transparency, in particular with reference to director's selection process (Recommendation 14). Even more, this code in the paragraph devoted to the selection of new member has a specific mention of gender: Director selection policy should

seek a balance of knowledge, experience and gender in the board's membership (Principle 10). The process needs to be detailed in a report by the nomination committee brought to the general assembly. The general assembly should ratify the process and the final decision taken by the board. And even after the selection, the criteria used needs to be reported in the annual report (Recommendation 19).

Women on Spanish Corporate Boards

Current National Public Policies for Women on Boards

The focus on gender equality and anti-discrimination have been on the agenda in Spain since the 1980s. The 1978 Spanish Constitution already states (Article 14) the right to equality and non-discrimination on the grounds of gender. However, it was not until the establishment of the Ministry for Equality and the introduction of the 2007 Equality Act (Gobierno de España 2007) that the lack of women in senior positions was really put on the agenda.

The 2007 Equality Act was implemented as one of the main proposals of the Jose Luis Rodriguez Zapatero' government agenda (from the Socialist Party). This law came from the brand new Ministry of Equality and was introduced by Bibiana Aido, also the youngest minister in the history of democratic Spain. During her time in office, additional legislation was introduced, including measures against gender-related violence (Lombardo and Leon 2015). The Ministry of Equality was the first in the history of Spain to advocate and aim to eliminate any kind of discrimination to citizens on the grounds of gender, race, ethnicity, religion, ideology, sexual orientation, age or any other condition, individual or social circumstance, as well as the eradication of violence against women. This ministry was one of the first to feel the effects of the restrictive fiscal policies of the crisis. Hence, the ministry was terminated in October 2010, a little more than two years after its foundation. The responsibilities of the ministry were subsequently absorbed under the umbrella of the Ministry of Health and Social Policy (Valiente 2013). The elimination of the Ministry of Gender Equality so early somehow had left the impression of their being no

consistent strategy on gender equality at the national level since this time (Verges and Lombardo 2015). In 2016, however, with a conservative party now in office, equality has now returned to the forefront of the political agenda, being part of the Ministry of Health, Social Policy and Equality.

Within the Equality Act of 2007, other legal approaches to promote gender equality in public entities were introduced. For instance, Article 60 states that at least 40% of the training seats for promotion rounds in the Public Administration must be reserved for women. In addition, Articles 52 and 53 aim to create a gender-equal presence among the members of the governing bodies of the General Administration of the State and of the public entities and tribunals and bodies of selection of the staff of the General Administration of the State. These articles have had an important impact, as they created a gender equal body of civil servants with 51% of women (Economista 2015).

Over the past decade or do, Spain has taken significant steps to leverage higher women/men ratios in business, with a particular dedication towards fostering their promotion into higher positions and boards. This includes legislation, incentives, support for private initiatives and public awareness. Among the most important initiatives, we can highlight the Unified Code for Corporate Governance in 2006 and 2015 and Article 65 in the Equality Act of March 2007.

In 2006, gender was first mentioned within the Corporate Governance Code. The 2006 Unified Code of Good Governance cited equality as its focal aim, as the recommendation no. 15 mentions accordingly: "when women directors are few or non-existent, the board should state the reasons for this situation and the measures taken to correct it" (Unified Good Governance Code 2006, p. 18; CNMV 2006).

In, 2007, the Unified Code of Good Governance was followed by the Constitutional Act 3/2007 of 22 March 2007, known as the Equality Act, which aimed to promote effective equality between women and men. Article 75 of the act states that "companies obliged to present unabridged financial statements of income will endeavour to include a sufficient number of women on their boards of Directors to reach a balanced presence of women and men within eight years of the entry into effect of this act" (Equality Act 2007, p. 483). Although Article 75 in the Equality Act 2007 sets a 40% target for the presence of women on boards,

the lack of direct sanctions makes it more of a recommendation than a mandatory statement.[3]

In 2015, the new Unified Code of Good Governance goes further in the gender diversity approach, including a potential goal for the presence of women. Recommendation 14 in this Code states that there should be a directors' selection policy that needs to be concise and verifiable and in favour of diversity on the grounds of knowledge, experience and gender. This policy promotes a goal of at least a 30% presence of women on boards, to be achieved by the year 2020.

Both the recommendation in the Equality Act 2007 and the inclusion of targets in the Corporate Governance Code 2015 have had a positive impact on the access of women to the boards of large companies, particularly among listed companies. As a result, the number of women on boards at IBEX-35 listed companies increased from 6.1% to 17% in 2016 (Instituto de la Mujer 2016).

In addition to these legal codes, other private initiatives were launched in attempts to increase the representation of women on boards, and senior management positions in Spanish companies. For example, companies were individually initiating cross-mentoring programmes for potential candidates for top management positions, along with specific women's training programmes for accessing boards and regular mentoring and research of the evolutions. These initiatives, and in particular the normative regulations, have led to intense debate in the Spanish business environment disclosing polarised points of view that are either clearly in favour or against the regulations. These societal debates have had a significant impacted on the media, and thus since 2006, media have been making regular reports on the different initiatives as well as the changes in terms of diversity composition on the boards of the leading Spanish companies (De Anca and Gabaldon 2014).

In the years following the Equality Act, the presence of women on boards of the listed companies (IBEX-35) increased from 6.1% in 2007 to 12.3% in 2013 (European Commission) and further 17% of the board seats in 2016 (Instituto de la Mujer 2016). In 2014, the government, seeking to promote female talents in the corporate world, implemented a series of individual voluntary agreements between companies and government. According to these, every company should define their own goals

for gender diversity at the different levels of the company, regardless of the starting point. In addition, the government has put in place programmes to support the career advancement of women. "Más mujeres, mejores empresas" offers visibility and support to those companies committed to gender equality. Within this platform, "Promociona" is a training programme for women to become board-ready, in line with other successful programmes such as "Female Future". Since 2013 "Promociona" has trained 300 women in 200 companies and by 2016 30% of the participants have already been promoted.

Facts and Figures for Women on Boards in Spain

In 2016, the presence of women in the Spanish listed companies' boards showed a considerable increase on the figures when the programme was launched back in 2007. As per this year, all listed companies had at least one woman, and in the same year, Técnicas Reunidas, the last company to have no women on board, introduced its first female director. The majority of the 35 biggest listed companies (51%) now have three or more women on their boards. The overall evolution of the companies without women has been impressive: from 16 companies in 2006 to none at all just a decade later (see Fig. 3.3).

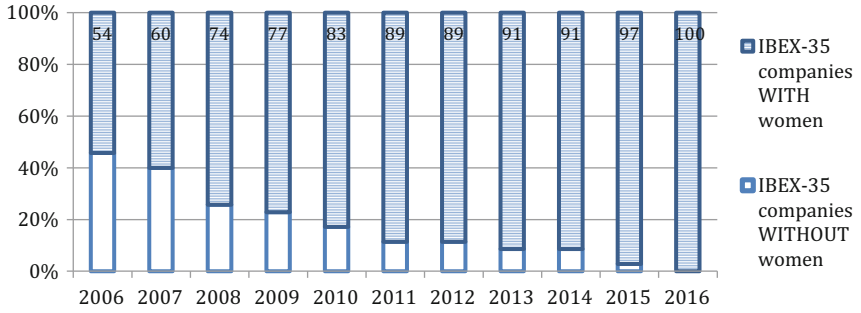

Fig. 3.3 Evolution of the distribution of companies in the IBEX-35 according to the presence of women on boards. Unit: percentage from the 35 companies at the IBEX-35 (*Source*: Own elaboration from CNMV data)

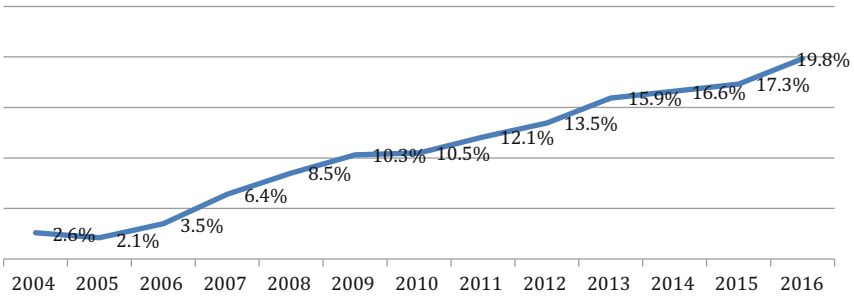

Fig. 3.4 Board seats held by women at the IBEX-35 companies (*Source*: Own elaboration from CNMV data)

According to a study by Cheng (2008), there is no ideal board size; however, the range where boards function well, has been found to range between 5 and 15 members to be flexible and strategic alike. The Spanish Corporate Governance Code follows this suggestion and in 2016 the average size of listed companies' boards was 13 members. In November 2016, among the 459 seats, 91 were held by women, representing 19.83% of the total board seats in listed companies (see Fig. 3.4). This means an average number of 2.6 women on each board. Five of these women were part of two boards at the same time.

All in all, if we compare the approximately 20% of women on boards with the European Union average, Spain is catching up but women are still underrepresented according to the European average, levelling around 21.2%. Even under acknowledgement of this increase of women on boards, it is still rare that female directors cross the 40% threshold in listed firms.

Of the 91 seats occupied by women, the majority hold independent positions, more specifically 62 of them (68.13%). Many of the independent female directors come from academic or political backgrounds. Shareholder representatives account for 20 of these female board members. In fact, the Spanish case shows that only a low number of executive positions are held by women (Gabaldon 2013). In 2016, only three of the executive directors were women, only three were chair or president and another three are vice-president. Moreover, considering the roles within the board, women are usually plain board members. This limits the power

of women on boards, first of all because they might still be perceived as minorities and second, because they are not located in the most strategic positions. The low number of female executive directors might also reflect a reduce pipeline within companies.

Relevant Actors on the Spanish Case

As can be seen from the historical development in Spain, the most critical actor was the government. Although the focus on gender equality and anti-discrimination have been on the agenda since the 1980s, it was not until the establishment of Ministry for Equality and the introduction of the Equality Act in 2007 that the lack of women in senior positions was really put on the national agenda. The government led by Rodriguez-Zapatero, which was in power from 2004 until 2010, initiated the change by establishing the country's first Ministry for Gender Equality with the responsibility to achieve gender equality in the country (Terjesen et al. 2014). Nowadays, the Ministry of Health, Social Services and Equality is in charge of issues regarding health services, assistance and protection, as well as social inclusion, family policies, children, disability and dependent protection, and equality and non-discrimination. It has a special mandate to fight gender violence. This ministry also runs the Instituto de la Mujer (Women's Institute). Since 2014, this institute has included both female issues as well as gender equality strategies (Instituto de la Mujer y para la Igualdad de Oportunidades). This organisation was brought to life in 1983, and it has been placed in charge of promoting gender equality, female participation in political, cultural, economic and social spheres and the mainstreaming of both gender-equal and broader non-discrimination policies (Bustelo 2016). In fact, the Instituto de la Mujer has been advocating for gender equality and women visibility since its inception, collecting data, research, and any kind of activities promoting female aspects. These days, the institute promotes programs like "Promociona", "More women more companies", and equality certifications among others. The main rationale behind these programs is social justice.

In Spain, as in any other European country (Seierstad et al. 2015), there are a number of women's networks and foundations who are fighting for

more women to get on boards, but their initiatives have not been coordinated, leaving the impact of limited effectivity (Bustelo 2016). "Parity in Action", for example, an initiative launched by the German lawyer Katharina Miller, has started to bring about some change.[4] Ms Miller attends annual general shareholders' meetings in person to ask directly why there were so few female representatives on their boards. This initiative has fuelled the debate, especially among listed companies. Making the question public was forcing the companies to explain their selections in more detail (Gosalvez 2014). Other initiatives, such as the "Fundacion Compromiso y Transparencia", try to push for more transparency in the nomination of new members of boards, by highlighting both the best and worst corporate governance practices run by Spanish corporate boards. There have also been some reports and academic initiatives that try to understand the low representation of women on Spanish boards, but they have been, in general, incipient and irregular.

The media used to be very active in promoting gender diversity on boards. This has been given high visibility in the media, especially in the rare cases when female executive members were appointed (see Anca and Gabaldon 2014, for more detail), but the overall impact of this news in the media has been decreasing continuously over time. Every year Mercedes Wullich, in charge of Mujeres & Cia, creates a ranking with the most influential women in Spain (https://www.lastop100.com) with high impact in the media.

One of the characteristics of the Spanish scenario is that it is only possible to identify a handful of visible non-governmental actors pushing for gender equality. Today an increasing number of women are holding top leadership managerial positions, and a few of them are also visible gender advocates, such as Ana Maria Llopis, president of DIA. Moreover gender diversity seems to be back on the political agenda now that Spain is recovering from the crisis: in the new cabinet of ministers created in November 2016, there are five women out of a total of 14 ministers. These women are in charge of very important areas, including the vice-presidency, and the defence and labour market portfolios. Altogether although gender diversity and female role models are increasing in number, progress is still slow. And there is still a gap for male gender

champions, as there are presently no visible gender diversity male advocates in the Spanish scenario.

Other Enabling and Hindering Forces in the Spanish Scenario

Although Spain became, in 2007, one of the first countries in Europe to introduce a gender law, the results are still well below the established goal of 40%. Nowadays, Spanish women are fully integrated into the labour market and have equal access to education. However, there are still some barriers that are inhibiting women to be promoted to the highest corporate positions (Anca and Gabaldon 2014).

First, even though the incorporation of women in the labour market has been successful, it is just a recent, yet welcome, development (Fernández et al. 2016). The reduced pipeline of women seeking to be appointed to boards is an important element to be solved by the different regulations the country has implemented. The fact that few women currently hold executive managerial positions reduces the chances of getting women on boards, due to the small pool of applicants. The potential existence of glass ceilings and biases is also addressed in the different Corporate Governance Codes and the 2007 Equality Act, both of which recommend the increase in the number of women on boards.

Many of the independent female directors are coming from the political or the academic scenes. Having more female executive directors, coming from the top management of the company, is the pending subject for the boards of directors of Spanish companies. The low presence of these directors highlights the difficulties of women moving into top managerial positions, and therefore the reduced pipeline. Programmes such as Promociona are helping in this regard, but the movement is still slow. The small number of women in senior management lines can be attributed to various reasons, such as the glass ceiling, the wage gap between genders and ultimately the reduced availability of women to fill these positions (Castaño et al. 2010). Furthermore, it shows the limited

presence of women on top management teams and very probably their limited importance on boards, noting that they are still minorities.

Second, the Equality Act launched in 2007 has caused an increasing awareness of the importance of women on boards, although the unfulfilled aim was to reach 40% of women on boards by 2015. The act, as it stands, does not state that it is mandatory to increase gender diversity on their boards, so companies that do not fulfil these criteria, do not receive any punishment. On a general basis, Spain lacks companies with gender-diverse boards and even though the number of women on boards has increased significantly, it still lags behind the aspired 40% target. It seems that many of these companies went for more gender-equal boards' aiming for compliance, and not truly believing in the business or the justice case. Overall, the crisis and the institutional changes pushed gender equality to a secondary stage among national policies, and so forth, among companies' goals.

The good side of the constant increase since 2007 is that by 2016 all of the IBEX-35 listed companies had women on their boards. Since the Code of Corporate Governance 2015 and the Equality Act 2007 do not require companies to meet the criteria of gender parity, companies are still showing low levels of gender diversity; therefore, the legislation(s) does not seem to be very effective. Although the companies should explain the reasons behind this situation (under a "comply or explain" scenario), in some cases, the companies give no reasons for it in their corporate governance reports. In the best-case scenario, those companies which are not reaching the 40% threshold offer and explain the strategic measures taken to increase the pipeline.[5]

However, it is very important to observe how the legislative pressure has made the boards change and yet do not seem to be totally permeable downward since the first line is still predominantly male. Therefore, it would be interesting to conduct further study into the real reasons why women do not reach top management levels. The reduced sample of executive women may be one of the causes that reduce its entry as executive directors at the board of their companies or as an independent directors within other companies.

It seems that the Equality Act 2007 and the latest consecutive codes of good corporate governance, as well as the Europe-wide proposal, have

been the catalysts of the increase in gender diversity on Spanish boards. While most women continue to be part of these boards as independent directors, and in small numbers, on several boards their presence exceed the "critical mass" which means having three or more women for advice, and thereby no longer being the minority within the councils (Konrad et al. 2008; Schwartz-Ziv 2017).

The discussion of quotas on corporate boards, originated in Norway and followed by the European Commission in 2012, aims to increase the speed of entry of women into business areas in which they are still in the minority. However, as a longer-term policy, in Spain, it aims to establish gender equality within the rest of the company. Spain does not seem to be achieving this goal on such short notice, but, given the slight positive recent evolution of the figures, their effects should also be assessed at a later date.

Reflections of an Actor

Katharina Miller

Founder of Parity in Action/Paridad en accio.[6]

At the beginning of 2009, I was a German lawyer working in Spain. In 2009, some members of the German Women Lawyers Association (DJB) began to attend Annual General Meetings (AGMs) of DAX (German Stock Exchange) listed companies; this was with the purpose of asking questions about the gender diversity of their boards and the appointment of their board members. They came to the realisation that nobody voluntarily gives up power, money or influence and began to become shareholder activists. It was a big move. *The Financial Times Germany* called it the most successful shareholder activism project in Germany. I really wanted to take the same approach in Spain. However, at that time I did not speak Spanish, and I did not know anybody. I arrived here as an intern. My plan was to learn Spanish and then return to the Court of Justice of the European Union in Luxembourg. When I received a job offer I changed my plans. It was clear to me that the first thing I had to do was to learn Spanish and to get to know as many people as possible, so that

I could get involved in networking. In 2012, during my second maternity leave, I prepared "Paridad en accion". With the help of many good friends, we translated the German questionnaire into Spanish, adapting it to the Spanish legislation and culture, so that it could be sent to companies before their AGM. The first meeting I planned to attend was MAPFRE in 2013. In Germany it is easy to attend any AGM, as you only need one share. But in Spain, this is not the case. In Spain, each company decides the minimum number of shares needed to be entitled to attend an AGM. In MAPFRE, for example, 1500 shares were required. As I had only 200 before the meeting, I thought it would be easy to go to the AGM, speak with the shareholders and to explain them what I wanted to do, by using their shares. As I was still on maternity leave, and was breastfeeding I took my three-month-old son with me, and left him in the car with my husband while I went to the AGM. On entering the venue, I began to look for women, to try to get more shares. Unfortunately, it was very difficult to find women due to the fact that in MAPFRE most of the shareholders were men, mainly of an older generation. Many of these attend the AGM in order to receive a gift from the company. I asked them to give me their shares, but many of them just exchanged the invitation for the gift, a cup or a pen. They did not understand why I wanted to have more shares. Finally, after a big discussion with (I think at that time) the vice-secretary general of the board of MAPFRE, he directly told me he was not allowing me to attend. When I asked him the reason for this decision, he replied "Because your question has nothing to do with today's agenda". I told him it was not true, as the board was going to talk about the board selection and I was planning to ask precisely about this topic. I was not successful in attending, although I got more shares, but not enough to be able to attend. It was a really hard experience.

The second AGM I attended was Telefonica and this time, I had everything ready to allow me to attend (the 3000 shares needed), and I was lucky: I was selected as the first speaker to participate in the questions round. I noticed that people were looking at me thinking "what the hell is that girl doing here, with her accent and her blond hair". Telefonica's president at that time laughed and he thought it was a funny question to be asked, and he answered something like "Yes, I also like women very much".

I have been sending the questionnaires to listed companies, and they really answer my questions, in writing and at the AGM. Since then, I have organised things so that I am able to attend the AGMs of big corporations and to ask them about gender equality on their boards. I buy shares myself—I am a shareholder in 15 companies—and I have organised a network of friends and contacts who give me their shares so as to be able to participate.

Then, I went to the third AGM, in 2013. This was Banco Popular, a very conservative bank, and again they were all looking at me, rather shocked, but, interestingly, they answered all my questions and they also confirmed that they were really trying to be more focused on getting more women board members.

After that I applied for some funding from the European Commission, putting together a team of different countries such as Spain, Germany, France, Benelux, the United Kingdom, Ireland, Italy, Hungary, Bulgaria and Finland. We adapted the questionnaire to the specifics of each country's reality and culture. As the one responsible for the Spanish territory, I received responses to the questionnaire from 32 companies out of the 35 listed companies in Spain. This grant was not only giving me financial support but it brought a lot of credibility and trust to the initiative. Many more companies were willing to cooperate after this, and some of them were even called me directly, asking me to attend their AGM. Although I have to admit that in the majority of the cases they were women board members, asking me to attend the AGM and put the questions about female representation on boards.

To be honest, for me it is really hard to go to AGMs and play the fool. AGMs are crowded meetings, where you cannot see the people you are talking to, as they are held in big rooms, and the lighting is organised in such a way that you do not know to whom you are speaking to or how far they are from you. But I have to admit that this strategy seems to have an impact: last March the last company without women, Tecnicas Reunidas, appointed a woman to its board, Petra Mateos. The first time I attended Tecnicas Reunidas's AGM, it was very difficult. It was probably the first time they had anyone asking questions about women board members. They looked very uncomfortable, while talking to me. The president was so annoyed that he gave a 14 minutes' response to my question, while

explaining that having no women board members was not a problem at all.

There are enough women who could be board members in Spain. But for a long time, keeping with the status quo and the old boys' network's strategy was good enough. In Spain a quota would solve many of these issues in relation to the selection processes. However, I also have to admit that only a quota is not sufficient. Even the quota needs to be backed by diversity strategies in companies and by supporting women during their careers. Because whether we like it or not, women fall from the career and promotion ladders. This way a strong, balanced pipeline of men and women would be available to join company boards, by being at the appropriate next level. Strengthening the pipeline is critical to making gender equality on boards a natural process.

When I talk to board members and headhunters they always claim that there are not "enough" women and to be honest I hate this argument. And I have started to understand what they mean. They mean that there are not enough women with very specific experience, but the problem is that they do not let women acquire this experience either. You have to let women try to gain the relevant experience. This is not exclusive to Spain. This is common in the rest of Europe; at least. I have experienced the same in Germany, for instance. Men at this level share the right connections and experience and also speak the same language, they went to the same schools or meet at soccer games. We tend to choose persons who are similar to us and we are afraid of people who are different.

But the Spanish scenario is changing. Having more women would have an impact because we are very different in the way of thinking and in the way of expressing ourselves. I think we have no problem making fools of ourselves and asking questions. What is also interesting is that we don't have problems in admitting that we have not understood a thing. Besides, we have different point of view of things. This morning I read an article that says that women tend to have more information or even care more about the employees and that they are trying to have more information about the employees. We see risk in a different way. These days, I am doing a course for woman directors in Berlin, and in every session these women ask what their responsibilities are and what kind of insurance we

need. I think it is good to have people that want to take risks, but we also need people who are more risk averse.

Critical Reflection on the Spanish Case

As indicated in the title, Spain has a non-mandatory quota for the presence of women on boards. This implies no sanctions for those companies not complying with the regulations, and only a positive reinforcement if it is fulfilled. The consequences of this in a country where the majority of women do not make it to top managerial positions, and where there are still important disparities between men and women in the labour market, are very relevant. On one side, the excuse of having a small pool of female candidates to be directors can be openly used for companies that do not have enough women on boards. Among the requirements to be selected as a director is to have some relevant experience in top managerial jobs or to have held previous board positions (Gabaldon 2013). Directors are usually selected by boards among those with previous relevant executive experience, which means that few women are present in these teams; they have limited possibilities to be selected. And experience in top managerial positions is only gained through intense and unbroken careers, and many women are lost in their paths to managerial positions for several reasons, especially related to issues around a work–life balance.

On the other hand, the introduction of gender diversity on boards has not been considered a strategic goal for many companies. Diversity and the potential benefits with it have not been understood as key by firms, and therefore it has not been adequately promoted onto boards. The majority of the listed companies, for instance, do not offer a 40% presence of women, although the numbers are increasing. Not even a national law, such as the one introduced in 2007, was able to put gender equality on the agenda of big corporations. More than a decade later, the international pressure from the rest of the countries in Europe (Alonso and Forest 2012; Bustelo 2016), from the European Commission, and some domestic agents, such as a few activists and politicians, have been able to move it up onto the agenda, but it is not yet a priority. However, the actual

situation is far from ideal, as it is still far from being equal. Recommendations to promote women onto boards, sometimes pointing into the business case benefits, have been timid, and, in many cases, mixed with social justice argument. In the case of Spain, it might be necessary to move forward faster to offer and make visible more business case arguments for gender diversity in corporations.

The possibility of introducing a mandatory quota should be accompanied with other medium-term measures that could secure a strong pipeline of women ready to join boards. The majority of women on boards in Spain hold only one seat and in 2016 only a few were sitting on two listed companies at the same time. However, as has happened in other countries, a limited number of women would accumulate seats if the quota becomes mandatory. This will imply compliance with the law, but no introduction of real gender equality. In order to avoid a potential "golden skirts" situation (Huse 2012), the pipeline needs to be strengthened and some elements of the selection process for a board member need to be introduced to ensure that there are no biases in the process and that the best candidates and the best mix of talents are getting to boards (Doldor et al. 2012).

The lack of visible gender champions and advocates, and the reduced use of the business case, is partially behind the slow movements in gender diversity in corporations. Current board members could become personally involved and companies could also observe the business case themselves, by seeing the positive financial and performance indicators resulting from the introduction of diversity onto their boards. But this is a job not only for women on boards. Men also need to be part of the process and solution for the incorporation of women on boards. Both male and female directors need to be involved, working together to create strategic and relevant solutions which show the positive effects of involving women on boards, leading to more successful companies. However, this can only be reached when visible leaders are advocating for gender equality, and when women as well as men are part of the change and can show the benefits of creating teams which could ensure wide and comprehensive decision-making processes.

Notes

1. The gender salary gap is defined as the difference between male and female median wages, divided by the male median wages.
2. Ley 31/2014, de 3 de diciembre, que modifica el Texto Refundido de la Ley de Sociedades de Capital para la mejora del Gobierno Corporativo.
3. The companies mentioned show two of the following criteria: with more than 11.4 million euros in actives, an annual business of 22.8 million euros or more than 250 workers.
4. Parity in Action: http://www.paridad.eu
5. "Explique las medidas que, en su caso, se hubiesen adoptado para procurar incluir en el consejo de administración un número de mujeres que permita alcanzar una presencia equilibrada de mujeres y hombres."
6. http://www.paridad.eu/la-iniciativa/

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4

Gender Diversity on Boards in Iceland: Pathway to Gender Quota Law Following a Financial Crisis

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Introduction

In spring 2010, in the wake of an unprecedented economic, social and political crisis, the Icelandic Parliament became the third in the world to pass a law on gender quotas for corporate boards. A three-year transition period followed, and on 1 September 2013, Iceland was amongst the first in the world to implement such a law (Terjesen and Sealy 2016). The Icelandic law (no. 13/2010) went a step further than the Norwegian "role model" by stating that 40% of each gender must be represented on corporate boards of directors in all state-owned enterprises (SEOs),

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publicly traded firms (PTFs) and all private limited companies (PLCs) with 50 or more employees. No other country has legalised such extensive requirements for firms. However, the law does not have punitive sanctions for non-compliance, a matter which has been debated in political and business circles since the passing of the legislation in 2010 (Viðskiptablaðið 2013, 2015a, b). The stated aim of the 13/2010 law was to "work towards a more equal ratio of women and men in influential positions in public, limited and private limited companies by increasing transparency and facilitating access to information" (Parliamentary Document no. 71/2009–2010). Additional arguments were made in favour of the legislation change, for example, reducing the inherent risk of board homogeneity in decision making (Ministry of Industry and Innovation 2013). The very extensive gender quota legislation in Iceland calls for the evaluation of the attainment of the legislative original purpose and also close monitoring and assessment of the process applied by the various firms, and the short-term and long-term consequences for directors, boards, firms and society.

The financial crisis, which began in 2008, has had long-lasting consequences. Companies in Iceland experienced strong turbulence when the national currency devalued more than 50%, creating hyperinflation of over 30% between 2008 and 2010 (Statistics Iceland 2016). With debts indexed to inflation, this meant that the equity of many companies was wiped out. Consequently, many of them were faced with enormous challenges which often led to the restructuring of the company boards. The experience of the financial crisis also created a major shift in thinking at a societal level, from the closed-door, mostly male boards to a new era of "open governance" which requires individuals to operate in a climate of transparency, trust, and improved decision making. Policy makers and the business elite were forced to consider more than ever "alternative ways" to govern business, even at the highest organisational echelon of the corporate board (Special Investigation Commission Report 2010; Bryant et al. 2014). A new governance mechanism that was considered at this time of difficulties was mandatory board gender quota, which had first been established in Norway. In 2008, less than 15% of board members of Icelandic companies with 50 or more employees were female (Statistics Iceland 2008). Furthermore, the share of female directors declined in the

years immediately prior to the 2008 financial crisis (Statistics Iceland 2008), despite efforts by agents such as the Icelandic Chamber of Commerce, the Iceland Stock Exchange and the service organisation of Icelandic businesses—Business Iceland who actively promoted greater gender equality on corporate boards using conferences and meetings as platforms (Jonsdottir 2008). The discussion about the scarcity of women on corporate boards had started in 2004 (Jonsdottir 2008) but really began to accelerate after the 2008 crisis, where lack of diversity and, in particular, the lack of female representation on corporate boards was partially blamed for how severe the crisis became (Morgunblaðið 2009a, b; Special Investigation Commission Report 2010). The consequence of this was a strong legislative change across Icelandic SEOs, PTFs and PLCs, thereby initiating a considerable change in boards' composition, leading to active reflection and discussion about gender equality and board diversity (KPMG 2014; Gunnlaugsdottir 2015). There were also extensive searches and a restructuring of the selection processes for new female board members in many Icelandic companies (Arnardottir et al. 2015).

The chapter is structured as follows: first a general background of Iceland is provided, with an emphasis on history, culture, gender equality standing, and the general political and economic system in the country. Then Iceland's national public policy is discussed, describing the current corporate governance structure and governance code. The following section focuses on enabling and hindering forces for gender quota legislation in Iceland followed by reflections from three active Icelandic board members. The last section closes with critical reflection on the Icelandic case.

General Background

Iceland is a small European country with 320,000 inhabitants who all live on a 103,000 square kilometre island in the North Atlantic Ocean, making it the most sparsely populated country in Europe. Two-thirds of the population lives in the southwest of the country, in the capital Reykjavik and surrounding areas. In order to gain some insight into the Icelandic specificities, it is important to give a short account of the history

of the nation, which, along with the nation's culture, has affected the attitudes and behaviours of its people.

Iceland was first settled by people of Scandinavian and Celtic decent in the ninth century. These were Vikings who had embarked on a westward expansion. In the year 930 the nationwide legislative and judicial assembly, Althing, was established to regulate the Icelandic Commonwealth, thereby effectively making Iceland one of the oldest democracies in the world. In the thirteenth century, Iceland came under the rule of Norway and subsequently Denmark, and it remained under Danish rule until declaring independence and becoming a republic on 17 June 1944. Up until the twentieth century, Iceland relied largely on subsistence fishing and agriculture, and remained among the poorest nations in Europe. The industrialisation of the fisheries and Marshall Plan aid following the Second World War brought prosperity to the country, meaning that today Iceland is one of the world's wealthiest and most developed nations. Iceland has a market economy with relatively low taxes compared to other OECD counties (OECD 2017), and the country maintains a Nordic social welfare system providing universal health care and tertiary education for its citizens. In 1994 the country became a part of the European Economic Area, leading to the further diversification of the economy into sectors such as manufacturing, finance and biotechnology. International economic relations increased further after 2001, when Iceland's newly deregulated banks began to aggressively branch out into international investment banking and financial services, contributing to a 32% increase in Iceland's gross national income between 2002 and 2007 (Jackson 2008; Statistics Iceland 2008). Therefore, Iceland was hit hard by the beginning of the financial crisis in late 2008, with the failure of the banking system and subsequent economic crisis.

Culture

Icelandic culture is founded upon the nation's Scandinavian heritage, but can simplistically be defined today as a hybrid of Scandinavian culture and US culture, in terms both of Hofstede's cultural dimensions (Hofstede 2017) and also visible cultural artifacts. Similar to other Nordic countries,

Iceland's *power distance index* (PDI) score is very low, meaning that Icelanders do not expect or accept that power in the society is distributed unequally, and that people are expected to make their own decisions and to take responsibility for their actions. The *individualism index* (IDV) score is high and similar to the other Nordic nations, which means that there is a high importance placed on immediate family and closest friends over the rest of personal relations. Thirdly, the *masculinity index* (MAS) is very low in Iceland, which translates into greater equality between genders, both in terms of respect and position in society, and with dominant values in society for caring for others and quality of life. In the last three dimensions of the Hofstede cultural dimensions model, the Icelandic index scores are closer to the USA scores than the Scandinavian scores. The nation's *uncertainty avoidance index* (UAI) is on the low side (also similar to Norwegian and Finish numbers), which can be interpreted to mean that Icelanders are willing to take risks in their decisions and actions. It further indicates, that the icelandic culture is fairly pragmatic. Focus is on planning, but those plans can be altered on short notice and improvisations made. In addition to the nation's high tolerance and acceptance for new ideas and willingness to try something different and new, the *long-term orientation* (LTO) score in Iceland is low, making it a normative culture where there is respect for traditions, a relatively small propensity to save for the future, and a focus on achieving quick results. Finally, on the sixth and final dimension, the *indulgence index* (IND), Iceland scores as indulgent, thereby indicating lesser control of desires and impulses, with a tendency towards optimism and focus on enjoying life and having fun.

Gender Equality in Historic Perspective

By international standards Iceland ranks highly in terms of development, gender equality and equal opportunity, as is evident by various international indexes. The United Nations Human Development Index (Human Development Report 2015) that takes into account variables such as health and life expectancy, security, economic status, education, and gender equality, rates Iceland at the top. According to the Economist Intelligence Index of 2011, Iceland has the second-highest quality of life

in the world, and the country has one of the lowest rates of income inequality in the world.

For seven consecutive years, Iceland has had the highest global index ranking, out of 145 nations, on the Global Gender Gap Index by the World Economic Forum (2015), with a steady increase on its overall score, thereby putting Iceland at the tip of the Nordic forerunners on gender equality, with Norway (2nd), Finland (3rd), Sweden (4th) and Denmark (14th). According to the Global Gender Gap Index (World Economic Forum 2015). Iceland is first on *political empowerment*, where 41% of parliamentarians are women and 44% of ministers are women, and with the country's first female prime minister coming into power in 2009. This current position has been supported by various steps in the country's gender equality history (see Table 4.1). These steps include Icelandic women gaining national suffrage in 1915, in 1980 making Vigdís Finnbogadottir the first nationally elected female president in the world, and in 1983 having the first political party in the world formed, led and run entirely by women (i.e., the Women's Alliance).

The Global Gender Gap Index ranks Iceland first in terms of *educational attainment* with a rating of a fully closed education gender gap. The country has a high literacy rate and females are 64% of university graduates, but still the proportion of gender atypical fields of study (e.g., horizontal segregation) remains a challenge (Eurostat Education and Training 2012). Iceland has ranked fifth on *economic participation and opportunity,* with a high female employment rate, which was 78% in 2013, considerably above the EU-27 average of 59%, a low unemployment rate, and relatively low unexplained gender wage difference. This strong standing is highly attributable to the country's strong family policies, equal rights regarding maternity and paternity leave, and strong daycare services. Iceland's lowest score, 105th place on the Global Gender Gap Index, is on *health and survival* due to its poor performance on the Healthy life expectancy indicator.

Despite the country's strong gender equality standing, the female presence in the business arena up until the gender quota legislation of 2010, tells a surprisingly different story that will be examined later in this chapter.

Table 4.1 Some of the stepping stones for gender equality in Iceland

1850	Equal inheritance rights for men and women
1882	Widows and single women gain local suffrage
1886	Girls can enter secondary school
1900	Married women gain the right to control their income and personal property
1907	Icelandic Women's Rights Association founded
1908	Women gain local suffrage and the right to hold local office
1908	The first women's list participates in local elections in Reykjavik
1911	Women get equal rights to grants, study and civil service
1914	First women workers' association founded
1915	Women over the age of 40 gain national suffrage and the right to hold office
1920	All women gain national suffrage and the right to hold office
1921	New marital law guarantees equality for spouses
1922	The first woman elected to the Icelandic Parliament, from a women's list
1926	The first Icelandic woman defends a doctoral thesis
1957	The first female mayor in an Icelandic municipality
1961	The Equal Pay Act
1970	First female Cabinet Minister
1975	Women nationwide take a day off work to emphasise the importance of their work
1976	The first Gender Equality Act and the Gender Equality Council is founded
1980	Vigdís Finnbogadottir, first nationally elected female president in the world
1982	The Women's Alliance, runs for the first time in local elections
1983	The Women's Alliance runs in parliamentary elections for the first time
1995	Equal rights of women and men stated in the constitution
1997	Fathers get an independent right to two weeks' paid parental leave
2003	Fathers get an independent right to three months of paid parental leave
2005	One-third of all Icelandic women participate in protesting unequal pay
2009	The first female prime minister is elected in Iceland
2009	The first government with equal number of men and women
2009	Women occupy 40%, 60%, and 100% of board seats of three largest banks in Iceland
2010	Gender quota legislation act 13/2010, taking effect on 1/9/2013

Table built on the Ministry of Welfare source (see https://eng.velferdarraduneyti.is/departments/gender-equality/)

Political and Economic System

In 2011, Iceland was ranked second in the strength of its democratic institutions (Economist Intelligence Index 2011) and 13th in government transparency (Transparency International 2013). The prime minister and

government exercise most executive functions in political life in Iceland. Following general elections to parliament, the government is appointed formally by the president. Nonetheless, this process is, in practice, carried out by the political leaders themselves following general elections. They decide among themselves, after discussions, which parties can form the government and how its seats are to be distributed, but with the prerequisite that the parties have majority support in parliament. In recent times Iceland's governments have always been coalitions with two or more parties, where no single party has received a majority of seats in the parliament.

At the beginning of the 2000s there was a merger of most of the left political parties to form the Social Democratic Alliance. Some members chose to join another new left party, the Left-Green Movement. After the defeat of a right-wing government in the 2007 elections, a coalition of the Independent Party with the Social Democrats was formed. This administration fell apart following the financial crisis in late 2008. In the resulting election, for the first time Icelanders voted for a majority left-wing government. This government was instrumental in passing the law on gender quota in 2010.

Discussion of National Public Policy Regarding Women on Boards

Governance Structure According to Company Law

The most common and economically important type of company structure in Iceland is the limited liability company. Other structures are partnerships, cooperative societies, businesses run by the self-employed and branches of foreign limited companies. Iceland adopted the EU directive no. 21 57–2001 on Societas Europaea (SE) with Act No. 26/2004 on European Companies (SE). There are two types of limited liability companies, public and private, and they are regulated by two separate acts. These acts are in line with the requirements of the company law provisions of the EEA agreement.

The rules for private limited companies are simpler than those for the listed ones. Minimum requirements are: to have one founder, one shareholder, and one director (with one deputy) in cases where there are four or fewer shareholders. There is no obligation by law to have a managing director. Upon their establishment, private limited companies must state whether they have one or more shareholders. In one-party private limited companies, meetings of the board of directors and shareholders are not obligatory. The Minister of Economic Affairs can grant an exemption from the otherwise general principle that the majority of the board of directors and the general manager of a limited liability company must be living either in Iceland or in a country within the European Economic Area or OECD.

A public limited company must have a board of directors consisting of at least three persons, and must appoint at least one managing director. The managing director(s) and at least half of the members of the board must reside in Iceland or be residents and citizens of any other EEA or OECD country. The general rule is that a private limited company shall have three persons on its board of directors. If the company has four or fewer shareholders, either one or two persons may serve as members of the board. One or more managing directors may be appointed by the board, and if there is only one person on the board of directors he may also serve as managing director. For companies listed at the stock exchange, at least five board members are required.

In general, companies in Iceland have a two-tier board system. The first tier is a supervisory board, which has to comply with the quota law, and is composed of non-executive directors and the second tier, an executive board, composed of the chief executive and other executive directors of the company (Corporate Governance Guidelines 5th edition 2015). The supervisory board consists only of independent (non-executive) directors and varies in size, with five directors as the most common size. Supervisory boards hold the legal responsibility towards shareholders according to Icelandic corporate law.[1]

The following is demanded by law to be included in the report or endorsements given by the board of directors of a company:

- Every important issue that might affect the financial position of the company and is not included in the income statement, balance sheet or accompanying notes.
- Proposed appropriation of the result for the year, if this is not disclosed in the accounts themselves.
- If the company is registered on the Icelandic stock exchange and has issued a business plan for the year, the operating result should be compared to that plan and major variances explained.
- The number of shareholders at the beginning and the end of the year, and names of single holders of 10% or more of the shares. Numbers of partners or associates should also be stated if the entity is not a corporation.
- Important post-balance sheet events.
- Financial prospects for the future.
- Research and development activities.
- Branches in other countries.
- Extensive information on the conduct of business in a company.[2]

According to the Icelandic regulations, the board of directors must ensure that the company maintains proper accounting records and that the annual accounts give an adequate representation of the assets and liabilities, financial position, profit or loss for the accounting period, and application of funds. In the obligatory report prefacing the financial statements, the auditor must state whether, in his or her opinion, this obligation has been fulfilled. The auditor's report must contain an opinion as to whether the financial statements provide a true and fair view of the company's affairs and results, and whether the statements have been prepared properly—that is, in accordance with the law and the company's articles of association. It is mandatory that the report by the board of directors is consistent with the financial statements and, unless specifically stating otherwise, the auditor's report must implicitly confirm that the directors' report contains the legally mandatory information and is consistent with the accounts.

Corporate Governance Codes

From the year 2004, the Icelandic Chamber of Commerce, Business Iceland and Icelandic Stock Exchange (e.g., NASDAQ Iceland) have cooperated in publishing the Icelandic Guidelines on Corporate Governance, often with wide support from a number of people, companies, organisations and the Financial Supervisory Authority. From the publication of the first guidelines, the code has been reviewed regularly, with the most recent version coming out in June 2015. The Corporate Governance Code is a compilation of general guidelines for responsible governance, and aims at "setting forth recommendations over and above those laid down in the relevant legislation" (Corporate Governance Guidelines 5th edition 2015, p. 8), and it aims to influence and regulate the corporate governance of firms in the following major areas:

- the process of Shareholder meetings and Annual General Meetings (AGM);
- clarifying the role and responsibilities of the board chair, directors, and CEO:
  - risk management and internal controls;
  - performance assessment of CEO, management, and board functioning;
  - remuneration policy;
- role of the board sub-committees, audit and remuneration committees;
- role and process of nomination committee in director selection.

The Guidelines on Corporate Governance are specifically targeted at public-interest entities—that is, pension funds, financial institutions, insurance companies and companies with securities listed on a regulated market in accordance with Act no. 79/2008 on Auditors and Act no. 80/2008 on Annual Accounts. All of which must follow recognised Guidelines on Corporate Governance according to article 19(2) of Act No. 161/2002 on Financial Undertakings and Article 6(3) of the Insurance Act No. 56/2010. However, the Guidelines stress that the code can be of benefit for all companies, regardless of their size and activities, and

further stress that it would be desirable for state-owned enterprises to adhere to the Guidelines on Corporate Governance in their operations.

The Icelandic Guidelines on Corporate Governance are based on a "comply or explain" principle, allowing company boards to define to what extent various guidelines will be followed. The guide further insists on boards' responsibility to give detailed explanations for all deviations from the guidelines in the company's yearly corporate governance statement, where the focus should be on what deviations were made (the way), the arguments made for deviation (the why), how decisions about deviation were made, what measures were taken to offset deviations, and how the guidelines will later be met. The corporate governance statement should be published and made available on the firm's website.

Gender Diversity and Director Selection in Icelandic Corporate Governance Codes

The development of the corporate governance guidelines shows clear signs of increased domestic awareness of the importance of good corporate governance and the impact governance has on firm performance and trust towards it. When comparing the content and depth of the guidelines across the five editions, both the legal emphasis and the dominant discussions of each time period become apparent. The importance of director independence, gender diversity, and director selection practices through a nomination committee first appear in the third edition from the year 2009, in addition to critical board self-assessment and having code of ethics and CSR (see Table 4.2). In the opening statement of the third edition, the need for improved corporate governance in the wake of the financial crisis becomes quite apparent:

> The setbacks suffered over recent months have raised many questions concerning the infrastructure of Iceland's business sector, its focus and responsibilities. There have been calls for a revised approach involving a new set of values. This demand is both reasonable and necessary. Distrust towards companies and the business sector bears witness to many things

Table 4.2 Gender diversity and director selection in Icelandic Corporate Governance Codes

Edition	Publication year	Length of code (pages)	Independence of directors	Gender diversity	Nomination committee	Ethics & CSR	Board self-assessment
1st	2004	10	No	No	No	No	No
2nd	2005	28	No	No	No	No	No
3rd	2009	43	Yes	Yes	Yes	Yes	Yes
4th	2012	35	Yes	Yes	Yes	Yes	Yes
5th	2015	42	Yes	Yes	Yes	Yes	Yes

> that might have been done differently, and it is evident that action must be taken to reclaim lost goodwill and to build credibility in the business sector. (Corporate Governance Guidelines 3rd edition 2009 p. 7)

Therefore, in the third edition, firms and organisations are for the first time urged to use nomination committees that, among other things, "address the gender ratios on the company's board" (Corporate Governance Code 2009). No further arguments are made in the code for gender diversity per se, but the code stresses that "directors must be diverse and have a wide range of capabilities, experience and knowledge" (Corporate Governance Guidelines 2009). Later code versions, particularly the fourth and fifth, remark further on the improved response and adherence to Corporate Governance Codes by the Icelandic business world after 2008, for example through actively "seeking to diversify their boards, e.g. by advertising for new members" (Corporate Governance Guidelines 2012) and a more detailed account of required knowledge, skills, and abilities for potential directors (Corporate Governance Code 2015).

Enabling and Hindering Forces for Gender Quota in Iceland

A parliamentary interest in the small share of women on both boards and in managerial positions within Icelandic firms started around the millennium. In 2003, the business sections of the local media started to draw attention to the lack of female representation in management and on corporate boards (Morgunblaðið 2003, 2004, 2005). Figures such as the 5% female participation on the corporate boards of listed companies were in stark contrast to the levels of female representation in other areas of Icelandic life. The Icelandic Statistical Bureau reported in 2004 that the percentage of women heading business' with 50 employees or more was around 6.5%, and a similar percentage of females were chairing boards of that size (Jonsdottir 2008). The issue gained momentum, mostly led by

the women's activist movements, such as the Icelandic Association of Women Entrepreneurs, who raised awareness through, among other things, lectures, seminars, and media discussion (Jonsdottir 2008).

The former Minister of Industry and Commerce, who was in office from 2003 to 2006, paid active attention to the representation of women on boards (a committee named the "Opportunity Committee") was established by the Ministry of Industry and Commerce with the aim of promoting the possible benefits of increased diversity and gender balance within Icelandic business life. The committee published a report in 2005 (Ministry of Industry and Commerce 2005) claiming that women had too little presence in boards of corporations, with less than 10% female representation (see Fig. 4.1), the lowest number of any Nordic country. The report openly rejected the gender quota route but suggested several soft measures as possible correction tools, including: to encourage open discussion on the issue; to publish regularly statistics on the level of women on boards and in senior management positions; to encourage males in high-level positions to engage in the support of female board participation and extend their network of selecting board members; and to train women to become effective board members (Ministry of Industry and Commerce 2005). All of those suggestions were later implemented, for example, through several published and discussed reports (Rannsóknasetur vinnuréttar og jafnréttismála 2006, 2007) on the level of women on boards by the Center for Employment and Gender Equality Research at Bifröst University, but with limited effect (see Fig. 4.1).

In the same year, 2005, the Ministry wrote a letter to Iceland's 100 largest companies encouraging them to make an effort to increase the number of women on corporate boards. This act did not result in a marked response by businesses, according to the Ministry, and a follow-up message was that the Ministry would potentially have to react more drastically (Ministry of Welfare 2014). Though no official objections arose in the wake of those actions, the general view of those in charge of the Icelandic organisations seems to have been that selection to these corporate seats and the selection practices applied were built on merit, and women would naturally progress to those positions once gaining the necessary human and social capital (Ministry of Welfare 2014; Viðskiptablaðið 2014).

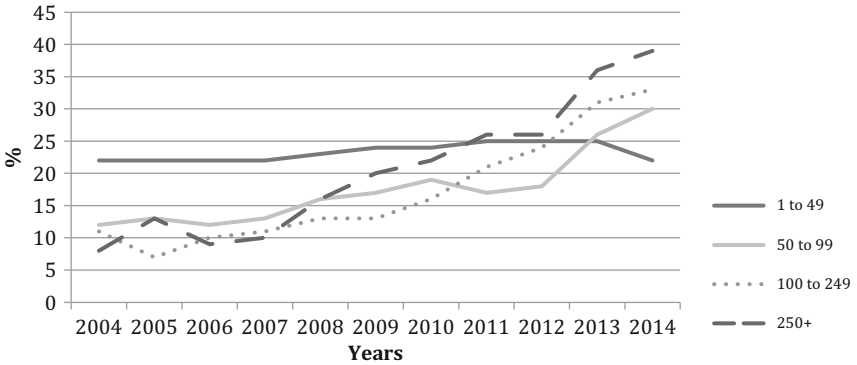

Fig. 4.1 Women's share of director seats of Icelandic enterprises 2004–2014 period, by number of employees

The official policy was a soft measure towards balancing the gender ratio within boards of corporations. It soon became obvious, however, that those type of measures would not go far. Hence in 2006 an addition was made to the law on public PLCs: "In an election to a board of a public firm it shall be secured that the gender balance is kept at equilibrium" (Act 90/2006). The Gender Equality Council concluded in 2006 on the law change that it was unnecessary where the law already considered a balanced ratio between the genders sitting on a public board to be the norm. Furthermore, that some type of gender quota legislation would lead to negative press discussion; hence work against gender equality (Jafnréttisráð 2006). The Gender Equality Council further quoted a previous argument made in the "Opportunity Committee" report from 2005, which stated "...women who already would have secured their positions as board members would be at risk of negative media discussion for being there due to gender but not merit" (Jafnréttisráð 2006). The Center for Gender Equality concluded that a gender quota would always be a measure of last resort (Jafnréttisstofa 2006).

The 2008 financial crisis was a turning point for the reaction toward the low participation rate of women on corporate boards. Reports showed that the share of female directors had slightly declined from the 13% mark in 2005 for larger companies (see Fig. 4.1) in the years immediately prior

to the 2008 financial crisis despite vast efforts (Rannsóknarsetur vinnuréttar og jafnréttismála 2007; Creditinfo Island 2009). Homogeneity not only at the board level, but also at the managerial levels of both public and private firms, was partially blamed for the severity of the crisis in Iceland (Special Investigation Commission Report 2010). The thought was that closed and tight networks between a handfuls of males had created a male-dominated risk-taking culture, with strong nepotism between them, which would not have been the case if women had taken a more active role in business life (Special Investigation Commission Report 2010). The urgency of gaining gender balance on boards and in business life had shifted, paving the way for more hard measures to reach gender diversity.

One of the initiatives taken after the 2008 crisis was a four-year cooperation agreement between the Iceland Chamber of Commerce, the Employers' Association and the Association of Women Business Leaders in Iceland (FKA) in cooperation with representatives of all Icelandic political parties where they would cooperate in openly stressing the importance of greater gender balance with the mission of generating greater awareness and willingness among the Icelandic business world (Félag kvenna í atvinnurekstri et al. 2009).

Another initiative was the creation of a central database of women who wanted to participate as board members, including their names, education and experience. Such databases are well known from elsewhere, amongst others an international database promoted by the European Commission, the Global Board Ready Women database (European Commission 2012). However, the measures taken in Iceland did lead to little changes in women's participation at the board level (see Fig. 4.1). After a left-wing government came into power in 2009, the possible gender quota law was discussed, debated and finally passed in June 2010 (Ministry of Welfare 2013). Initial discussion within parliament focused on how strongly worded the law had to be in order to secure a closure of the gender gap. Some members of parliament's right-wing opposition promoted that a firm suggestion from the legislator to the business community on the need to close the gender gap at the board level should be sufficient. This was debated, but in the end the Norwegian route was taken with 40/60% gender balance at the board level. A discussion had also centered on how

extensive the legislation should be in terms of the types and size of firms covered by the law. The Norwegian experience was considered, where only state-owned enterprises and publicly traded ones had to apply the legislation, but not private limited companies, which some argued created an "escape route". Hence in Iceland all PLCs had to apply the law, as did all those employing 50 or more employees. In total, this meant that 352 firms had to apply the law, 129 limited companies, five public limited companies and 218 PLCs.

In 2014, shortly after the execution of the law on 1 September 2013, a new Minister of Trade, from the right-wing Independent Party, one of two parties ruling in the parliament at that time, came into power and proposed to annul the gender quota law with the argument that women would not embrace this type of entry into the boardroom (Viðskiptablaðið 2014). This suggestion was met with extensive objections as at this point in time the majority of the business community and leading business actors had turned in favor of the mandatory gender quota and protested any changes to the law, urging for following the set path and judging the outcome (Viðskiptabladid 2014).

Since 2014, no serious discussion against the gender quota has officially taken place in society, and studies indicate a growing positive view towards the gender quota, particularly among women directors and older established male directors (Arnardottir et al. 2015), though the issues of setting a time limit to the legislation has been aired in the media by a few business people (Viðskiptablaðið 2014, 2015a, b).

Reflections of Actors

This section presents the content of interviews conducted with three actors who all have first-hand experience as board members during the implementation phase of the gender quota law in Iceland. They were asked to reflect on their experience of the change process and its initial effects. Following is their account, often in the style of quotations in order to reveal as thoroughly as possible their experiences.

The first actor is a senior female, general manager with more than thirty years of board experience. She has been a member of more than twenty boards and is currently sitting on several boards.

As it seems to have been the case with many experienced females in business, her view towards gender quotas was initially negative, seeing the legislation as unnecessary and troublesome for women directors. She claims; "*I felt that women should be promoted on their own merits, but not through quotas. I felt that no one wants to be promoted to any position of responsibility and status without having worked him or herself towards that goal on their own merits.*" As was the case with so many others, both females and males, after having taken a careful look at the low percentage number of female directors and how hard the path had proved to be, she changed her opinion. "*After having really reflected on how women have succeeded in attaining board seats, I then changed my opinion towards gender quotas. I have been in a managerial position for various corporations for decades and during this time I have experienced how difficult it has been for capable women to get promoted to the very highest positions, becoming CEOs and members of corporate boards*" further stating that "*Even though powerful agencies such as the Chamber of Commerce, the Federation of Employers and others have pushed for the greater participation of women on boards, nothing really changed until the gender quota law was passed. Then, of course, corporations had to apply and accept women into their boards.*"

Nonetheless, according to the first actor the gender quota legislation experience has not been wholly successful in gaining the intended effect of increased diversity "*There is not much diversity amongst women who have entered the boards following the gender quota law. This is my personal view. They are very much of the same character and have similar experiences. Hence we are not receiving the diversity within boards as could have been the case. And even worse, I see the tendency that the same women are sitting on many boards, which is something we have criticised the males for in the past.*" The actor criticises women on boards for being few and identical in character, but she also raised the point that during a transition such as this, women have to be careful regarding their reactions *"My final point has to do with how women behave and feel when acting as board members. In my opinion women are different from males, and that is just fine as a diversity variable on the board. Women often carry along different types of experience when they*

enter the boardroom, also in terms of values. But women are much too emotional and serious towards debates and criticism that regularly happen within boards. Women have to learn to let go of their emotions and not take issues personally. I see a big threat here. I have already witnessed sub-groups of genders being created within boards because of these women vs. male behaviours."

The second actor is a senior male. He is a CEO and board chair, has more than thirty years of board experience and is currently sitting on several boards.

The actor claims that following the implementation of the gender quota law in 2013 shareholders and other stakeholders of boards became truly obsessed with the gender issue. He mentions that this has become most obvious within the Icelandic pension funds, which own a large share of the listed companies on the stock exchange. They, as large shareowners, have the right to nominate board members and the actor critiques the lack of sophistication when assessing diversity: "*The gender seems to be the only diversity variable they think of, especially the employees' arm of the pension funds. The pension funds' initial strategy was not to get involved in the selection process of board members, but they surely have walked away from that strategy and are now very impulsive in getting in their candidate. Unfortunately it seems to be always the same female individuals, who they get into their boards.*" Furthermore "*. . . there is a lot of diversity talk regarding the gender quota but there isn't really any diversity in Icelandic boards as a result of the gender quota. Females who have succeeded in business behave just like the males they criticise. They create their own tight network and truly take care by not accepting other females into it. These are female cults. Just like the males have.*" The actor further complains that the females who have joined boards after the gender legislation have similar levels of education, most often a business background, and similar levels of age and experience as their male counterparts. "*They also think and behave as the male board members. There is not much diversity here.*"

The actor claims that the gender quota law is a flawed solution and that other paths could prove more fruitful: "*I believe the solution has to do with exploring and understanding behavior. We need people into the boards who think differently, who would behave differently in different circumstances. In both academic discussion and in practice this has all been approached too*

narrowly." Then the actor continues by addressing the important issue of the selection process of board members and especially the criteria used when applying the selection process: *"The discussion should take place and focus on how to select board members based on behavioral issues. The discussion must be much more open and broader than it currently is."* Related to this is the matter of addressing or analysing the current board composition and what might be lacking in terms of fit between that and the firm's future strategy. *"There is no or little analysis on the board as a group or as a team. This is just my experience, having been a board member of dozens of boards. The selection is not based upon understanding what composition of a board is needed in order to push a firm's strategy. The link there has been broken. Without analysis of what combination of a team best supports strategy, the most effective board will not be put together*."

The third actor is a middle-aged female, who is currently a professional board member with substantial managerial experience.

The actor focused on her experience of the selection process in the wake of the gender quota legislation, and she describes a case in which the firm needed to change the board composition following the gender quota in 2013. There was a need to find a female to join the board and an informal nomination committee was created for that purpose. The criterion for selection was then created based on the firm's strategy. Hence gender became just one of the variables taken into consideration. Important other variables included strong international experience from a non-Icelandic person with a solid technical background and experience from the firm's industry. The search was carried out by using the board members' own network. Members of the informal nomination committee were from the board; the chair, the vice-chair and one common board member. They identified a foreign female candidate, with extensive managerial experience from the industry and with the technical foundation being searched for. This person accepted to stand for election to the board of directors. Then the actor presents: "*On the other hand, it was very surprising to get criticism for focusing on getting a foreign female candidate. There were people who thought that the candidate should be Icelandic, where it is the gender gap in Iceland which the law is trying to correct. Politics and private interests are truly influencing the gender quota discussion and decision making in Iceland."*

Another issue which seems to be getting more attention in the Icelandic setting, according to the third actor, is how shareholders should be involved in the nomination process. "*How should a nomination committee react if one believes that the shareholders are not considering the strategy of the firm? Unfortunately shareholders are not always thinking what is in the best interest of the firm.*"

Critical Reflection on the Case: Takeaways

In Iceland, a country with a long and strong emphasis on gender equality, the discussion about the importance of gender diversity on corporate boards and in the management of organisations had been extensively emphasised by various actors for over a decade. Despite the various soft measures that had been taken to promote gender diversity and gain better gender balance on corporate boards, the percentage of female directors still moved at a glacial pace. It took a strong economic shock that called into question the pre-existing values, knowledge, behaviour, processes and practices to get the hard route of gender quota legislation seriously discussed, debated, and finally passed in the Icelandic Parliament. The legislation was debated with the same arguments seen used by various actors around the world, but with the addition of very strong arguments for the urgency of change and need for "the female voice and reason" in business in order to prevent a reoccurrence of economic recession.

The gender quota came into effect on 1 September 2013, and since that time several actors, such as the Ministry of Welfare, the Center for Gender Equality, the stock exchange, Statistics Iceland, academics, media, and business institutions such as the Icelandic Chamber of Commerce and Business Iceland, have paid attention to the firm adherence to the 40% gender rule. One focus point has been to evaluate the political initiative as judged against the attainment of its original purpose. The stated objective of the legislation was to "*work towards a more equal portion of women and men in influential positions in limited and private limited companies*" (Parliamentary Document no. 71/2009–2010). Hence, judging simply from share numbers, as measured by the ratio of seats occupied by each gender on each board across years it becomes evident that female

representation on the boards is now close to the 40% mark and hence the stated objective of the legislation has nearly been met. It is also evident that smaller private companies lag behind in implementing the quota (Statistics Iceland 2016), and may be thereby supporting arguments made by some actors that the 13/2010 legislation was over-extensive by including small private PLCs, in addition to state-owned enterprises (SEOs), and publicly traded firms (PTFs). Another debated point has been how extensive the influx of new female talent has been onto the boards—that is, whether board's seats are now occupied by a few females sitting on various boards or if an increase in gender balance is reached by an influx of new talent. The numbers seem to indicate the latter (Statistics Iceland 2016) though this point needs further research attention.

The various actors, who have been for or against the gender quota, have also been trying to pay attention to some of the processes and short-term and long-term consequences of the gender quota legislation on directors, boards, firms and society. The results now, in early 2017, three years after the implementation of the legislation, seem to point to changes on several fronts. For example, authors echo the previous words of Storvik and Teigen (2010) about the experience of Norwegian gender quota, in that the Icelandic experience of gender quota so far has revealed that mandatory regulation is a key to the successful increase of female representation around the board table and "*not only does it create the pressure needed for fundamental change but it also triggers a public debate at the core of which are questions of gender equality in wider society*" (p. 1). Further, in the authors' opinion this mandatory change has led to a sharper focus on the concept of diversity among the business community, where diversity is now more openly discussed, as well as its potential meaning and how it can best improve board effectiveness and firm performance. The authors further claim that, following the implementation of the gender quota, the director selection process during this period of drastic board composition changes where firms are simultaneously looking for female talent, has gained increased attention. Research has drawn closer attention to the often-unstructured and opaque methods historically used in director selection and clear trends toward a more transparent process can be detected (Arnardottir et al. 2015). Finally, a general shift in attitude of the existing board directors towards the need and benefits of gender quota has been

detected from 2010 to 2014, with both female and male directors significantly more positive towards gender quota and discuss some effect on board dynamics (Arnardottir et al. 2015). But the long-term consequences of this hard measure remain to be seen, and hopefully will be closely monitored so that both Icelandic society and businesses, and the world as a whole, can learn from the pros and cons that the mandatory gender quota can have on directors, boards, firms and society.

Notes

1. The Major sources for this chapter are *Doing Business in Iceland*, published by Invest in Iceland and *Promote Iceland*, in collaboration with the Ministry of Industry, Energy and Tourism, and Corporate Governance Guidelines (4th edition) published by the Chamber of Commerce in Iceland.
2. This list comes from Doing Business in Iceland (2016).

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5

Gender Diversity on French Boards: Example of a Success from a Hard Law

Emmanuel Zenou, Isabelle Allemand, and Bénédicte Brullebaut

Introduction

In spite of recommendations given by governance codes, in France the proportion of women on boards and in top management more generally has remained low for decades. To bring about change, following the examples of Norway in 2003 and Spain in 2007, France adopted gender quotas on boards in 2011. The Copé Zimmermann law voted on and implemented in January 2011 requires listed companies and non-listed companies with revenues or total of assets over 50 million euros or employing at least 500 persons for three consecutive years, to reach a 40% gender balance on boards by 2017, with an intermediary level of 20% in 2014. Following its announcement in 2010, France's average proportion of female directors on boards of CAC40 companies increased from 10% to 15.4% during 2010 (AFEP-MEDEF 2010). After the

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General Assemblies of 2016, the 140 biggest listed companies (those with a capitalisation of more than 1 billion euros) have 36.7% of women on their board (Baromètre de la Diversité).

This chapter will begin by offering a general background of France's economic and political system around this law, as well as a description of the corporate governance structure in French companies. A discussion of the national policy, as well as figures on women representation, are given in a second section. The third section gives critical reflections on the case and the fourth section provides a short reflection from a French practitioner, female director in several French listed companies.

General Background of the Country

According to French National Institute of Statistics and Economic Studies (INSEE) in 2015, the population of France was 64.4 million inhabitants on a landmass of 552,000 km^2. France is the fourth most populous country in Europe, behind Russia, the United Kingdom and Germany. It is also the third-largest country, after Russia and Ukraine. In addition, France is one of the founding members of the European Union.

Characteristics of the Economic System

Labor Market and the Integration of Women in France

Women represent about 51% (INSEE 2016) of the population of France. The latest comparative statistics from Eurostat (European Parliament 2015) show that women have a higher level of education than men (32.8% are educated to graduate level as against 28%; the gap was similar in 2008: 26.7% compared with 22.8%) and a lower unemployment rate (9.6% versus 10.2%). Despite these good figures and a positive trend since 2008, inequalities remain in many aspects: in employment rate, part-time work, remuneration, segregation in occupation and also in the presence of women in Parliaments and senior ministers (see Table 5.1). The Global Gender Gap report 2016, published by the World Economic

Table 5.1 Statistics about women and men, in France and in European Union

	Women EU	Women France	Men France
Life expectancy in 2015[a]		85.1 years	79 years
Unemployment rate of women or men over 15 years old in 2014[b]		9.60%	10.20%
Employment rate for women or men aged 20–64 in 2015[c]	64.30%	66.20%	75.60%
Full time equivalent employment rate among women or men aged 20–64 in 2014[d]	54.50%	59.10%	71.90%
Gender pay gap in 2013[d]	16.30%	15.10%	
Gender segregation in occupation, in 2014[d]	24.40%	26.10%	
Part of women or men in the single/lower houses of the national/federal parliaments in 2015[d]	29%	26%	74%
Part of women or men among senior ministers in national/federal governments in 2015[d]	28%	48%	52%
Part of women or men aged from 15 to 67 graduated[d]	28.40%	32.80%	28%

[a]INSEE: http://www.insee.fr/fr/themes/series-longues.asp?indicateur=esperance-vie-naissance

[b]INSEE: http://www.insee.fr/fr/themes/series-longues.asp?indicateur=taux-chomage-sexe

[c]Report on Equality between women and men 2015 and Gender Equality Report: Key findings, European Commission 2015

[d]Eurostat 01/07/2016

Forum, ranks France in the 17th position over the 144 surveyed countries, with a 0.755 parity score.

France relies on several legislative texts and policy instruments to implement its gender equality policies in various domains. As underlined by a recent study carried out for the European Parliament (2015), gender equality policies in France have been developed since the 1970s and today they represent a consistent and comprehensive legal framework covering almost several domains of social, political and economic life. France has a long-standing tradition of legislating in favour of gender equality in the domain of employment and professional life, with the first legislation dating from 1972 and the establishment of no less than 12 laws between 1972 and 2014.

More recently, the main legislative initiatives that appeared where on the areas of, on the one hand, parity in politics and other decision-making bodies, including a series of laws strengthening gender electoral quota schemes which were adopted between 1999 and 2014. On the other hand, gender-based violence with several important laws on sexual harassment adopted in 2002, 2003 and 2012, and on sexual exploitation and domestic violence between 2005 and 2010. To the contrary, media and gender stereotypes have not yet been the target of similar legislative efforts, so constitute an emerging domain.

The most important and recent development in gender equality policy is probably the adoption of the "Law on Real Gender Equality" in 2014, which promotes an "integrated and transversal approach to gender equality". Instead of previous gender equality legislation that had been passed with specific laws for each policy domain, the 2014 Law aims at embracing all spheres of social life and various fields of gender equality policy simultaneously, with 77 dispositions.

Other Characteristics of the Economic System

The economic system in France has several distinct characteristics. First, the government had a long-standing influence on firms, as the main shareholder of many of the biggest companies. Even if this influence has been decreasing since 1987, with several waves of privatisation, during which big companies and financial companies took the place of the government, followed by foreign investors, it is still consistent today (Vie Publique 2016). Second France is well known for its elitist world based on prestigious education (Ecole Nationale de l'Administration, engineer's schools: Mines, Ponts, Centrale, ENSAE, Télécoms. . ., and business schools: HEC, ESSEC, ESCP and INSEAD) (Burt et al. 2000). People graduated from these schools run the biggest French firms and accumulate directorships in large public and private firms (Bertrand et al. 2004; Zenou et al. 2012). Most of them had worked in ministries for several years. And, thirdly, France is characterised by the predominance of family-owned companies, even among the 650 publicly listed companies: 70% of them are family firms (Sraer and Thesmar 2007).

France is facing a paradoxical situation. On the one hand, in view of the increasing proportion of foreign investors in French companies (in 2014 46.7% of CAC40 firms are owned by foreign investors) (Banque de France 2015), the country evolves towards Anglo-Saxon governance, with sanctions decided by the market. Since no gender quotas for boards haves been voted for in the USA or the UK, this may not be in favour of more women on French boards. On the other side, the heavy role played by stakeholders (influence of unions and committees, role played by employees in new regulations (NRE Law), awareness of sustainable development, increase of corporate social responsibility) has a strong influence on firms' governance and brings specific constraints to managers, creating other disciplinary mechanisms. This second point probably makes women's access to boards easier since CSR promotes fairness and equality among people, including for gender criteria.

The French Corporate Governance System

French firms can choose between two forms of governance: a two-tier system with two separated actors—the executive board and the supervisory board—or a one-tier system with a Chief Executive Officer (CEO) and a board of directors, in which the CEO and the chair might be the same person. This last situation is common in France: 65% of firms have a one-tier system. The Copé Zimmermann law applies to both systems. For the two-tier system, it is the supervisory board that has to comply with the Copé Zimmermann law.

The Dominant System Is a One-Tier System: A CEO with a Board

Article L225-17 of the French Commercial Code provides that the board of directors must be made up of a minimum of three members and a maximum of 18, excluding all the directors representing the employees. In France, two types of directors elected by the employees coexist, both have the right to vote. First, according to the French law voted in on

14 June 2013 (Law on Securing Employment no. 2013-504), in firms with more than 5000 employees in France or 10,000 in the world, two board members representing the employees have to be elected or appointed if the boardroom is over 12 members, and one otherwise. These board members are not taken into account for the ratio of 40% women on boards introduced by the Copé Zimmerman law. Secondly, if the employee shareholders represent more than 3% of the share capital of the firm, they have to elect a board member among them according Article 225-23 of the French Commercial Code. This member represents the employee shareholders but he is not an employee representative. This board member is taken into account for the ratio of 40%.

Board members are elected by the shareholders during the general meeting, for a period laid down in the statutes, of at least two years and not exceeding six years. They can be re-elected and can be dismissed preterm by shareholders, during any ordinary shareholders' meeting. The chairperson is chosen among board members, without any specific requirements, and this nomination is submitted to the vote of shareholders during general meeting.

The organisation of boardrooms usually consists of committees, such as audit committee, nomination committee or any other committee that may be useful or considered relevant. In 2008, article L. 823-19 of the Commercial Code made it mandatory to establish, in entities whose securities are listed on a regulated market, an audit committee: this committee, acting exclusively under the joint responsibility of the members of the board or the supervisory board, has to monitor issues relating to the preparation or review of accounting and financial information. The French legislation does not require the setting up of other committees.

The board of directors is involved in the definition of the strategy and monitors its implementation. It has the broadest powers to act in any circumstances in the firm's name and has to monitor and supervise the CEO's actions/decisions. The number of meetings to be held by the board of directors is not governed by any regulations.

The CEO is chosen by the board members. He/she may or may not be a member of the board—and may indeed be the chairman. The duration of the term is defined in the statutes of the firm and it is possible to be re-elected. The CEO can be dismissed at any time by the board of directors. The CEO has the widest powers to act in all circumstances in

the name of the company, within the limits of the corporate purpose or subject to the power that the law expressly give to the general meeting or to the board. He/she shall represent the company with regard to third parties.

The Two-Tier System, with a Supervisory Board and an Executive Board

In the one-tier system the rules relating to the supervisory board are often the same as the rules for the board of directors. Nevertheless, some differences exist. Members of the supervisory and the executive board cannot be the same and each organ has a chair, to be appointed by the members of each board. The main duty of the supervisory board is to monitor and supervise the executive board. The main difference with the board of directors is that the supervisory board is not involved in the definition of the strategy. A minimum of four meetings per year is set in the law—which recommends a total of eight should be held.

The supervisory board appoints the executive board, with at least two and no more than five members. In the law, the duration of the term of office is four years, but the statute of the firm can define a ny duration between two and six years. The executive board member can be dismissed by the shareholders or by the supervisory board if mentioned in the statutes. A chair is elected among the members of the executive board. With the exception of powers expressly assigned to general meetings of shareholders and to the supervisory board, the executive board is vested with the more comprehensive power to act in all circumstances in the name of the Company. Even though women have entered boards (see Fig. 5.1), few of them are chairwomen. In 2014, only 6% of board chairs were held by women in the largest French companies (European Commission 2014).

Board Nomination

Board nominations are less professionalised than is the case in Anglo-Saxon countries. Indeed, the influence of networks is very strong (Zenou

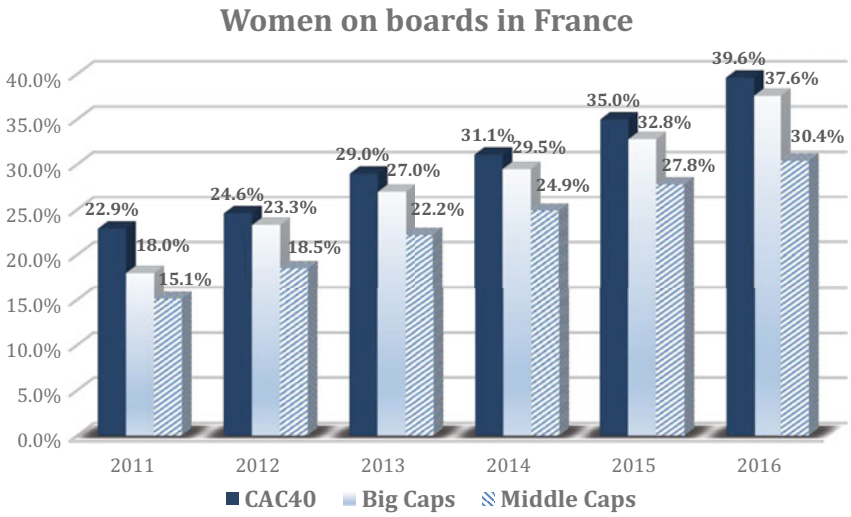

Fig. 5.1 Evolution of women representation on boards in CAC40, big caps and middle caps, from 2011 to 2016

et al. 2012), as French directors have strong interlocking links between boards (Yeo et al. 2003), and a strong influence of elites and prestige schools (Kadushin 1995; Allemand and Schatt 2010), in the explanation and origin of board membership. As Burt et al. (2000) highlight, the usual image of French business is the one of dense elite networks organised around several state-owned firms, and graduation from the most prestigious schools (Polytechnique, Ponts, Mines, Centrale, Telecoms, ENSAE, Ecole Nationale de l'Administration (ENA), or HEC are among the most famous ones). Kadushin (1995) has analysed the cohesion of the French financial elite, showing that the main predictor of a friendship between two people from this elite is that both had graduated from ENA. Pichard-Stamford (2000) notices that French corporate governance is characterised by a high density of interlocking ties between boards, higher, in particular, than occurs in its European neighbours such as Germany and the UK. Even if French Corporate Governance Codes such as the Viénot Report (1999) and the Bouton Report (2002) advocated for significant improvements with regard to board nominations, practices change relatively slowly. In companies, internal rules for board selection

Table 5.2 Summary comparison of both board systems

	One-tier system	Two-tier system
	CEO (one person)	**Management/executive board (2–5 members)**
	He can be a board member or not, and even the chairman of the board of directors	None of the members can be a member of the supervisory board
Chairman	Not relevant	A chairman is elected among the management board—No specific requirement
Appointment	He is chosen by the board members and can be dismissed at any time	Each member is appointed by the supervisory board
Tenure	In the statutes	4 years according the law or 2–6 years in the statutes
Renewal of mandate	Yes	Yes
Termination	The CEO can be dismissed at any time by the board of directors	Each member can be dismissed by the shareholders or by the supervisory board if written in the statutes
Role/mission	The CEO is vested with the more comprehensive power to act in all circumstances in the name of the company (article L 225-56-1 al. 1 Code de Commerce	The executive board is vested with the more comprehensive power to act in all circumstances in the name of the company
	Board of directors	**Supervisory board**
Members	3–18 members + Employees representatives (shareholder or not) (deliberative vote)	3–18 members + Employees representatives (shareholder or not) (advisory opinion)
Chairman	A chairman is chosen among the board members—No specific requirements	A chairman is elected among the supervisory board—No specific requirements
Tenure	Tenure: 2–6 years, written in the statutes	Tenure: written in the statutes, with a maximum of 6 years
Elected by	Each member is elected by the shareholders	Each member is elected by the shareholders
Re election	Yes, by the shareholders	Yes, by the shareholders
Termination	Each member can be dismissed by the shareholders	Each member can be dismissed by the shareholders

(*continued*)

Table 5.2 (continued)

	One-tier system	Two-tier system
Role/mission	The board in involved in the definition of the strategy and , monitors its implementation The board has the broadest power to act in the Firm's name	The supervisory board is not involved in the definition of the strategy
	The board has to monitor and supervise the CEO's actions/ decisions	He has to monitor and supervise the management board
Meetings	No regulation for the number of meeting: a minimum of eight are recommended by the main governance code	At least four meeting per year regarding the commercial code (Article L225-68)
Women/men	At least, 40% of each gender Employees representative are not taken into account for the ratio of 40%	At least, 40% of each gender Employees representative are not taken into account for the ratio of 40%
Committees	An audit committee is compulsory for the listed companies	An audit committee is compulsory for the listed companies

are homogeneous and specify, as previously explained, that the general meeting of shareholders appoints the directors (either in a supervisory board or board of directors), possibly on a proposal from the nominating committee. In turn, when there is a nominating committee, the latter is proposed by the board. The same administrators can be presidents in other firms, thus the dense network of board interlocks plays a significant role in board nomination (Table 5.2).

National Public Policy Regarding Women on Boards

Corporate Governance Codes

Governance codes have been developed through a private initiative supported by the Association Française des Entreprises Privées (AFEP)

and by the Mouvement des Entreprises de France (MEDEF)—the French equivalent of the Confederation of British Industry for UK. MEDEF has 700,000 firms that are members. Adhering companies decided to define more precisely many good principles of governance, to live up to public and investors' expectations. The first recommendations in governance appeared in 1995 with the Viénot I report, and they have been completed in the following years (the Viénot II report in 1999; the Bouton report in 2002; and the recommendations AFEP-MEDEF in 2007 and 2008), but without mentioning the representation of women and men in boardrooms or promoting diversity. The first recommendations appear in 2010, in the code AFEP MEDEF,[1] and indicates that "each board must consider the expected balance of its composition [...], in particular in the representation between women and men [...]. To reach this balance, the goal is for each board to reach and maintain at least 20% of women within three years and at least 40% of women within six years".

Legislations

Since the recommendations suggesting an increase in the number of women on the board of directors in the governance code are relatively recent, the percentage of women remained low and the situation did not change for several years. France was one of the bad students of Europe, with only 11.95% of women in the boards of big firms (European PWN 2010). This figure leaves the country well behind leading countries such as Norway (37.9%), Sweden (27%) and Finland (20%) (European PWN 2010).

The French government has been promoting actions for professional equality for some years. The first law requiring equality between men and women at work was adopted in 1983 (Roudy Law) and this law was reinforced in 2001 with the law Génisson. These laws promote equal access to work (appointment, training, career advancement, work conditions and wages) for men and women, but nothing was said concerning boards or managing bodies.

However, the feminisation of management and governance bodies was still considered as particularly low by many business actors and by society.

In order to enhance the government actions promoting professional equality among leaders, several deputies, led by Marie-Jo Zimmermann, the president of the Gender Equality Commission at French National Assembly, proposed a draft of law on gender equality on boards in December 2009, requiring 50% of women on boards five years later. The National Assembly modified the rate to 40% and the maturity to six years. This law was adopted and implemented in 2011. Marie-Jo Zimmermann had already proposed a similar legal text in 2006 that was refused by the Institutional Council.

This law, called Copé Zimmermann, applies to all listed companies and non-listed companies with revenues or total assets over 50 million euros, or employing at least 500 persons for three consecutive years. It requires these companies to reach at least 40% of women in their board of directors by 2017, with a first step of 20% by 2014. However, the law only applies to non-executive directorship positions, and while the female proportion of non-executive directors in France is well above the EU-28 average, the proportion of female executive directors is below the EU-28 average (European Women's Lobby 2014).

In case of non-compliance with the law, the appointments of directors shall be considered as null and void. Moreover, failure to comply with the law will lead to the non-payment of the board attendance fees to the board members.

Diversity Figures Before and After the Regulation

Evolution of Board Gender Diversity in the Biggest French Companies: The CAC40

Most studies focus on the largest listed companies and, in particular, the CAC40 companies (40 highest market capitalisations). The study from the Ministère des Familles, de l'Enfance et des Droits des Femmes indicates (2010, p. 23) that the percentage of female board members in these companies increased from 8% in 2006, and 10.5% in 2009 to 15.3% in 2010. According to the European Commission, the representation of female directors in CAC40 companies reached 34.1% in 2015,

placing France third in Europe in terms of the proportion of women on boards of the biggest listed firms in 2015, after Iceland (OMX10) and Norway (OBX38).

Listed Companies and Diversity

The CAC40 is not representative of all French firms. Since the Copé Zimmermann law also applies to smaller firms (the criteria are more than 50 million euros of assets or more than 500 employees), it seems interesting to study a larger sample of firms. Statistics from the Baromètre de la Diversité dans les Conseils d'Administration (Burgundy School of Business 2016) are available on Big Caps (those with more than 1 billion euros of capitalisation) and Middle Caps (capitalisation of between 150 million and 1 billion euros) since 2011. This accounts for around 250 companies.

As shown in Fig. 5.1, the proportion of women on board has doubled in the largest French companies between 2011, the year in which the Copé Zimmermann law was passed, and 2016. In middle caps, even if the level of gender diversity is lower, it has also doubled since 2011 and reached 30.4% in 2016. During all the period, we see a relationship between the size of the company and the representation of women on boards. Biggest firms are more exposed to the pressure of media, which leads them to comply with societal standards (Allemand et al. 2016).

The educational and the professional backgrounds of new women directors are similar to men's ones in the big caps (Allemand and Brullebaut 2014). No significant differences can be observed among the new appointees in terms of age, education (number of years of studies, alumni of elitist schools) and several kinds of experiences (experience as CEO, international experience). Differences consist in nationality (more women directors are foreigners) and independence (women are more independent than men in percentage).

Enabling and Hindering Forces

For private companies, the recommendations published by employers' networks (AFEP MEDEF Code) before the publication of the law were a main driver for pushing the issue of gender diversity on boards. In this respect, these recommendations pushed for gender diversity on boards more significantly than unions or syndicates, which were more focused on securing gender equality in wages than on their representation in decision-making bodies. Unions themselves show a very low representation of women in their executive boards (Damge 2015).

In the case of France, the increase of female representation was significantly pushed by a hard law, so this implementation did not have to face real opponents. Of course, as many other European countries French boardrooms were dominated by "old boys' network" usually described, which means that they traditionally were choosing male administrators as a usual norm, even though they were not declared opponent to this law.

French companies had to comply with the law, even though some criticisms had been made on the legitimacy of quotas (as outlined in the next section). The existence of a strong compulsory regulation cancelled any strong and structured hindering forces or groups that could be opponents to the increase of female representation on boards. In the public sector, several agencies and institutions controlled and published annual reports on the proportion of women on boards of public companies, and companies in which the state participates. They also checked for classical circumvention strategies such as lowering the number of board members to increase statistically the proportion of women (Damge 2015). As regards private companies, the application of these standards about female representation on boards was controlled by private structures, such as consulting companies or rating agencies, or by order of the government.

This law pushed companies to renew their board composition, and select new profiles, which needed also to be able to detect women profiles and make them visible. This is why the development of many women networks was also a useful factor to accompany the law and help its implementation. Networks such as Fédération des Femmes Administrateurs (http://www.federation-femmes-administrateurs.com)

or Femmes Chefs d'Entreprise (http://www.fcefrance.com) helped women to share experiences and visions about their role as board members. Indeed, the law about gender diversity on boards needed also to change the sources by which women profiles could be identified. The traditional recruitment and influence networks were not entirely adequate to define new profiles to select on boards, and those networks also contributed to add more professionalisation and structure to profiles specifications expected by companies. Public institutions and bodies also encourage training approaches, and many training programmes emerged in French 'Grandes Ecoles', universities or professional networks, such as *Women Be European Board Ready* by ESSEC Business School, and programmes proposed by the Institut Français des Administrateurs (IFA—*French Institute of Directors*; http://www.ifa-asso.com). These programmes are intended to help participants stay at the highest level of skills in the exercise of their mandate. They include operational training and experience sharing on best practices of governance, in particular in complex and international environments. In this perspective, they had a role in promoting the law and making it more operational for companies and potential female administrators.

Critical Reflection on the Case

Statistics show that French firms have decided to enforce the law, and that most of them are even ahead of the compulsory gender diversity schedule. Big caps' response to the quota law was immediate and diversity increased each year by five points since 2011. During the period 2011–2016, the same proportion of male and female candidates has been appointed on boards of largest companies (Burgundy School of Business 2016), reflecting a significant change about gender in hiring practices, which were mostly directed towards men before the law. Other appointment criteria did not change, as shown in Allemand and Brullebaut's (2014) study: selection is as rigorous for women than for men in terms of education and experience.

However, some complaints exist from companies. Firstly, to reach the high compulsory level of the law, companies give priority to women's

appointment (as previously stated, half of the new directors are women, which was not the case previously: see Burgundy School of Business (2016), for more figures), with two consequences. Some relevant male directors are not renewed at the term of their office, in order to make way for women, and male candidates are far less likely to obtain a mandate, whatever their skills and expertise are. Secondly, as expressed by Caroline Weber (2012), the CEO of Middlenext—the independent French association representing listed SMEs and midcaps, the drawbacks of quota laws are their inability to take into account firms' specificities. For example, in some specific industries, other skills and competencies may be more relevant than gender. In the automotive industry, for example, engineers are required on boards and this criterion is stronger than gender (a female engineer can be appointed but for her technical skills rather than simply because she is a woman). For Caroline Weber, firms should be differentiated by size or by types of shareholders when laws are decided in order to adapt legal documents to their specificities, with achievable goals. She states that big firms and small firms do not have the same governance issues and constraints. Still, as expressed by Agnès Touraine, President of IFA (French Institute of Directors): "Quotas are never a victory and should not be the solution. However, they are the only option when there are no signs of a willingness to change the current situation. Despite our preference for "soft law," we have to recognise that regulation can speed up progress" (Deloitte 2015).

Opponents to quota laws argue that compulsory levels of women on boards force companies to appoint directors based on their gender and not on their skills and what they can bring to the board. Some studies indicate that quota laws would lead to a reduction in the level of board human capital (Ahern and Dittmar 2012). However, the comparative study of Allemand et al. (2016) concerning France (quota law on women on boards) and Canada (comply or explain concerning diversity) concludes that hard laws lead to higher and quicker women representation on boards, and that French firms manage to find female candidates meeting usual selection criteria (experience as CEO, experience of other boards, international and finance experiences, and elitist education).

Thanks to the Copé Zimmermann law, by 2016 86% of French boards have three or more female directors. According to Torchia et al. (2011),

using critical mass theory of Granovetter (1978), a minimum number of women is necessary to be able to see gender diversity effects on the organisation. This means that in future years, researchers will be able to test more efficiently the relationship between board diversity and firm performance, and more generally speaking, to study the influence of women representation on boards (decision making, supervision, etc.).

Reflections of an Actor

Viviane Neiter

Interview to *Viviane Neiter*, board member of five French listed companies (Iceram, Plant Advanced Technologies, Prodware, Spir, Vêt Affaires) and member of Governance Professionals of Canada (GPC).

Gender diversity, generally thought of as "gender balance" between male/female, has become an important topic on boards since 2010. Before that, boards were "old boys clubs" and the matter was not really debated. The promulgation of the Copé Zimmermann Act has been an opportunity to lead the way into a new way of thinking. Of course, it caused some initial trepidation, because it was left to "hard law". Several professional organisations, like MEDEF (The MEDEF "Mouvement des Entreprises de France" is the French equivalent of the Confederation of British Industry in UK—MEDEF has 700,000 firms that are members), should have initially preferred "soft law" in the form of "best practices", or "soft law". But the figures spoke for themselves: women found slow progress in the increase of their peers on boards. It was true that very few women reached the highest positions as executive heads of organisations. Even today, progress in this direction remains relatively marginal in comparison to the large number of qualified women in the labour market. Indeed, it necessitated a real paradigm shift for the companies. Fortunately, the acknowledgement and the lobbying of a long-term work and undertaking have deeply changed the mindset, the attitude and the culture. They have raised awareness among both companies and executives, too. Everyone who is honest is aware of the invaluable contribution to debates of women

whose life experience and meaningful inputs give them a different understanding.

I observe that women on boards offer complementary points of view (not necessary approaches opposed to competing perspectives) on several topics that prove worthy of their consideration. Take the example of succession planning, mergers and acquisitions, human resources, sustainability, long-term issues and challenges of organising, role of social medias . . . They help deal with the global challenges facing us, such as tackling climate change. So, every board member is enriched after having listened to the different ideas. Women dare to ask questions about sensitive aspects and that is very useful for decision-making. Nevertheless, the mix means a constant exchange and the understanding of male codes. It takes much time, but that is the solution to make our demands heard. Sure, only one woman on board appears to have less direct influence over things. When two or three women serve as board members it is easier to master male codes; it's a way to rise through the ranks. At a deeper level, it may be necessary to transform masculine norms and practices that encourage old men to flout their responsibilities. Do not forget, one of the objectives of a board is to ensure the long-term existence of the company and to create value not only for shareholders, but also for stakeholders. So we can create an ecosystem in favour of innovation.

Another point is that the greater presence of women on boards has professionalised the recruitment of board members. We have intense discussions about the best way to capture diversity profile that meets the particular needs of the board and to identify the skill and experience set necessary for the board at that particular time. They are focused on sourcing qualified candidates, and the recruitment is increasingly based on merit and expected contribution, while the diversity profile is a factor.

Is there a correlation between financial performance and gender balance or is there a correlation between financial performance and board diversity? That is a question!

Trends towards the notion of greater diversity can be seen on French boards; it promotes independence of thoughts and improves board effectiveness through different perspectives and knowledge. They can be summarised in four words: male, frail, pale and stale. Understanding that each individual, each human is unique and recognising that diverse individuals bring different perspectives, I observe more respect and

appreciation of differences. However, it also needs inclusion that demonstrates acceptance of differences and involves creating a sense of belonging of all. Diversity without inclusion ignores unique perspective and adds very little, if any, value.

What about diversity policy? Boards have to consider other types like competency, ability and whether the board's diversity reflects the diversity of the market the company operates within. Canadian people consider overall diversity and inclusion, age, geographic concentration, urban/rural balance and disabilities, culture and sexual orientation. In Canada, gender may include gender identification (gay, bisexual, lesbian or transsexual). In France, that's a taboo subject on board.

Finally, it must be noted that women didn't dare to be on boards. So for me, interactive workshops are necessary. The goal is to empower women to be more confident to lead and serve on boards and foster the opportunity to network from each other in small groups setting with other like-minded women. These workshops help women gain insights and learn about the skills they need to prepare for board opportunities and must be facilitated by corporate directors. Three words: Connect, promote and empower women.

For me, challenges are the definition of "diversity", determining which types of diversity are more important, at a given point in time for improving board effectiveness, and determining appropriate initiatives and measures. Moreover, senior executives are not so diverse. Can you have diversity of thought without diversity and inclusion? Does diversity of gender create diversity of thought?

To conclude, a law is necessary to make things change. Women bring new ideas to the boards and the search for women candidates contributes to improving board recruitment process. However women's mind needs to be changed to better convince them to become board members, women should be more connected, promoted and empowered.

Note

1. Code de gouvernement d'entreprise des sociétés cotées (revised in April 2010): "Chaque conseil doit s'interroger sur l'équilibre souhaitable de sa composition [...], notamment dans la représentation entre les femmes et

les hommes [. . .]. Pour parvenir à cet équilibre, l'objectif est. que chaque conseil atteigne puis maintienne un pourcentage d'au moins 20% de femmes dans un délai de trois ans et d'au moins 40% de femmes dans un délai de six ans [. . .]".

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6

Women on Board in Italy: The Pressure of Public Policies

Alessandra Rigolini and Morten Huse

Introduction

Italy is one of the countries where a gender quota law has been implemented. The so-called Golfo Mosca Law was implemented in Italy in 2012. This law required that by 2015 the boards of listed companies and state-owned companies should have been composed of at least 33% of the least represented gender. In 2011, before the introduction of the law, only 6% of directors of listed companies sitting on boards were women. By the end of June 2015, the percentage of women board members had

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risen to 27.6% (Consob 2015). Before the introduction of gender quotas, other public initiatives were raised in the Italian gender debate. However, it was only with a mandatory law, even if with a temporary validity, that there has been an increase in the percentage of women in top positions.

In this chapter, we investigate the development of Corporate Governance Codes, gender balance initiatives and the effect of the quota on boards in Italy. The chapter is structured as follows: following a brief introduction discussing the development of the political and economic environment in Italy relevant to this study, we present the main characteristics of the corporate governance system. We then introduce the main gender public policies implemented in Italy, and, finally, we present some empirical evidence and critical reflection on the Italian case.

General Background

The Italian capitalist system has developed along different lines to that seen in many other countries, such as the Anglo-American and the German-Japanese systems. The Italian system is the result of a "mixed model" (Melis 2000; Zattoni 2006) characterised by a high ownership concentration, pyramid ownership formation, a substantial presence of holding companies, a wide diffusion of family properties and state-owned firms, and an underdeveloped equity market. Moreover, there is a limited separation between ownership and control, and the traditional agency conflicts are generally between large controlling shareholders and minority shareholders.

The Italian stock market is historically characterised by particular structural deficiencies. The number of listed companies, for example, is modest in comparison to both other major European markets and the rest of the world. Approximately 260 companies were listed in the period 1999–2015. At the end of 2015 the weight of market capitalisation on Gross National Product was about 26% (Borsa Italiana 2016).

Italian companies, as has been mentioned, are characterised by a high degree of ownership concentration. Even listed companies typically have only one shareholder (mostly one or more families) who, either directly or indirectly, control the company. Therefore, there is very little separation

between ownership and control. Companies are often managed directly by, or operate under the close supervision of, the controlling shareholders. Italian board members are top managers, representatives of the controlling shareholder, or people linked to the main shareholders through close family or professional relationships. Such relationships are sustained by long-term connections, trust, and mutual respect. Thus, the boards of directors of Italian companies could be seen as having more of a formal than a substantial role. Often they are in place simply to ratify decisions already taken by others in other contexts (Brunetti 1997). These characteristics can also have consequences such as the limited independence of outside directors and weak legal protection for small investors (D'Onza et al. 2014).

As the result of such patterns of ownership, since the mid-1990s, a large number of new guidelines and regulations have been introduced to protect outsider investors in Italy. These have included the Draghi reform (1998), the "Corporate Governance Code" (Codice Preda 1999), the reform of the company law (2003), the so-called "Law of Saving" (2005), and the Legislative Decree no. 12/2010 for the enactment of the European Shareholder Rights Directive. The gender quota regulation (Law Golfo-Mosca no. 120/2011) can also, to a certain extent, be seen as an instrument intended to reduce the power of the business elite. For a very long period this elite has played a central role in Italy's political and economic development. In order to understand the peculiarities of the Italian corporate governance system and how the gender debate has recently contributed to its change, here we give some brief reflections on the development of the Italian political and economic system.

Political and Economic System

The development of Italian capitalism has been characterised by the presence of a few large corporate groups with political power and wealthy, elite families entangled in a network of relationships with banks, the state and large public and private firms (Amatori 1995; Rossi and Toniolo 1992). They dominated both the economic and the political scene during the 1980s and the 1990s.

The development of a strong and powerful bank system, towards the end of the nineteenth century (Gerschenkron 1962), may be considered one of the pillars of the development of industrialisation in Italy. Banca Commerciale Italiana and Credito Italiano, for instance, were both founded in 1894 and these two banks soon became the most important financial institutions in Italy (Confalonieri, 1974–76, 1982). Between 1896 and 1914, they encouraged the first phase of intense industrialisation in the country, providing financial and managerial resources to the strongest Italian companies such as FIAT (automobiles), Breda (train engines) and Montecatini (mining). These banks also facilitated the birth of the electrical and steel sectors (Aganin and Volpin 2005). However, the banks' sustenance was not sufficient to support the entire industrialisation process. The development of Italian capitalism also required the involvement and assistance of the state. Accordingly, in 1933 the state created the Istituto per la Ricostruzione Industriale (IRI) as an establishment through which the state began to acquire companies and invest in all sectors of the economy. In 1952 the state created a second institution, Ente Nazionale Idrocarburi (ENI), to coordinate state-owned companies operating in the chemical, oil and mining sectors. Further, the state established two more agencies, Ente Partecipazioni e Finanziamento Industrie Manifatturiere (Efim) and Società per le Gestioni e Partecipazioni Industriali (Gepi), in 1962 and 1972 respectively, to direct their intervention in Southern Italy. Between 1933 and 2000 (when IRI was liquidated), IRI and ENI were involved in more than one hundred merger and acquisition (M&A) activities.

Another important step in the development of Italian capitalism was the state's decision, in the early 1960s, to nationalise the electrical industry. Thus, during the 1950s and 1960s state-owned enterprises made a significant contribution to the growth of the Italian economy (Barca and Trento 1997). However, over time as the result of structural inefficiencies such as budget constraints, technological underdevelopment, weak managerial incentives, and the inefficient allocation of resources, the strong level of state involvement became an increasing obstacle to economic growth (Aganin and Volpin 2005). The state decided to finance the losses caused by these inefficiencies mainly through the use of public debt. By the beginning of the 1990s, public debt had

reached a seriously high level, meaning that, with pressure from the European Union, the state started a privatisation programme (Goldstein 2003).

The privatisation era of Italian capitalism represents the period of consolidation of the positions of wealthy families and business elites. Indeed, the absence of anti-trust legislation until 1991 implied that large companies owned and managed by wealthy and notorious Italian families, were involved in the privatisation game, acquiring unlimited market power. The acquisition of formerly state-owned companies gave the privately owned companies opportunity to achieve monopolistic rents in the core industries, increasing their financial, political and economic influence in the Italian market (Aganin and Volpin 2005; Amatori and Colli 2000).

Families, such as the Agnellis, Benettons, De Benedettos and Berlusconis, and company groups, such as Generali (Italy's largest insurer), Telecom Italia (the biggest telecommunications group), RCS Media (owner of one of Italy's most influential national newspapers, *Corriere della Sera*), Medio Banca (the Italian Goldman Sachs), started to dominate the economic and political sphere in Italy.

Cultural System

There are some specific features of the Italian institutional setting that make it difficult to compare the development of the gender debate in Italy different with developments in other countries. Women and men play different roles in work, life and family. According to research by Eurostat, Italian women devote more time to family responsibilities of all other European women, with a daily average of 5 hours 20 minutes a day. Thus, a women's career is closely related to having somebody to take care of the children. That could be family members—such as grandparents. But it is still most often the case for Italian women that if they have a family, this is a strong impetus for them to be the homemakers.

In Italy, the gender gap in the working population is still pronounced (Istat 2017), with the gap in the employment rate being around 20%. In this survey 26.8% of women state that they would like to work but are

unable to do so, despite their high level of education. More than half of employed women (54.1%) performed a combination of more than 60 hours per week of paid work and/or family care. Despite having broken through the glass ceiling, Italian women are paid less than men for the same work (the so-called gender pay gap), and they are more often to be found in involuntary part-time and precarious positions (Istat 2015) with fewer possibilities to make a good career.

Furthermore, it is important to understand in Italy the difference between women in general and those women that are the main actors in the discussions about women on boards. Many of the women getting board seats are individuals who belong to the elite and career progression is still also related to social career and marrying upwards. A combination of femininity and relational capital is sometimes used to achieve career advancement. Career is more than just a mark of status in a corporation; it may also mark an advance in social status.

Governance Structure

The reform of company law (Legislative Decree No. 6/2003) has, among other things, given Italian companies the possibility of choosing between the adopting of different systems of governance. The legislation has also made the Italian context more attractive to foreign companies. The reform this brought, allows listed companies to choose one of the following corporate governance systems: (a) a dualistic horizontal model, the "traditional" Italian system; (b) a dualistic vertical model, inspired by the German system; or (c) a monistic model, inspired by the Anglo-American system. The "traditional" system is characterised by the presence of two bodies—the board of directors (Consiglio di Amministrazione) that acts as the managing body, and the board of statutory auditors (Collegio Sindacale) that has a controlling responsibility. Both boards are appointed by the shareholders' meeting (therefore the system is called dualistic horizontal).

At the end of June 2015, about 90% of the listed companies in Italy had implemented the dualistic horizontal system (Assonime 2016). In the following sections, following a description of the ownership structures of

the Italian companies, we will focus on the characteristics of the dominant Italian dual horizontal governance system.

Ownership Structure

The ownership structure of the majority of Italian listed companies is concentrated in the hands of a family, a coalition or, in some cases, the state. Financial institutions hold only a very limited amount of shares. Pyramidal groups, in which the holding company controls the majority of voting rights of the other affiliated companies (directly or indirectly), are distributed widely. The ultimate controlling shareholder is usually a single entrepreneur, a family or a coalition. However, the structure of these groups is often quite complicated and the exact controlling structure is difficult to trace, especially in the international environment.

Moreover, in the Italian context, the main shareholder usually acts as a blockholder who is likely be controlling the management team directly. Such capacity to control is a consequence of the high ownership concentration, the existence of non-voting shares and shareholders' agreements, and the owners' involvement in the top management team (TMT). In fact, when the ownership is concentrated in the hands of a single shareholder, this shareholder is most often also involved in the TMT of the firm (Volpin 2002), which ensures a high level of managerial discretion because the ideas and objectives of the top managers correspond to the ideas and objectives of the major shareholders of the firm (Spencer Stuart 2016). In addition, particularly with regard to listed companies, 21% of the top management teams are composed of family members, and in 34% of the cases the chief executive officer (CEO) is a member of the family that controls the company.

Thus, due to the peculiarities of Italian ownership structures, there is agency conflict, not as much between shareholders and management, as between minority and majority shareholders (Melis 2000).

The Board of Directors in the Dualistic Horizontal System

In the dualistic horizontal system, the board of directors (Consiglio di Amministrazione) is the executive body of the company. It is tasked with implementing the decisions of the shareholder meeting, and is responsible for managing the company. The board of directors plays a central role in corporate governance: It is responsible for approving the organisational strategies, of hiring, supervising and defining the remuneration of senior executives, and for ensuring that the companies meet their legal responsibilities in the external environment.

The number of board members (Art. 2383 Civil Code), if it is not established by the statute, is decided by the shareholders' meeting. This meeting also sets their remuneration. Board members remain in office for three years, but they can be re-elected, unless the statute states otherwise. Board members can also be dismissed by the shareholders' meeting at any time.

The board may appoint one or more CEOs (Amministratore Delegato) itself if permitted either by the shareholders' meeting or by the company statutes. The board delegates certain powers to the CEO, such as to make decisions in the name of and on behalf of the company, to do contracting and to exercise rights that produce effects for the company. The board of directors may set limits to the powers of the CEO.

The board of directors is composed of executive, non-executive and independent directors. The executive directors are board members with executive roles within the company, and participate in the daily corporate life. The independent directors are outside directors who do not directly or indirectly maintain with the firm any family or business relationships "of such a significance as to influence their autonomous judgement" (Italian Corporate Governance Code 2014:13). The non-executive directors are those who do not meet the requirement of independence. Shareholders are not meeting the requirement of independence but they might be in the group of non-executive directors.

In case of CEO duality, the board should designate a lead independent director. Directors can be members of boards of directors in several

companies. However, Article 2391 of the Civil Code states some rules to manage possible conflicts of interest.

Statutory Auditors as the Supervisory Board in the Dualistic Horizontal System

In Italy, the statutory auditors (Collegio Sindacale) form the main controlling body of a company. This body is composed of between three and five members (plus two substitutes) with adequate specific knowledge of accounting and relevant legal matters. They are usually drawn from the same range of people: accountants, lawyers, business consultants, or university professors of law or economics (Romano and Rigolini 2013). At least one full member and one substitute should be a "legally qualified" auditor.

This supervisory board should ensure the company's compliance with the law and the company statute, their compliance with the principles of correct administration and also the adequacy of their organisational, administrative and accounting structures. Given the duties attached to their role, the supervisory activities of the statutory auditors should be developed systematically, and not episodically. To ensure this, the auditor members of this supervisory board also participate in the meetings of the executive board and the executive committee. In addition, although they are appointed by the shareholders who also elect the members the board of directors, statutory auditors have to act autonomously and independently. They, therefore, should operate in the best interests of the company and have to maintain neutrality in their judgement. Their responsibilities are very broadly defined as having to fulfill their duties professionally and diligently, and being jointly responsible for acts or omissions of executive board members.

Corporate Governance Code and Regulation

The Corporate Governance Code for listed companies was introduced in 1999 by the Committee for Corporate Governance and promoted by the Italian Stock Exchange. The code's recommendations are not mandatory,

but listed companies must, in accordance with the Italian Stock Exchange Regulations, keep both the market and its shareholders informed regarding their governance structures and their degree of compliance with the code. To assure this, listed companies are required to publish a special report along with their publication of financial information. This is circulated to the shareholders and simultaneously sent to the Italian Stock Exchange, which makes it available to the public.

The code relates to, among others topics, the following: the role of the board of directors; the composition of the board; requirements for independent directors; treatment of confidential information; procedures for the appointment of board members and their remuneration criteria; the committee for internal control; related party transactions; and relations with institutional investors and other shareholders. The code is written using he/she as personal pronoun form, but gender representation is not specifically mentioned.

Companies seeking to go public have to evaluate how their existing structures and procedures comply with legislated regulations, as well as with well-established best practices. It is clear that once listed, the company will be subject to strict evaluation of governance structures and control by financial analysts, business journalists, and supervisory bodies, who have influence regarding the ratings of all stakeholders, first of all potential investors (Romano and Rigolini 2013).

Board Nomination Process

In the traditional Italian corporate governance system, the shareholders' meeting is assigned to appoint the board members. The code sets no precise rules on the procedures according to which the voting system should take place. It gives the company autonomy to decide on voting by raising hands, by acclamation, or by head count. The shareholders could also be asked to vote for individual candidates or for a list of candidates for directorship positions.

It is common in the nomination process to use a "voting list", under which the shareholders' meeting elect the board members from two or more competing lists of candidates. The "voting list" mechanism is

intended to ensure the inclusion of minority group representatives on the board of directors.

National Public Policy Regarding Women on Boards

The Gender Debate in Italy

The emancipation of women in Italy has been a long and tumultuous process. The Italian law on women's voting rights was approved on 1 February 1945 after having been rejected on several previous occasions. In the Code of the Family approved in 1942 and in the Penal Code discrimination against women was still upheld. These codes were based on the ideas regarding subordination of the wife to her husband, in terms of both personal and economic relationships. Moreover, authority regarding the children was solely afforded to men.

True women's emancipation in Italy was strongly signalled for the first time in 1951 when the first woman was elected in Parliament: The Christian Democrat, Angela Cingolani, was nominated as deputy secretary in the Industry and Commerce office. In 1959 the women's police unit was created, and in 1961 the judiciary and diplomatic careers were opened for women.

The Family Code was reformed in 1975 as the Reform of Family Law (no. 151/1975) which recognised legal equality between husband and wife, and abolished the institution of dowry. It guaranteed the same protection to legitimate sons as to the biological sons, and parental authority was allocated to both parents, particularly in the protection of children.

Further, Law no. 125 of 10 April 1991 introduced actions that would ensure gender equality in the work environment. What this law provided was later taken up in the Equal Opportunities Code in the Legislative Decree (no. 198/2006, art. 42) of 2006.

Importantly, the Italian Constitution was amended in 2003 to include a regulation which accepted the gender balance principles that had been

introduced in different kinds of legislation during the forgoing fifty years. Specifically, the Constitution set out principles for formal and substantial equality (art. no. 3), non-discrimination against working women (art. no. 37, c.1), and equal access to public offices and political positions (art. no. 51), in reference to "equal opportunities" articulated in the Constitutional law (1/2003) of that particular year.

Despite the introduction of several public policies, by 2009 Italy still ranked as one of the lowest in the international ranking of women's representation in the business environment.[1] Only 6% of boards in listed companies were occupied by women. In the state-owned companies the percentage of women on boards was 4%.

Finally, in 2011, the Golfo-Mosca Law (law no. 120/2011) was introduced with the aim of increasing women's representation on Italian boards. This law addresses listed companies and firms controlled by public administrative bodies not listed on regulated markets. Actually, the first version of the law was presented in Parliament in 2009, but the legislative procedure was long and complex, running into several barriers along the way. The next section will discuss the process and main actions introduced by the law.

The Italian Quota Law

The Golfo-Mosca Law requires that by 2015 the boards of listed companies and state-owned companies should be composed of at least 33% of the least represented gender. By 2012, the target of 20% was set.[2] Historically, in the Italian companies the least represented gender is women. The law applies to both the corporate governance bodies: the board of directors (executive board) and the statutory auditors (supervisory board).

The Italian case differs from that of other countries with similar strategies (e.g., Norway), in that the law has a cut-off date and therefore has only a temporary effect. It is obligatory for three mandated board terms, until 2022. After this, the law will lapse, and companies will be free to determine the gender composition of the board. It is assumed that the

law is valid for nine years for both the board of directors and the board of statutory auditors.

The legislative directives apply for publicly listed companies from the first term renewal of board of directors, and from one year after promulgation of the law for statutory auditors. Publicly listed companies follow the directives of the Golfo-Mosca Law and a subsequent CONSOB (Italian Stock Exchange Commission) regulation. In particular, CONSOB is in charge of evaluating listed companies' compliance on gender quotas. If they do not comply, CONSOB instructs compliance within a period of four months. If the company still does not comply within the term assigned, CONSOB can impose a monetary penalty of up to one million euros if the failure regards the board of directors, or up to 200 000 euros if the failure is in the composition of the statutory auditors. In such cases, CONSOB will also set a new term of three months for their compliance. If the company still fails, the governance bodies will be removed.

State-owned companies are regulated by the Decree of the President of the Republic (DPR of 30 November 2012. In this case, the authority that checks on observance of the law lies with the President of the Council of Ministers, or it can alternatively be delegated to the Minister for Equal Opportunities. The regulation decrees that these companies have to communicate the composition of their governance to the President of the Council of Ministers or to the Minister to whom authority has been delegated, within fifteen days of the date of their appointment. When the controlling authority finds that the legal obligations have not been met, it can apply a double warning mechanism, with a deadline of sixty days each, after which, if the company does not comply, the elected body will be removed.

In the next sections we will show the effect of the quota law on the presence of women in top positions as board members. We will be comparing appointments of women before the introduction of the law to similar appointments of women after its implementation. In order to compare Italy's gender quota system with other countries' systems we will focus on women representation on boards of directors (Consiglio di Amministrazione). This body is chosen because the appointment of statutory auditors as described in the Statutory Auditors as the

Supervisory Board in the Dualistic Horizontal System, is driven by criteria less affected by power dynamics.

Women's Representation on Boards: Changes and Developments

It is evident that until the European debate about "Women on Boards (WoB)" flared up, the share of women on Italian boards was low—although the number of women on boards was increasing even before the introduction of the Italian gender quota regulation in 2011. Even so, as late as 2009 only 6.3% of the board seats were held by women (see Table 6.1 in appendix). In 2009, of the 149 companies listed on the Italian Stock Exchange, 95 had just one woman on the board and only six companies had three or more women as board members (see Table 6.2 in appendix). Nevertheless, there were variations between different companies. There were more women on boards of companies controlled by a single owner, where family ownership prevailed (see Table 6.3 in appendix), in that 94 out of 173 women board members (54%) were family-affiliated (see Table 6.4 in appendix) Among them, 40% were non-graduates (see Table 6.5 in appendix). By contrast, 95% of the women board members who were not family affiliated, were educated to graduate level. Comparing the figures and results of previous studies (Gamba and Goldstein 2009), it is evident that the percentage of family-affiliated women has decreased over the past four decades while the educational level of women on boards has increased considerably during the past decade (Bianco et al. 2015).

Since the introduction of the law in Italy in 2011, there have been several studies that have aimed to explain some of the changes and consequences of the law. A research project carried out by the Dondena Center at Bocconi University investigated how the implementation of the law brought changes to the composition of the boards of Italian listed companies.[3] The analysis shows that since its implementation, not only has there been an increase in the number of women in senior positions, but the governance of the company has also improved. The share of women rose—from 13.6% among companies whose boards were renewed shortly before the reform, to about 25% where the boards were renewed

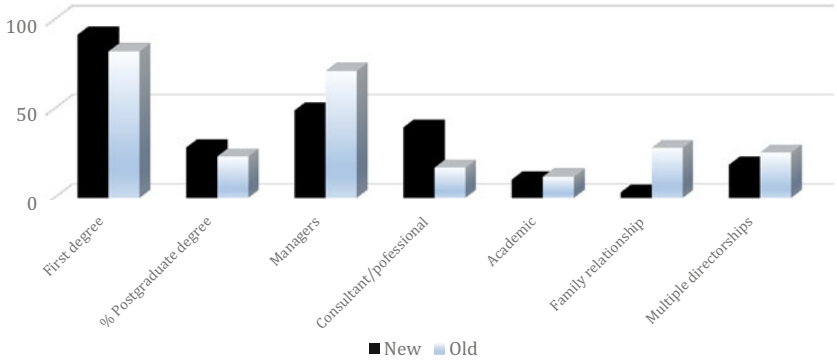

Fig. 6.1 Comparisons between women appointed before and after 2011 (%) (*Source*: Our elaboration based on Corporate Governance Report 2015 (CONSOB))

after the reform. In the interim period between August 2011 and August 2012, the percentage of women increased to around 15% (WP.2 2015: 5).

Beyond numbers, the increased presence of women has been accompanied by a positive trend of improved quality indexes in the composition of the corporate bodies of listed companies. Figure 6.1 compares 2015 statistics on the background of the women appointed before the introduction of the law in 2011, to those of women appointed after its introduction. Considering the CVs of board members appointed after the law, the number of women with high levels of education (postgraduate) increased by 21%. In addition, two negative trends which many had feared with the introduction of quotas were not evident, namely more appointments of the so-called "golden skirts" (a small number of women who were appointed to many boards) and more appointments from within the family circle of existing owners. The results show that there has been a decrease in the numbers of those with multiple positions, and only 3% of the new women board members have family ties to the family-owned firms.

During 2014 and 2015, there was a momentous increase in the number of women on boards (Consob 2015). By June 2015, 85% of Italian listed companies had already followed the Golfo-Mosca Law (see

Table 6.6 in appendix). The percentage of women on Italian boards reached about 28—which is almost five times more than in 2008. Women are principally appointed to the independent director positions: only 2.6% have a CEO appointment and only 5.6% have an executive role. Tables describing the characteristics and development of women on boards in Italy are given in the appendix.

Hindering and Enabling and Forces

The Italian quota legislation (*quota rosa*) was not introduced without a debate. Voices in favour of increasing the number of women on boards had been raised for more than a decade preceding the event, but still the initiatives for quota legislation came as a surprise to many. Lella Golfo, a right-wing member of the Italian Parliament (Lower House), proposed the first quota law on 7 May 2009, and Parliament approved it unanimously. However, nobody really took it seriously (Brogi 2013: 189). Six months later, Alessia Mosca (MP) proposed another law suggesting a gender quota on corporate boards. Eventually, the two quota proposals were merged, reaching the Senate (Upper House) on 6 December 2010. This was met publicly with a considerable amount of negative reaction. "In a joint press release the Italian Trade Association, the Italian Bankers Association, and the Italian Insurance Companies Association declared that the quota law would greatly harm Italian businesses" (Brogi 2013: 189). Nevertheless, the media and Italian journalists widely supported the law.

The main arguments against the quota law in Italy were that it was unconstitutional, and an unjustified tool; that board nominations would be too complex, that it did not set qualifying requirements for women as board members, that it would favour women in family businesses, that it would create a shortcut to careers in business for ambitious women, that there would be a group of "golden skirts", and that it would encourage the foundation of a women lobbyist group. The main arguments in favour of a quota were that it would accelerate achieving gender parity, female solidarity, an improved corporate governance system, improvements in board activities, introduction of new talents to the board, improved

performance through diversity, improved board culture, and a domino effect spreading similar advantages to other aspects of business life.

The President Emeritus of the Constitutional Court, Antonio Baldassarre, objected to the law, because in his view, it was "a provision unconstitutional because it violates the freedom of economic initiative." He found that "The appointment of boards of directors are fiduciary, if I trust only male people this cannot be legally changed [. . .] moreover it is obviously unconstitutional because the law provides the sanction of removal of the board if the company does not satisfy the obligation to include a certain quota of women." (D'Ascenzo 2011, p. 79).

However, his arguments were not accepted. The measures introduced by Law no. 120/2011 were articulated to be compatible with Article 3 of the Constitution. Furthermore, the ruling of the Constitutional Court no. 109 of 1993 on Law no. 215 of 1992 on women entrepreneurship, confirmed that it is permissible to reverse historical discrimination in law by introducing a temporary measure to bring balance and thus to ensure equality as required by the Constitution. A major problem highlighted in the public debate was that this law could possibly limit the freedom to elect the board members best qualified to take care of shareholders' interests. Such limitation of freedom would be unconstitutional.

Opponents of the law argued that this tool offends women, regarding them as some sort of "protected species". Moreover, some Italian opinion leaders maintained that there would not be enough women qualified to meet the demands of women board members in terms of competences, and that, consequently, the boards would be filled with "wives of" or "children of". The law does not provide indications of the expected profile of a woman board member, and therefore it is possible for women who do not have the adequate skills, competences and background to cover the director positions to be appointed. Previous experience as a board member could count as a criterion for the appointment of new directors, and considering the small number of women with this kind of experience, the implementation of the law might have the consequence of boards appointing women to multiple directorships. As a further consequence of the law, there was concern about it possibly encouraging the creation of a women's lobby, a privileged group of women set on influencing the business scene.

In recent years, many initiatives have been undertaken by different associations aimed at distributing a gender balance culture in Italy. Among them we can report the commitment of associations such as Aidda, Assonime, Federmanager-Gruppo Minerva, Fondazione Bellisario, Fondazione Brodolini, Legacoop, Progetto Donna e Futuro, Pwa, Università Bocconi, and Valore D. The main initiatives of these associations are training courses for women wanting to achieve top positions within the companies, collecting curriculum vitae of women suitable for board positions (www.readyforboard.com), organising conferences, workshops, and research that deal with issues such as work–life balance, development of gender competences, sensitisation regarding opportunities for, and the capabilities of, women.

Reflections of an Actor

Lella Golfo

Few, if any, people have contributed as much as Lella Golfo to the aim of getting women onto company boards in Italy. Golfo is the president of Fondazione Bellisario, and she was a member of the Italian Parliament between 2008 and 2013.[4] We had the pleasure of interviewing Lella Golfo[5] in order to deepen the understanding of the development of Italian public policies. We asked her the reason for her active commitment in the gender equality debate in Italy: "I have been working with women and for women for a lifetime, and with the Fondazione for almost thirty years. I therefore have a privileged vantage point on the major obstacles that women encounter in their professions. We continuously monitor the presence of women in all spheres. So when I noticed the low percentage of women on boards (then less than 6 percent), and especially the slow progress (according to the Bank of Italy it would take 50 years to get to 30 percent) I understood that it had to be prioritised." In order to give to the gender debate the right priority, she realised the importance of being part of the political scenario. Lella Golfo said: "I decided to become a member of Parliament after a life of political commitment, precisely because I have always been convinced that if we want to change things, we need to be where the decisions are made. More

women in the top positions means a greater focus on policies that address issues which are not only female ones but which affect primarily women, from unemployment to conciliation. More women in top positions in the governance of corporations means, above all, more flexibility and sustainability in work organisation, and then also, as international studies demonstrate, better results in terms of the companies' productivity. My goal has always been the growth of women, and with this law we got results as have never happened before in Italy. The law has changed the numbers of women in top business positions, but above all, it has changed the public perception; the culture of the company is changing and a new class of women executive has been born."

However, Lella Golfo has not always been in favour of gender quota. She argued: "Like many, I was opposed to quotas too, until I realised it was the only medicine to cure a disease that, until then, had seemed incurable." In particular, she highlighted the importance of the cultural environment in which the public policies about gender equality are developed. She said: "To be effective, the law should be designed and written considering each country's culture and social environment. Voluntary initiatives can only work where gender equality is already part of the social and economic environment; in Italy we are still behind with this on many fronts. I am thinking, for instance, of the very high unemployment levels among women and the shortcomings of our welfare system. I have no doubt: In my country, voluntary quotas would have had no real effect, and certainly would not have given the necessary kick-start to our system. This is clearly demonstrated by the fact that in the public sector, listed companies have found ways to circumvent the law by moving to a single director (in 91.5 percent of the cases a man). Thus, giving a mild recommendation or leaving the responsibilities for change in the hands of the companies, was unthinkable."

After few years since the introduction of the quota law the results in terms of gender representation in the top positions in Italy are consist. Lella Golfo have noticed: "I can proudly say that today women in Italy are more influential than ever before. We have reached 31 percent in Parliament and we are now present in every professional field. It is also thanks to the thousands of initiatives promoted by the Fondazione Bellisario in developing a real culture of equal opportunities. Before the law, in 2009, the boards of directors of listed companies had only 5.6 percent women members; today women make up 28 percent of the number. And the

studies conducted in recent years have shown that the increased presence of women has improved the Italian boards. Today, the board members are younger, better educated and more knowledgeable. Moreover, the number of candidates has snowballed to include many more than the usual names: There are new men and women from modern and competitive companies. Also, companies that have more women than men at the top, thanks to quotas, have reduced their debt. A few months ago, with the Fondazione Bellisario, we wanted to honor all the companies that had introduced quotas with the Pink Apple. Well, a few days later, I received dozens of letters from CEOs and Chairpersons of listed companies thanking me. The law has 'forced' them to experience the contribution of women at the top, and verified concretely that having more women is good for business. Thanks to this law Italy is among the foremost countries in Europe in terms of women's presence in the economic environment."

Despite these important results, the implementation of the law has been tumultuous and many political and economic actors have negatively influence the process. As Lella Golfo recalled: "Even after the approval of the Chamber of Deputies and Senate, the three Italian largest associations—ABI, ANIA and Confindustria (representation of banks, insurance companies, and entrepreneurs)—sent a letter to the Chairman of the Finance Commission of the Senate asking for more gradual implementation and less severe penalties.

In Parliament it was not a question of political games but often a matter of 'men against women', with men, of any party, lined up against the law. This law would decrease the number of male armchairs. Moreover, most of the companies were quite irritated by what they considered to be external interference in their decision-making powers.

There were so many people against me, inside and outside Parliament. But there were also 'enlightened' men with me (including Antonio Catricalà and Gianfranco Conte, the Chairman of the Budget Committee of the Chamber), and millions of women. It was a battle that caused my no re-election to Parliament but which certainly assured me a place in the history books. Last November, at the Milan Stock Exchange, we met over 400 women who had become board members thanks to the law: it was a huge satisfaction, and in them I saw the future."

We concluded our interview asking Lella Golfo to make some reflections about two words: women and power. She observed: "women have

often been kept out of power, but sometimes women have also been afraid to take it. While men often take power and authority as equivalent to their domain, for women 'power' means 'service' and involves an enormous assumption of responsibility. It means having the power to decide what is the best for the community. This brings me to the second observation: I am convinced that having more women in power is absolutely positive. It is not a gender issue, but a profitability decision for the whole system. My hope is to see more and more women in power, because women deserve it and because the world needs it."

Critical Reflection on the Case

The Italian case may trigger a great deal of critical reflections. Two peculiarities of the Italian quota law need attention. The first peculiarity concerns the penalties imposed in cases where companies do not comply with the law. Italy has different degrees in terms of serving penalties: First a warning is given, this is then followed by financial penalties, and, finally, the board members are removed. Further, there are differences in terms of the penalties imposed on publicly listed companies and state-owned companies In Italy, the monetary penalty is imposed on the company. In other European countries, such as Belgium and France, the monetary sanction applies to the benefits and compensation paid to board members.

The second peculiarity refers to the validity of the law. Different to other countries, the law in Italy is time-limited. It will be mandatory until 2022, after which the law lapses, leaving the company free to decide on the composition of its boards without any further legal gender requirements. This temporary validity raises some questions: Are temporary quota laws capable of leading to permanent results? Are the motivations for temporary validity too few? It will be interesting see what happens after 2022. In the meantime, it is necessary to implement measures and actions to significantly change the culture of people and organisations, beyond a kneejerk reaction to the law.

We conclude that in the Italian case, other aspects need to be observed and investigated. To understand the impact of quota regulation in Italy we need to consider which women are actually appointed to the board. The women being board members belong most often to a circle of

privileged social elite women. However, we observed that, as the deadline for sanctions in the gender balance law approached, there were some changes in the characteristics of the women appointed to company boards (Rigolini et al. 2017).

Appendix

Table 6.1 Women in corporate boards in Italian listed companies 2004–2009

	2004		2005		2006		2007		2008		2009	
	#	%	#	%	#	%	#	%	#	%	#	%
Women on board	122	4.4	130	46	133	4.7	155	5.4	158	5.4	173	6.3
Companies with at least one woman on board	91	33.8	97	35.3	103	36.4	118	39.9	120	41	129	46.4

Source: Consob

Table 6.2 Distribution of Italian listed companies by number of women on board (end of 2009)

	No. of women board members	No. of companies	% on all listed companies (278)	% market capitalisation[a]
Companies with women as board members	5	1	0.36	0.3
	4	2	0.71	0.3
	3	3	1.08	0.2
	2	28	10.07	13.1
	1	95	34.17	19.6
All-male boards	0	149	53.60	66.5

Source: Consob

[a]We refer to the total market capitalisation of the companies listed in the Italian Stock Exchange

Table 6.3 Women representation in Italian listed companies by control model and controlling shareholder (end of 2009)

	No. of companies	% of companies with at least a woman board member	Average no. of women board members	Average % of women board members	Average board size
(A) Control model					
Single	184	49.5	0.68	7.6	9.53
Formal coalition	58	43.1	0.55	5.4	10.72
Informal coalition	19	36.8	0.42	4.7	8.84
Widely held	9	44.4	0.56	4.7	10.33
Cooperatives	8	25.0	0.25	1.4	15.38
TOTAL	*278*	*46.4*	*0.62*	*6.7*	*9.93*
(B) Controlling shareholder					
Family	184	47.3	0.66	7.2	9.33
Other/Non-family	94	44.7	0.54	5.8	11.10
TOTAL	*278*	*46.4*	*0.82*	*6.7*	*9.99*

Source: Consob

Table 6.4 Distribution of companies by affiliation and education of women board members (end of 2009)

Characteristic of women board members		N. of companies	% of companies with at least one woman board member	% of total number of companies	% of total market capitalisation
(A) Affiliation	Family	61	47.3	21.9	7.1
	Non-family	56	43.4	20.1	23.8
	Both	12	9.3	4.3	2.7
	All-male board	149	–	53.6	66.5
(B) Education	At least one BA	102	79.1	36.7	32.0
	Not graduated	27	20.9	9.7	1.55
	All-male board	149	–	53.6	66.5

Source: Consob

Table 6.5 Women board members by affiliation and education (end of 2009)

	Family affiliated		Non-family affiliated		Total women board members	
	#	%	#	%	#	%
Bachelor's degree	56	60	75	95	131	76
Not graduated	38	40	4	5	42	24
Total women board members	94	100	79	100	173	100

Source: Consob

Table 6.6 Women representation on corporate boards of Italian listed companies (end of the year; for 2015 end of June)

	No.	Weight	No.	Weight on total number of companies
2008	170	5.9	126	43.8
2009	173	6.3	129	46.4
2010	182	6.8	133	49.6
2011	193	7.4	135	51.7
2012	288	11.6	169	66.8
2013	421	17.8	202	83.5
2014	521	22.7	217	91.9
2015	621	27.6	232	98.7

Source: Consob

Table 6.7 Positions held by women board members in Italian listed companies (end of 2014)

CEO		Chairperson/honorary chairperson		Deputy chairperson/ executive director		Independent director		Minority director	
No. of directors	Weight	No. of directors	Weight	No. of directors	Weight	No. of directors	Weight	No. of directors	Weight
13	3.2	10	2.5	33	8.1	244	59.8	20	4.9
16	3.1	16	3.1	32	6.1	333	64.0	37	7.1
16	2.6	17	2.7	36	5.8	424	68.2	42	6.8

Source: Consob

Table 6.8 Board members attributes in Italian listed companies by gender and relationship with the controlling shareholder (end of 2014)

			Education		Professional background			
					%	%	%	%
		No.	% first degree	% postgraduate degree	Managers	Consultant/ professional	Academic	Other
Board members	***Family***	361	69.0	14.1	94.7	5.0	0.0	0.3
	Non-family	1872	87.8	18.6	68.7	21.2	9.6	0.6
Women	***Family***	75	60.0	20.0	88.0	12.0	0.0	0.0
	Non-family	432	91.9	26.7	54.4	31.9	13.0	0.7
Men	***Family***	286	71.3	12.7	96.5	3.2	0.0	0.4
	Non-family	1440	86.6	17.0	72.9	17.9	8.6	0.6

Source: Consob

Table 6.9 Board members attributes in Italian listed companies by gender and tenure (end of 2014)

					Education		Professional background			
		No.	Age av.	% family	% first degree	% postgraduate degree	% Managers	% Consultant/ professional	% Academic	% Other
Board members	***New***	672	52.5	4.3	87.9	25.5	60.3	29.0	9.3	1.5
	Old	1551	59.0	21.3	83.4	14.7	78.3	14.1	7.5	0.1
Women	***New***	271	49.0	3.0	91.5	28.2	49.1	39.5	10.3	1.1
	Old	236	52.6	28.4	82.2	23.2	71.2	16.9	11.9	0.0
Men	***New***	401	54.8	5.2	85.5	23.3	67.9	21.8	8.5	1.8
	Old	1325	60.1	20.0	83.6	13.2	79.5	13.6	6.7	0.2

Source: Consob

Notes

1. Italy was 74th in the 2010 ranking, while it was 72nd in 2009. Considering only the sub-index related to the area "economic participation and opportunity", Italy occupied 97th position (The Global Gender Gap Report 2010).
2. The decimals arising from application of one-fifth and one-third are rounded off to the superior unit.
3. The research project was carried out in partnership with the Department of Equal Opportunities of the Presidency of the Council of Ministers, funded by the European Commission under the Progress projects. The results are presented in many reports and publications published or listed on the web site of the project http://www.womenmeanbusiness.it. In particular, here we refer to "*WP.2. Database di Donne nei CDA e analisi dei loro profili*", 2015.
4. Founded in 1989, the Fondazione is one of the most important organisations in Italy supporting the enhancement of the professionalism of women working in the public and private sectors, and promoting a culture of gender equality.
5. The interview has been realised by the authors of this chapter during the summer of 2016.

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7

Belgium: Male/Female United in the Boardroom

Abigail Levrau

Introduction

Gender diversity on boards and throughout the executive ranks is widely recognised as an important issue in corporate governance (Terjesen et al. 2015). In particular, the underrepresentation of women in corporate decision-making bodies is well documented. Organisations such as Catalyst, Corporate Women Directors International (CDWI) and European Women on Board (EWOB) continuously track and publish statistics for various countries, denouncing the lack of progress made over the years. While investors and stakeholders put pressure on homophilous (all-male) boards, academics try hard to justify the link between gender diversity and firm performance (Dalton and Dalton 2009).

For a long time, the debate focused on why we need more women at the board table, while today the spotlight should rather be on measures how to accelerate progress. Policy makers around the world address the

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female representation in business using a variety of approaches. Some countries prefer voluntary targets, while others have opted for legislation of quotas. Reference is frequently made to Norway as the European champion in boosting the number of women on boards, by introducing gender quota legislation. Its impressive growth path serves as a source of inspiration for many other countries, including Belgium: "if it works there, it should work here too".

In Belgium, the gender balance in corporate boardrooms was not so rosy. In 2007, only 6% of board members of the 20 largest companies on the Belgian Stock Exchange were female. This percentage increased slightly to 10% in 2010, but it still remained below the European average of 12% (European Commission 2016). In 2010, 31.6% of the BEL20 still had no female board members and 52% had not one single woman in their top management team (GUBERNA 2012). One year later, in 2011, the Belgian government issued the quota law. Despite clear indications about how to increase the share of women on boards, the effects are more mixed and this chapter seek to explore to what extent the quota law makes a difference.

The chapter is structured as follows: first, a *General background* is provided outlining general economic data on gender equality in Belgium. In addition, this section includes a description of the corporate governance model in Belgium and sheds some light on the board nomination practices in listed companies. Second, the *Discussion of national public policy* elaborates on two instruments namely the Corporate Governance Code (soft-law) and the law of 28 July 2011 (hard-law) that are used to guarantee a better representation of women on boards. The following section reviews *Enabling and hindering forces* with specific attention for the board mentoring programme. The fourth section allows for a *Critical reflection on the Case*. The chapter is closed by *Reflections of an actor,* sharing her personal experience as a female board member in various types of companies.

General Background

Belgium is a small, independent country situated in the heart of Europe. Its central geographical location between the most important countries in Western Europe plays a special role, making Belgium a hub for

international contacts. More than 1000 public and private international organisations (international institutions, diplomatic missions, lobby groups, think tanks, multinationals,. . .) have either set up headquarters or have a permanent secretariat in Belgium. In particular, Brussels is considered the de facto capital of the European Union (EU), hosting the seats of the European Commission, Council of the European Union and European Council and the European Parliament. This tradition of openness is also reflected in its population. More than 10% of Belgian inhabitants are registered foreigners. When it comes to politics, Belgium is often cited as complex. Since its independence in 1830, the country has evolved through five state reforms. As a result, the first Article of the current Belgian Constitution reads: "Belgium is a federal state, composed of communities and regions" (Belgium Official information 2017). In particular, Belgium is a federal constitutional monarchy made up of a federal level, three Communities (the French-speaking, Flemish-speaking and German-speaking Communities) and three Regions (Wallonia, Flanders and Brussels-Capital). The power to make decisions is no longer the exclusive preserve of the federal government and the federal parliament. The leadership of the country is in the hands of various partners, who independently exercise authority within their domains. In terms of the economic scenery, the most important sectors are public administration, defence, education, human health and social work activities (22.7%), wholesale and retail trade, transport, accommodation and food services (19.8%) and industry (16.8%) (European Union 2017). Belgium also has a strong reputation for research and development (R&D) and innovation within the EU, primarily due to the high quality of its education and research facilities, the availability of skilled workers and numerous fiscal incentives for R&D ventures (European Union 2016).

Gender Equality or Inequality?

Belgium shows a mixed picture with respect togender gender issues. Regarding the developments in the labour market, the employment rate of both sexes is considered to be a key social indicator. For 2014, the general female employment/population rate was 44.3% compared to

53.9% for men. Both percentages remain below the OECD average of 50.9% (female) 63.5% (male) (OECD Gender Data 2014). The gender gap analysed by Eurostat is defined as the difference between the employment rates of men and women of working age (15–64). Across the EU-28, the gender employment gap was 10.5% in 2014, meaning that the proportion of men of working age in employment exceeded that of women by 10.5%. The gender gap for Belgium was somewhat lower at 7.9% but illustrates a remarkable evolution over the past ten years. In 2010 this gap was 15.3%. Nevertheless, there remains a significant pay gap. In 2010, the gender overall earnings gap amounts to 35.9% for Belgium compared to 41.1% in the EU-28.[1] This difference is partly caused by the fact that many more women work on a part-time basis—77.3% compared to 22.7% men (Eurostat 2016). Furthermore, one of the prominent indicators within the educational statistics is the proportion of persons who have attained tertiary education. From the available statistics, it becomes clear that girls outperform boys. According to the OECD, the total tertiary graduation rate for girls in Belgium, in 2014, was 50.7% compared to 33.4% for boys (OECD Gender data 2014). In 2015, the EU reported a gender gap of 11.5% for Belgium, meaning that the proportion of women aged 30–34 that had attained tertiary education exceeded that for men by 11.5% The EU-28 average was 9.3% (European Union 2016). Finally, Belgium ranks 19th in the Global Gender Gap Index 2015 with an overall score of 0.753 (World Economic Forum 2015). This index ranks 145 economies according to how well they are leveraging their female talent pool, based on economic, educational, health-based and political indicators.

Over the last 15 years, Belgium has taken significant steps forward in the field of gender equality. Various legal measures to promote gender equality and equal opportunities in both the private and the public sectors have been introduced at both federal and regional levels. In this respect, the main law of reference is the Gender Act 2007 which tackles gender discrimination in several fields. In addition, the controversial instrument of quotas to promote a more balanced participation of men and women in decision-making are the most notable ones European Parliament (2015).

Corporate Governance Model

Similar to many other European countries, the Belgian corporate world has been hit by some corporate scandals as well as the financial crisis. Consequently, trust in corporations has drastically degraded in the last couple of years. In particular, the effectiveness of corporate governance has been put into question. With the aim of rebuilding trust, Belgian politicians have been strengthening corporate governance legislation as well as financial regulations (as to the regulatory environment, Belgium has inherited a civil law legal system based on the 'Code Napoléon'). An important milestone that has changed the legal context in Belgium is the 2002 Corporate Governance Act. This regulatory reform has introduced some basic governance principles into the Belgian Company Code. Next, a new wave of adaptations to the Company Code happened, transposing the provisions of various European Directives into Belgian law. In sum, all these events have additionally shaped and influenced the current corporate governance model in Belgium.

Shareholder Base

Listed companies in most Continental European countries show a remarkably high level of ownership concentration (Barca and Becht 2001). This also applies to Belgium. With respect to Belgian listed companies, the largest ultimate shareholder (the last indirect shareholder in the ownership chain) possesses, on average, 36% of share capital, while the three largest ultimate shareholders together hold, on average, about 50% of the shares. Looking at the identity of those shareholders, one will find that families and individuals are the largest ultimate owners (32.2% of the market capitalisation). Smaller categories of ultimate owners are public authorities (4.2%), industrial and commercial companies (2.8%). In contrast to the practice in most Anglo-Saxon countries (for example, the Office of National Statistics indicate that institutional investors owned around 70% of the share in UK listed companies in 2012), institutional investors are less represented in Belgium as they own directly only 2.8% of the shares (Jonckers and Mertens 2016). Furthermore, a significant

growth in foreign ownership from 17.1% in 2009 to 34.5% in 2013 is noted (Lambert and Tesolin 2014).

Board Structure

Under Belgian law, companies are headed by a unitary board of directors. This implies that executive and non-executive directors are sitting together in one organisational layer (so-called one-tier board model) (Maasen 1999). Executive or inside directors are those who also fulfill a management function within the company. In contrast, non-executive directors come from outside the company and some can be considered to be independent when compliant with the criteria of independence as laid down in the Company Code (see article 526ter of the Company Code). Corporate boards of Belgian listed companies are composed of mostly outside, non-executive directors, while a separation of roles of the CEO and Chairman of the board is nowadays common practice. In addition, board committees are frequently installed, also under impetus of the Company Code's recent requirement to set-up an audit committee and a remuneration committee (see articles 526bis and 526quater of the Company Code).

Belgian law prescribes that the board of directors has the extensive powers to manage the company and perform all acts necessary to achieve the company's objectives. The board of directors may appoint one or more persons to carry out the daily management of the company. In this respect, two particularities in the Company Code receive special attention.

First, the Company Code foresees a modified one-tier board structure by introducing the possibility to install a Management Committee (directie comité/comité de direction) (Van der Elst 2004). This Management Committee is composed of executives who may (but not necessarily) sit on the board. In fact, the powers, composition, remuneration and organisation of the Management Committee are determined by the board of directors. In the most extreme case, the board of directors may transfer all its powers to the Management Committee, with the exception of the determination of the overall company policy, the supervision of management and any powers explicitly vested in the board of directors. The main

purpose of this provision is to provide current business practices a legal foundation as the notion of 'daily management' is being interpreted by jurisdiction in a very restrictive way. At the end of 2015, only 22 listed companies out of 78 had a Management Committee in accordance with the legal prescriptions.

Second, the Company Code allows public limited companies to opt for a two-tier board structure if they accommodate the Statute for a European Company (Societas Europaea, SE). Although this corporate vehicle enables companies a greater flexibility with respect to their governance structures, the SE is not what you would call a runaway success. Since its entry into force in Belgian law in 2004, only four companies has been identified as a 'normal' SE, in the sense that they are known to have both business activities and more than five employees (ETUI 2014).

Board Nomination Process: The Predominance of the 'Old Boys' Network'?

The Belgian Company Code applies the principle of the 'ad nutum revocability' of a board mandate. In particular, the general assembly holds the exclusive power to nominate and dismiss board members at all times. Aside from this legal fact, the recommendations on corporate governance assume a key role for the board of directors in safeguarding a rigorous and transparent procedure for the efficient appointment and reappointment of directors. In particular, it is the board's responsibility, supported by the nomination committee, to draw up selection criteria as well as a professional selection process, including specific rules for executive and non-executive directors where appropriate (principles 4 and 5 of the 2009 Belgian Code on Corporate Governance). Board practice, however, reveals a more nuanced picture (GUBERNA 2013). At listed companies, boards increasingly start to reflect on the desired profile of the newly appointed director. In this respect, the three mostly cited selection criteria are competency, 'fit' and availability. Still, selection profiles are rarely made explicit or published. When it comes to the recruitment of board members, network and personal contacts remain the dominant channel, although headhunters enter the scenery in search of very specific

or international candidates. Commonly, the chairman of the board sits in the driving seat of the board nomination process, while the nomination committee plays an important role in the preparation of the various steps, including the presentation of the candidate(s) to the board. Striking differences are noted between the recruitment process of non-executive and independent directors. The findings, as described above, holds for the selection of directors who fit the independence criteria. In contrast, as non-executive directors serve mainly as representatives of the major shareholders, the role of the board, including the nomination committee is rather limited if not, non-existence. Put differently, the power and autonomy of the board in the recruitment process varies according to the type of director. How does gender fit in to this process? Belgian business is still dominated by male captains of industry who also populate the boards of directors and nomination committees (GUBERNA 2016). Consequently, it is predominantly men who decide who enters the boardroom. Since they mostly recruit within their 'own' pool of familiar faces, they create a vicious circle that is hard to break through. Over time, a few women have overcome this barrier and found their way into the boardroom. The same names popped up in multiple boards and consequently in media they were unjustly marked as "trophy women" (Sephiha 2012; Eckert 2015). However they paved the way for other women to follow, a positive trend indeed, yet an unsatisfactory one.

National Public Policy Regarding Women on Boards

Belgian Corporate Governance Code: A Flexible Approach to Female Representation in Boards

In the late 1990s, years before regulatory governance reforms took place, the first codes on corporate governance for listed companies appeared. Next, in January 2004, the Banking, Finance and Insurance Commission, the Federation of Enterprises in Belgium and Euronext Brussels took the joint initiative to establish the Corporate Governance Committee.[2] Its original

purpose was to draft a single reference code for Belgian listed companies and the Belgian Corporate Governance Code was published in due course on 9 December 2004. Although the focus of the Code is essentially on the functioning of the board of directors and its relationship with management, no explicit reference to gender diversity was included. Meanwhile, the Code has been revised, and a new edition was published on 12 March 2009 (For more information see www.corporategovernancecommittee.be.). The Code is still based on nine principles, which are viewed as the pillars of good governance. This time, the revision has resulted in an amended provision with respect to gender diversity, namely 2.1: "*The board's composition should ensure that decisions are made in the corporate interest. It should be determined on the basis of gender diversity and diversity in general, as well as complementary skills, experience and knowledge. A list of the members of the board should be disclosed in the CG Statement.*"

It is for the Code to retain the flexibility it allows in adapting the recommendations to the companies size, needs and commercial realities. This flexibility is strengthened by two key elements, which are legally enshrined: the comply-or-explain approach and transparency.[3] In January 2011, the Corporate Governance Committee put the spotlights on gender diversity again by issuing a practical rule *"Representation of women in boards of directors of listed companies*—recommendations" ("Représentativité des femmes dans les conseils d'administration des sociétés cotées—recommandations") in order to promote a better representation of women on boards of listed companies. The Commission deliberately opted for a voluntary approach supported by the comply-or-explain principle recognised by law. This laudable intention and recommendation, however, became outdated by the law of 28 July 2011.

Gender Quota: Five Bills, One Compromise

2010. New elections, a new round of political discussions. Obviously, the propositions with respect to gender diversity were nothing new. They were already submitted by various political parties (e.g., the Christian Democratic Party (CD&V), the Social-Democratic party (SP-A)) during the former legislature, but the federal government at that time refused to

put the topic on the agenda. A shift in political power in the new government coalition, headed by a Social-Democratic and native French-speaking as prime minister (the "Di Rupo Government 2011–2014"), led to a revival of the gender issue. Months of fierce discussions and public hearings on the five initial bills, resulted in a compromise of a gender quota law which was finally approbated in 2011.

The Belgian law of 28 July 2011 on the reform of certain government-held companies, the Belgian Company Code and the National Lottery, aims to guarantee a representation of women in the boards of autonomous government-held companies, publicly listed companies, and the National Lottery. This law, which came into effect in September 2011, stipulates that at least one-third of the board members must be of a gender different from the other board members. The date of commencement of the Law of 28 July 2011 varies between 2012, 2017 and 2019, according to the type of companies. For example, for certain government-held companies the due date is from 2012 onwards, while listed SME's should comply by 2019. Larger listed companies are expected to comply by 2017.

Furthermore, the sanction is the same for all the companies involved. In the event the number of board members of a different sex is below the required minimum, the first board member to be appointed shall be of the different sex (Article 518bis, §4 Company Code). If not, the appointment shall be invalid. The same shall apply if an appointment would create a situation in which the number of board members of a different sex falls below the required minimum. Regarding publicly listed companies an additional sanction applies. In the event the number of board members of a different sex is below the minimum, the first general meeting of shareholders following such event shall appoint a board of directors in accordance with the requirements of the law. If this provision is not complied with, all financial and other benefits granted to the board, shall be suspended (Article 518bis, §2 Company Code). It is interesting to note that the latter is a softer measure due to a negative advice of the Council of State on the initial sanction of penalty of nullity of board decisions.

Finally, publicly listed companies have to file an annual report on the efforts they have undertaken to ensure that each gender accounts for at least one-third of the members of the board of directors (Article 96, §2, 1, 6 Company Code).

Table 7.1 Quota law—representation of women in boards

	2008 (%)	2012 (%)	2014 (%)
Total sample	8.2	12.7	16.6
Publicly listed companies	7.2	11.9	15.8
Autonomous government-held companies + National Lottery	31	29.1	36.4

The question that triggers everyone who follows up on the evolution of female directors is straightforward: does the quota law have an impact? A study on the effect of the quota law, published in Spring 2016 by the Institute for the Equality of Women, a Belgian federal institution, reveals mixed but interesting results. First, the researchers note a positive evolution in the representation of women in boards of directors for all companies involved between 2008 and 2014. In particular, the average number of female directors rose from 8.2% to 16.6%. Nevertheless, the average still remains below the prescribed 33.3%. Moreover, in 2014 only 21% complies with the quota law.

Second, if they filter out the results for the publicly listed companies, the findings still show a positive evolution, but the statistics fall below those of the total sample. In contrast, findings for the autonomous government-held companies and the National Lottery are more promising (Table 7.1).

Third, the study founds a correlation between the representation of female directors, the size of the company (measured by market capitalisation), board size and sector for publicly listed companies. Although the composition of the board of directors has changed, the number of board members remains status quo. Put differently, apparently no additional board seats have been created to include female directors, female directors simply replace male directors.

Enabling and Hindering Forces

Belgium is an interesting case as an increasing number of women have been appointed to non-executive board positions, driving by the imposition of the gender quota law. Apparently the institutional context of

Belgium is favourable for this measure to flourish. The essay of Terjesen et al. (2015) argues that political institutions as well as particularities of the institutional environment facilitate the development and implementation of regulation on gender equality. Important dimensions in this respect relate to welfare provisions that promote gender-friendly work conditions (i.e., maternity leave and childcare), left-leaning government coalitions and a legacy of path-dependent initiatives from public sector and corporate governance towards gender equality. In addition, support from business leaders is key in promoting female representation in decision-making bodies and endorsing gender policies. Looking at Belgium, the context appears to fit the criteria. However, despite the laws and policies applied, Belgium still has a complex institutional structure that fragments gender equality policies and causes gender gaps to remain. In particular, numerous legislative acts are adopted at the central (federal) and sub-central (regional and community) levels of power, with a different pace and enforcement.

Much more needs to be done to further stimulate a better representation of women in corporate decision-making bodies. A more open recruitment process, training and mentoring as well as a more comprehensive diversity approach within companies are the most notable existing incentives in Belgium to accelerate progress.

As mentioned in one of the previous paragraphs, networks are still an important part of the board nomination process. It is common to fill board seats through personal contacts and references. The academic literature states that networks are formed by actors who resemble similar characteristics, including gender, which facilitate communication, enhance knowledge sharing and create trust. In this respect, it is proven that boards' composition reflects the social networks of the key actors of the organisations and tends to present homogeneous characteristics (Perrault 2015). Put differently, the challenges for Belgian boards are twofold: on the one hand, board members should consider a more open recruitment by spotting potential candidates beyond their own networks while on the other hand women should come out of the shadow and make themselves more visible in these elite networks. The proverb "unknown, unloved" also applies to boards of directors.

In addition to the legislation, alternative initiatives have been designed to increase female representation on boards of directors. In particular, the importance of mentoring and other educational programmes are well understood to improve the directors' pipeline in both practice (EWOB 2016) and literature (Mc Donald and Westphal 2013). In Belgium, GUBERNA takes up a privileged position. As the national Institute of Directors, it serves as the reference for directors' trainings. In recent years, it witnessed a remarkable growth in women subscribing to its programmes. In addition, GUBERNA and its partners (Women on Board, Mercuri Urval and FBNet) were the first to launch the Belgian Mentoring Programme at Board Level in 2011. Inspired by the FTSE-100 Cross-Company Mentoring Executive Programme, the GUBERNA programme offers a mentee, qualified and talented man or woman, the opportunity to be mentored by an experienced board chair or director (male/female) during a period of 18 months. The main objective is to transform the qualities, behaviours and thought processes of the mentee that are key as a manager or director in early years, into those that are ingredients of being an effective and confident director, as well as to provide the mentee an experienced view on life in the boardroom. About forty-four pairs have participated in the first two editions and the next edition is ready to start at the end of 2016. GUBERNA and its partners strongly believe that the added-value of this programme is also in the change it enables in corporate board rooms by involving powerful male captains of industry as mentors. As stated by Mckinsey (2012): "the best of efforts may fail unless people change the way they think". So by confronting the mentors with capable women who they did not know before, creates awareness and stimulates corporate leaders to not ignore the benefits of gender diversity.

Finally, companies are increasingly pointing their attention towards the development of the executive leadership pipeline for women. Statistics systematically show the underrepresentation of women in senior management positions, too. Besides, warnings have been voiced that the push to increase female non-executive directors on boards may be cannibalising the female executive pipeline (EWOB 2016). Therefore, it can be argued that gender diversity on boards should be embedded in a much more comprehensive policy on diversity within the whole corporation enabling

women to get to the C-level. The well-known studies of McKinsey reveal that women continue to face barriers on their way to the top and summarise various "best practices" to encourage companies to take further actions (McKinsey 2012, 2010). In Belgium, the Institute for the Equality of Women and Men has also identified various policy recommendation in its 2012 report to achieve gender balance at top and middle management level in private companies. In addition, initiatives such as The Wo.Men@Work Award, which rewards the CEO who works hardest to achieve gender equality within his or her company based in Belgium, contribute to putting gender equality in the spotlight thanks to one corporate champion and by spreading best practices for women's advancement at work (http://www.womenatworkaward.be/).

Critical Reflection on the Case: Takeaways

Gender Quota Law as Accelerator

Numbers do not lie. As in many other countries, in Belgium businesses were unsuccessful in attaining equal representation on their boards of directors on a voluntary basis. Despite the many initiatives and voluntary targets to promote women on boards, the pace of change remained slow. The gender quota law of 28 July 2011 has definitely accelerated the process, although the objective of one-third has not yet been fully achieved. Going through all the press articles and other related documents, it is obvious that the quota regulation was the subject of extreme criticism in Belgium, not least from the corporate world. A frequently raised argument was the lack of capable women, so companies would be forced to call on a small group of qualified women to serve on their boards, the so-called token women (Sephiha 2012). Fortunately, practice has proven the critics to be wrong. A recent study by UHasselt (Roos 2016), whereby 40 CEOs, chairs and both executive and independent board members where interviewed, find that a mentality change has clearly taken place. Companies are reflecting on their staffing policies much more than before. For instance, they are now looking beyond the usual—mostly male—networks and are turning to other sectors to find

suitable female candidates. In short, the study demonstrates that the assumptions held before by the corporate world turned out to be false and that criticism has decreased sharply since the regulation was introduced. But there is still work to be done as the time period for implementation of the quota law is near. Hard law is typically accompanied by sanctions for non-compliance and requires actions by the enforcing agencies. Future will tell how effective this incentive will be for the publicly listed companies to comply.

Women in the Crowd

Discussions on gender equality in board of directors get easily lost in feminist tendencies, whereby arguments of justice, fairness and equality overrule the economic, business rational. One may not overlook the essence why and how women matter to board decision-making. Firstly, gender is one of the dimensions of diversity and there is consensus that diversity is a key attribute for board effectiveness (Levrau 2007). Diversity amongst board members is assumed to improve debate due to the obvious reason that diversity is commonly associated with different life experiences and hence, diverse perspectives (Eisenhardt et al. 1997). In his popular book, *The Wisdom of Crowds*, James Surowiecki (2004) clearly documents that diversity is one of the conditions for small groups to make wiser and better decisions than individuals. Also businesses and investors are increasingly convinced that a well-diversified board adds value. This applies to all types of diversity although gender diversity continues to be an important area of focus (EWOB 2016). Women are different from men and have the capacity to bring other ideas and options. The key issue remaining is whether they effectively do so (Heminway 2014). Evidence both in literature and practice is advancing but is still limited. Although literature has well-documented the impact of gender diversity on various corporate performance indicators, the effects of female directors on board dynamics and decision-making are still an area to be further explored (Huse and Solberg 2006; Kakabadse et al. 2015). Still, there appears to be a consensus that a critical mass of three women is required to have an impact. A Belgian female director states “it is hard to go against the tide if you are

alone, or only two" (Lutgart Van den Berghe, Executive Director of GUBERNA and board member of Dexia, Ablynx). This resounds the essence of the critical mass theory proposed by Kanter (1977) who argues that once the minimal threshold of gender-balance is crossed, the presence of women will catalyse board performance. Otherwise they are perceived as symbolic representatives of their social category (Schwarts-Ziv 2015).

Reflections of an Actor

Inge Boets

Inge Boets was a partner with Ernst & Young until March 2011 where she held managing partner positions in the areas of audit, risk management, advisory and serving the European Union. Currently she serves as a non-executive director on several Boards of both international and Belgian companies, in a variety of industries and in different roles, as independent director, chair of the board and of the audit committee. Inge is also the owner and manager of La Scoperta, a small business importing Italian wine and food products.

During my over 30 years of professional life, of which 27 years in a professional services firm, and more recently as an independent director and entrepreneur, I have seen the presence of women in my work environment change enormously. I recall the days as a student when females were a distinct minority, to being the only women in a group of junior auditors, a meeting with clients, or later the management meetings when I became one of the few female partners. But there has been a lot of change. In many education types, women are now a majority. And more and more young women go through the ranks, achieve executive positions and become board members.

This is a great achievement, but it doesn't mean that all is well and no further action is required to address the imbalance that still today exists in women's representation in leading positions in our society and our businesses.

Of course, there is a moral argument for awarding people equal opportunity (and who will deny this?) but it is my experience that in business that is not often a driver for change.

My experience both in management positions and on boards has confirmed my belief that diversity brings enormous value. And not just gender diversity.

In a board it is important that the composition of the board, and the diversity of skill sets, experiences and personal styles, allows the board to operate in such a way that it supports the best possible outcome for the company and all of its stakeholders. The more diverse the board, the more challenging questions will be raised based on director's personal experiences and reference frameworks, resulting in a better challenge and an increased likelihood of making the right decisions.

I don't like stereotypes and don't believe women, as a group, are homogenous. Among women (just like men), there are lots of different styles and personalities.

But my experience has shown me that women do face a number of specific challenges, which provide explanations as to why they are underrepresented in executive and board roles.

The glass ceiling is a concept that is often referred to when debating gender diversity but I have always preferred the notion of a succession of hurdles along the way that may cause women to drop out or get behind in their progress. Lack of flexibility in the work environment making the combination of personal and professional life a serious challenge, is definitely one of those hurdles, but also low self-esteem and lack of conviction in their success potential in women themselves sometimes plays a role. A company culture that stimulates and rewards macho behavior, lack of role models, and lack of mentoring and sponsoring are others factors that are often identified.

Quotas have been introduced in Belgium, and many other countries, to address the underrepresentation of women on Boards. I am not in favour of positive discrimination and concerned about the potential risks associated with a rigid implementation of quota measures. But it cannot be denied that as a temporary measure to drive change, they can be extremely useful.

What is important is to change people's minds about the value women can and should bring in leading roles in our society and businesses. Do we really want to underutilise more than half of the intellectual capital that we have available? Wouldn't that be an enormous waste of both human capital (the potential to succeed) and financial investment (education cost)?

And showing that women can be successful in executive roles and as board directors will have an impact on people's perception: both male colleagues, younger women and society at large.

Many companies have programmes to aid gender diversity, focused on increasing the position of women in executive roles. In addition, a number of initiatives exist in Belgium that contribute positively to the representation of women in board roles.

Women on Board has developed a pool of women with experience, capabilities and desire to serve as board directors, who are being connected to companies seeking candidates.

GUBERNA contributes through its education programmes, networking activities and the mentoring programme that has been set up in cooperation with a number of partners.

These initiatives are clearly showing a positive impact and hopefully will contribute to bringing us one day to a situation where the discussion whether a board candidate or a potential executive appointment is male or female will have become irrelevant.

Notes

1. To give a complete picture of the gender earnings gap, a new synthetic indicator has been developed by Eurostat. This measures the impact of the three combined factors, namely: (1) the average hourly earnings, (2) the monthly average of the number of hours paid (before any adjustment for part-time work) and (3) the employment rate, on the average earnings of all women of working age—whether employed or not employed—compared to men.
2. In May 2007, the Committee adopted the more permanent legal form of a private foundation. The aim of the foundation is to contribute to the

development of corporate governance among listed companies by regularly monitoring enforcement of the Code, submitting suggestions for amendments, amending the Code or issuing positions on any regulatory initiative or other initiative pertaining to corporate governance.

3. Since 2010 the Corporate Governance Act of 6 April and the adjunct Royal Degree impose the Belgian Corporate Governance Code as the reference code for listed companies this in function of the implementation of the European Directive 2006/46/EC introducing the corporate governance statement.

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8

Gender Diversity on Corporate Boards in the Netherlands: Waiting on the World to Change

Sonja A. Kruisinga and Linda Senden

Introduction[1]

In the Netherlands, increasing the number of women on corporate boards is considered to be, first and foremost, the responsibility of companies themselves and the Dutch legislator has so far been hesitant in introducing binding gender quotas for companies (Parliamentary documents 2015/2016c, p. 1). However, in January 2013 the legislator introduced gender quotas (set at 30%) for the corporate boards of 'larger companies' given the low number of women on corporate boards. These quotas were of a soft nature only as no strict sanctions would be applied if a company failed to comply with the said target. The law was also temporary in nature and expired automatically on 1 January 2016 because of the legislator's expectations that the quotas would no longer be necessary after 2016. Yet the law has had very disappointing results: at the end of 2014, the average

[1] This title was inspired by the name of the report Business Monitor, 2016.

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percentage of women on boards of directors of companies to which the quotas applied was 9.6% and this had increased to 10.2% by May 31, 2016 (Hendrikse and Pouwels 2016, pp. 28–29). On the supervisory boards, the average female share had increased from 11.2% at the end of 2014 to 13.1% on May 31, 2016 (Hendrikse and Pouwels 2016, pp. 28–29). Even though this is an increase, at the same time it is not even half of the targeted 30%.

The attention given to gender diversity in the boardroom increased when the Dutch Minister Jet Bussemaker asked for attention to be given to this topic in the media in 2015. Bussemaker is the Minister of Education, Culture and Science and is responsible for gender equality and emancipation policy. Together with the VNO-NCW (the Confederation of Netherlands Industry and Employers), which is the largest employers' organisation in the Netherlands and represents the interests of Dutch business, she took several initiatives to increase the number of women on corporate boards (see, for example, Rijksoverheid 2016). In her opinion, the introduction of mandatory quotas is a 'rough remedy', but she also stated that "where there is a will, there is a way and where there is no will, there will be a law" (Tuenter 2015, our translation). By submitting a proposal to Parliament on 23 March 2016 for the reintroduction of the aforementioned quota or rather target law, she has provided companies with yet another opportunity to demonstrate their willingness to bring about the required change. This approach raises the question of whether the Netherlands is in fact following a merely symbolic legislative route that is destined to fail in achieving the set target.[2]

In this chapter, we will deal with this question by first providing in the section "General Background: The Political, Economic and Social System" a more general background of the Dutch political, economic and social system, also providing insights into the labor situation in so far as this is relevant for the topic at issue. Section "Governance Structure According to Company Law" will present the governance structure as it is provided under Dutch company law and section "Facts and Figures" will provide the facts and figures regarding female labor participation in general and their representations on corporate boards more specifically. Section "National Law and Policy Regarding Women on Boards" continues by presenting the national public law and policy approach. On this basis, in section "Enabling and Hindering Forces and Critical Reflection

on the Dutch Case" we will identify what we consider to be the core enabling and hindering forces for the introduction of (binding) gender quotas and provide a critical reflection on the Dutch case. Section "Reflections of an Actor" provides an actor's view and we will conclude the chapter in section "Conclusions" with some conclusions.

General Background: The Political, Economic and Social System

Politically, the Netherlands constitutes at the same time a constitutional monarchy, a decentralised unitary state and a parliamentary democracy. It is often characterised as a '*polder democratie*', since the political system is very much geared towards realising consensus between the different political actors. Other actors, however, such as the Social and Economic Council, are also involved in the decision-making process. This is one of the most important and influential advisory bodies for both the government and Parliament regarding economic and social policy, and also having an important responsibility as regards the promotion of business and consumer self-regulation. In its own words, "it aims to help create social consensus on national and international socio-economic issues [...] and its advisory reports ideally have a dual role: to help shape cabinet policy to ensure it enjoys broad support from society and to help ensure the business sector operates in a socially responsible manner" (SER). It is composed of three groups, each made up of 11 representatives; the first group represents employers, the second employees and the third one is comprised of independent members appointed on their personal merits by the government. Employers' representatives include members of the aforementioned Confederation of Netherlands Industry and Employers, and of the Association of Small and Medium-sized Enterprises of the Dutch Organisation for Agriculture and Horticulture. Employees' representatives come from the Federation of Netherlands Trade Unions, the National Federation of Christian Trade Unions and the Trade Union Federation for professionals. Independent experts are often university professors in the fields of law, economics, finance or sociology.

From a social-economic point of view, the Netherlands constitutes a welfare state, meaning that the state plays an important role in addressing social injustice. More specifically, in the three typologies of welfare states identified by Esping-Andersen (1990), the Netherlands has been qualified as a hybrid system, somewhere in between a social democrat and a corporatist system. In other classifications, it has been considered to be a hybrid between the Scandinavian (social democrat) system and the continental system (see, for example, Goodin and Smitsman 2000).[3] Social democrat states are typified as such in particular because they also have equality and emancipation at the core of their policies, including a high level of female participation in the labour force. Focusing on this particular aspect, the goal of Dutch emancipation policy is said to bring about "a pluriform society in which everyone, regardless of sex and sexual orientation, can shape his or her own life as much as possible in freedom, with autonomy, defensibility and equality and equivalency as core values" (Parliamentary Documents 2012/2013, as quoted by Portegijs and Brakel 2016, p. 11). Enhancing the participation of women and realising their economic independence lies at the heart of this policy, the ultimate goal being that everyone in paid labour would be earning enough to support him/herself (Parliamentary Documents 2015/2016a, as quoted by Portegijs and Brakel 2016, p. 12). While female labour participation in the Netherlands is already relatively high, the realisation of this goal requires that the labour participation of women further increases and, in particular, also that women in minor part-time jobs will work more hours (see further section "Women's Participation in the Labor Market"). While the focus, up until 2015, was mainly on low-educated women, this has now broadened to all women who are not economically independent. Every two years since 2000, the Netherlands Institute for Social Research and Statistics[4] has published an 'Emancipation Monitor', which keeps track of the emancipation process in the Netherlands and whether it is indeed developing in the way that the government envisaged. To assess such progress, it provides up-to-date statistics on the position of women and men in many areas, including: labour market participation; educational and career choices; combining work and care tasks; economic independence; wage differences; representation in senior positions; and health and safety (Portegijs and Brakel 2016 (English summary), p. 2).[5]

Governance Structure According to Company Law

Supervisory and Executive Boards

The two most important legal forms of companies with shared capital in the Netherlands are the so-called Naamloze Vennootschap (NV) (a public limited company) and Besloten Vennootschap (BV) (a private company with limited liability). Within these two types of companies, a choice can be made between the so-called one-tier or two-tier systems. In the one-tier, or monistic, system, the board will consist of both executive and non-executive directors. In the two-tier, or dual-board, system, by contrast, there will be an executive board (*raad van bestuur*) and a separate supervisory board (*raad van commissarissen*). The legislation on both types can be found in Book 2 of the Netherlands Civil Code, the *Burgerlijk Wetboek* (or *BW*). As a general rule, the general meeting of shareholders will appoint the members of the executive board (Arts 2:132 and 242 BW) and of the supervisory board (Arts 2:142 and 252 BW). This will also apply if the company has opted for the one-tier system.

Corporate Governance Code

Art. 2:391 section 5 BW provides that specific measures can regulate the contents of the annual report. This provision is intended to refer to the Corporate Governance Code. The Dutch Corporate Governance Code applies to all listed companies which have their registered offices in the Netherlands (see also www.commissiecorporategovernance.nl, Code 2008). The code contains principles and best practice provisions that regulate the relations between the executive board, the supervisory board and the general meeting of shareholders. The code does not contain any mandatory provisions. The provisions in the Corporate Governance Code have to be applied on the basis of the 'comply or explain' principle. Listed companies have to indicate in their annual report which principles and best practice provisions of the Code have not been complied with and the company has to indicate, or explain, why it has failed to comply with

these provisions. The executive board and the supervisory board of a company are accountable to the general meeting of shareholders for the corporate governance structure that has been adopted and for compliance with the Code.

Very recently, the Corporate Governance Code of 2008 has been revised. In this revised version, published on 8 December 2016, some new provisions on diversity were introduced, and these will be discussed *infra* in section "National Law and Policy Regarding Women on Boards". On 8 December 2016, the *Monitoring Committee Corporate Governance Code* published the revised Corporate Governance Code, which entered into force on 1 January of the following year. The companies to which the Corporate Governance Code applies will still report on compliance with the Code from 2008. In 2018, these companies will be required to report on compliance with the revised Code for the financial year 2017. The condition for this is that the revised Code 'must be enshrined in Dutch law by the cabinet in 2017' (MCCG 2017).

Facts and Figures

Women's Participation in the Labor Market

The latest Emancipation Monitor, dating from December 2016, reveals, first of all, that in 2015 some 71% of women in the Netherlands in the age group from 20 to 64 had a paid job compared to 82% of men (Portegijs and Brakel 2016, p. 57) Compared also to previous years, the labour participation of women has remained rather stable whereas that of men has slightly decreased, in particular, because of the higher concentration of male employment working in financial crisis-sensitive areas such as transport and construction (Portegijs and Brakel 2016, p. 61). Yet female labour participation shows many interesting differences: between age groups; between women with and without children; between single or married/cohabiting couples; and between highly educated women and those with a low level of education (Portegijs and Brakel 2016, pp. 57–86). Moreover, of those 71%, 73% of the women work part time, meaning that only 27% work full time; by contrast, 79% of the male labour population work full time. Around the age of 30, the labour

participation of women decreases considerably when they leave the labour market to have children; about 11% stop working and 36% work fewer hours, compared to only 9% of men stopping work or reducing their working hours when they become fathers (Portegijs and Brakel 2016, pp. 67 and 92). Many women work in small or medium-sized part-time jobs, which explains why, overall, only 54% of women in the Netherlands are economically independent.[6] This means that they earn an income that equals about 70% of the statutory net minimum wage (*Rijksoverheid*; see also Portegijs and Brakel 2016, p. 159). While figures show that women are increasingly more highly educated than their male counterparts, their gross annual income, on average, remains at the level of €30,000 p.a., this being 59% of the average gross salary of men: €51,000 p.a. Only older women (those above 40 years of age) in a single household earn a higher than average income: around €40,000 p.a. (Portegijs and Brakel 2016, pp. 152–153).

There is a clear correlation between the level of education and labour participation, as highly educated women with a higher professional education or university degree have a 91% labour participation, which almost equals that of highly educated men (93–95%). These women are also the ones who are most engaged in full-time jobs and who have ambitions to move up the career ladder. This also holds true for single women (Portegijs and Brakel 2016, p. 86). Women and men with lower education levels show less labour participation and a higher difference between women and men; at higher secondary school level, 72% versus 82%; at lower secondary school level, 54% versus 75% and at primary school level the highest difference: 37% versus 61%. The lower the level of education, the lower the weekly working hours, young highly educated women working mostly full time, those having a lower secondary education working on average 23 hours, those with higher secondary education between 20 and 28 hours and highly educated women working an average of 32 hours a week. The male labour population shows hardly any link between the level of education and working hours (Portegijs and Brakel 2016, pp. 69–70). A total of 56% of women indicate that the most important reasons for them to work part time are household tasks and caring responsibilities for children and other people (Portegijs and Brakel 2016, p. 75).

This last point also raises the question of to what extent childcare policy can be seen as either a facilitating or an obstructing factor for female

labour participation. In this respect one can note, first of all, that the use of formal childcare facilities has increased exponentially over the past few decades; from 31,000 places in 1990 to 800,000 in 2009. This huge increase can be partly traced back to the fact that it is only since around 1990 that childcare is considered as a tripartite responsibility of parents, government and employers, and to the fact that the first law on childcare was introduced in 1994. This law considerably reduced parental contributions and increased the level of state subsidies for childcare. This has had a positive effect on female labour participation and research suggests that the decision for women to (re-)enter the labour market appears to be very much determined by the pay level after the deduction of childcare costs (E-quality 2010; Plantenga and Lucy 2007). Yet since then there has been a slight decrease in the number of childcare benefits paid by the government; in 2015, it paid such benefits for 767,000 children. Behind this figure a number of important developments can be noted. To begin with, the childcare benefits regulation was the subject of austerity during 2009–2013, which can be seen as an explanatory factor for this slight decrease (Portegijs and Brakel 2016, p. 95; Portegijs et al. 2014). When the regulation was again somewhat extended in 2014, there was also a slight increase in this figure. There are now also slightly more children in afterschool care than in daycare. Another important tendency to note is that the use of formal childcare (day nurseries, out-of-school childcare or registered childminders) decreased between 2011 and 2014, before increasing slightly once again between 2014 and 2015. Over the past five years, there has been a growth in the amount of informal childcare provided by family members or friends and many families now combine this with formal childcare. Thus, in 2015 some 72% of families with children aged up to four years used this form of childcare whereas in 2011, this figure had been only 58%. The use of informal care also increased among employed parents with school-aged children: from 44% in 2011 to 52% in 2015 (Portegijs and Brakel 2016 (English summary), p. 5). Thus, a reliance merely on formal childcare facilities has decreased—a phenomenon which has been largely explained by cuts in childcare benefits (Portegijs and Brakel 2016, p. 96 with reference to Plantenga and Lucy 2007). Yet, importantly, it has been established that the level of labour participation among mothers has been mostly unaffected by these

cuts (Portegijs and Brakel 2016, with reference to Michiels et al. 2015), the problem apparently having been solved by resorting more to informal childcare solutions.

When it comes to other supportive measures for women, it can be observed that the Netherlands ranks only 19th when it comes to the length of maternity leave and only 26th when it comes to parental leave provided for in all OECD countries; 16 weeks respectively 26 weeks (OECD 2015). The maternity leave payment amounts to 100% salary, but with a maximum of a daily wage of €196. Paternity leave is unpaid, unless otherwise provided for by the employer or under the terms of a collective labour agreement (Timmer and Senden 2016, pp. 35–40). Yet some tax relief is available. In 2015, 11% of fathers took advantage of this leave, compared to 22% of mothers (Portegijs and Brakel 2016, p. 99). Apparently, a fairly substantial number of mothers do not feel the need to take such leave. However, three out of four non-working women and women working part time with small children indicate that under certain conditions they would engage in (more) labour participation, the most important condition being mentioned is flexibility in combining care and work. This could concern the starting and ending time of their work, but also working at home or taking time off when necessary (Portegijs and Brakel 2016, p. 103; see also Plantenga 2011). The government has acted on this important signal by adopting the Wet modernisering verlofregelingen en arbeidstijden (Modernising Leave Regulations and Working Times Act) in 2014/2015 and in 2016 it enacted the Wet flexibel werken (the Flexible Work Act). Both academics and stakeholders anticipate that this will facilitate and enhance the combination of care and work (Portegijs and Brakel 2016, p. 88, with reference to Plantenga 2011; SER 2016; Taskforce DeeltijdPlus 2010).

Women's Representation on Boards

As of 2007, the Dutch Female Board Index provides a yearly overview of the number of women to be found on the corporate boards of Dutch listed companies (Lückerath-Rovers 2016), which distinguishes between the executive and the non-executive (or supervisory) board members in Dutch listed companies. The overview as of 31 August 2016 covers

83 Dutch companies listed on Euronext Amsterdam. The results that were most striking in the Female Board Index of 2016: the number of female board members had, in fact, decreased from 7.8% in 2015 to 7.1% in 2016 and only two companies have at least 30% female board members on both the board of directors and the supervisory board. As of 31 August 2016, the situation is as follows: of the 212 members of the boards of directors, 15 are female and of the 441 members of supervisory boards, 102 are female. In total, 24 companies have at least 30% female board members in the supervisory board and only nine companies have at least 30% female board members in the board of directors.

Yet another study, by the Monitoring Committee, covers large Dutch (listed and non-listed) companies to which the aforementioned legal quotas applied until 1 January 2016. This Monitoring Committee monitors whether the relevant companies have complied with the legal quota. The report by the Monitoring Committee illustrates that there has been a slight increase in the number of women on corporate boards after the introduction of the law. The average percentage of women on boards of directors had increased—from 9.6% at the end of 2014 to 10.2% on 31 May 2016 (Hendrikse and Pouwels 2016, pp. 28–29). On supervisory boards, the average female share had increased from 11.2% at the end of 2014 to 13.1% on 31 May 2016 (Hendrikse and Pouwels 2016, pp. 28–29). Even though this is an increase, at the same time this is not even half of the target of 30%. The percentage of companies, to which the quotas are applicable, that have complied with the legal target on the executive boards had increased from 14.2% at the end of 2014 to 15.6% by mid-2016; for supervisory boards, this percentage had increased from 17.8% to 22.3% (Hendrikse and Pouwels 2016, p. 33).

National Law and Policy Regarding Women on Boards

The Gender Quotas in the Dutch Civil Code

The gender quotas in the Dutch Civil Code, which applied until 1 January 2016, were introduced on 1 January 2014 in the Wet bestuur en toezicht

(Management and Supervision Act). As the Council of Ministers has decided to extend the duration of this legislation and this proposal was adopted by the Second Chamber of Parliament on 19 January 2017 (Parliamentary documents 2016/2017) and by the First Chamber of Parliament on February 7, 2017 (Parliamentary documents 2016/2017), we will discuss the legislation as it appeared in Book 2 of the Dutch Civil Code until 1 January 2016. The gender quotas only applied in principle to 'larger' public companies (NV) and private limited liability companies (BV). 'Large' in this context means that the relevant company on two consecutive balance sheet dates and without interruption, and on two consecutive balance sheet dates thereafter, has complied with at least two of the following three criteria: (1) the value of the assets (according to the balance sheet and notes), on the basis of the acquisition and production costs, amounts to more than €17.5 million; (2) the net turnover for the financial year amounts to more than €35 million; and/or (3) the average number of employees during the financial year is at least 250 (Arts 2:166/276 and 2:397 section 1 Dutch Civil Code, Josephus Jitta (translation). These requirements were increased for annual reports which have been provided for the financial years starting on or after 1 January 2016 (see Uitvoeringswet richtlijn jaarrekening, *Stb*. 2015, 351 and 349). The required value of assets has been increased from €17.5 million to €20 million, the required net turnover has been increased from €35 million to €40 million.

According to the aforementioned (former) provision of the Dutch Civil Code, for a balanced division of the seats on the board of directors and the supervisory board, at least 30% of the seats had to be occupied by women and at least 30% by men to the extent that such seats are divided amongst natural persons. Company law in the Netherlands allows the appointment of a legal person as an executive director of a public or private limited company (NV or BV). Therefore, the law provides that the quotas also apply to an NV or BV that has been appointed as a director of an NV or BV to which the quotas apply (Arts 2:166 and 276 subsection 3 BW). In addition, the quotas will also apply to an NV or BV that has been appointed as a director of an NV or BV that has also been appointed as a director of an NV or BV to which the quotas apply. Non-executive directors or members of the supervisory board have to be natural persons (Art. 2:129a/140/239a/250 BW).

For all companies that comply with the said criteria, Art. 2:166/276 of the Dutch Civil Code provides that for the purpose of a balanced division of the seats on the board of directors and the supervisory board, account shall be taken, to the extent possible, of a balanced division amongst women and men concerning: (1) the appointment of directors; (2) the preparation of an outline profile of the size and composition of the supervisory board; and (3) the preparation of an outline profile for the non-executive directors and the appointment and recommendation of non-executive directors (Dutch Civil Code, Josephus Jitta (translation)).

As was stated *supra*, the legislator in the Netherlands has been very reluctant to introduce legally binding gender quotas for corporate boards. Therefore, regulation in the Dutch Civil Code contains no concrete sanctions in case of non-compliance with the said quota. If a company to which the aforementioned quota regulation applies fails to comply with these quota, the company will have to explain in its annual report: (1) why the seats were not apportioned in a balanced way; (2) how the company has tried to arrive at a balanced apportionment of the seats; and (3) in which manner the company will aim to realise a balanced apportionment of the seats in the future (Art. 2:391 section 7 Dutch Civil Code, Josephus Jitta (translation). This provision applies to both the composition of the board of directors and the composition of the supervisory board. This provision is clearly based on the 'comply or explain' regime. Surprisingly few companies have complied with their duty to explain why they have failed to comply with the gender quotas: more than half (52%) provided no explanation at all as to why they failed to comply (Hendrikse and Pouwels 2016, p. 43). The proportion of companies that complied with all statutory reporting obligations in this respect in 2014 was less than 10% (Hendrikse and Pouwels 2016, p. 43). The report by the Monitoring Committee Corporate Governance 2015 (p. 32) contains a comparative perspective of compliance with the provision on diversity in the Dutch Corporate Governance Code (MCCG 2015).

The Lapsing of the Law Containing Gender Quotas

From 1 January 2013 to 1 January 2016, the Dutch Civil Code contained gender quotas for the board of directors ('raad van bestuur') and the

supervisory board ('raad van commissarissen') of larger companies. As was addressed *supra*, the provisions on this issue in the Dutch Civil Code apply to larger private limited liability companies (BVs) and public limited liability companies (NVs). These legal quotas apply to roughly 4900 NVs and BVs. The quotas do not apply to foundations (*stichting*), associations (*vereniging*) or cooperatives (*coöperatie*).

Even though there has been a slight increase in the number of women on boards, Minister Bussemaker concluded that without an active approach any substantial increase in the number of women would take too long (Parliamentary documents 2015/2016c, p. 2). Therefore, the Minister proposed, in line with the recommendations made by the Monitoring Committee, to extend the target figure for another four years. On 23 March 2016, a bill was introduced in which the Minister proposes to reintroduce the aforementioned quotas for another period of four years (Parliamentary documents 2015/2016b). Thus, the government intends to reintroduce the gender quotas for the executive and supervisory boards of large public and limited liability companies and has agreed to a proposal on this by Minister Bussemaker. The First and Second Chamber of Parliament adopted this proposal at the beginning of 2017 (Eerste Kamer 2017).

Companies are thus given one final opportunity to *voluntarily* ensure that the corporate boards consist of at least 30% women. After the publication of the figures in the aforementioned Female Board Index, Minister Bussemaker stated that the introduction of mandatory quotas is a drastic remedy, but, she continued, "waar een wil is, is een weg en waar géén wil is, is een wet" (see Tuenter 2015). This means that if there is a willingness to voluntarily reach the targets, then it will be possible. However, if there is no such willingness, there will be a binding law containing concrete sanctions for non-compliance with the said quotas. But it must be noted that the prolonged law actually gives a bit more leniency to companies by setting in fact a two-stage target; the target to be reached by the end of 2019 is set at 20%, and in case that is not reached, a quota of 30% will be imposed coupled with sanctions. In case the target of 20% is reached, the self-regulatory approach will be continued setting the target of 30% then for the end of 2023 (Portegijs and Brakel 2016, p. 118). As the parliamentary elections will take place on 15 March 2017

and a new government will have to be formed thereafter, it is uncertain who will be the next Minister who will be responsible for these initiatives.

In the Meantime: A Legal Vacuum?

As was illustrated *supra*, the Dutch Civil Code currently does not contain any gender quotas. As the Minister has announced that the former quotas will be reintroduced, she expects that companies will, in the meantime, act in accordance with the intention to extend the statutory quotas (Parliamentary documents 2015/2016c, p. 3). It is remarkable that these provisions only apply to large public companies (NVs) and large private limited liability companies (BVs) and not to large foundations and associations. It is puzzling to see that the quotas have not been extended to these entities. For example, healthcare institutions and housing associations in the Netherlands will generally be a foundation (*stichting*) or an association (*vereniging*) (See also: Kruisinga et al. 2016, p. 1473). Minister Bussemaker is right to suggest that the public sector can play an important exemplary role in the pursuit of gender diversity (see Bussemaker 2015, p. 7). However, the quota scheme is not applicable to the public sector.

In other areas, however, there are also provisions on gender diversity. For example, research into pension funds has shown that a large number of Dutch pension funds have no women on their boards of directors or supervisory boards. The number of female board members in this sector shows barely any increase (Klaassen and Vletter-van Dort 2015). Pension funds very often take the form of a foundation, which means that the aforementioned quotas will not apply. Quite recently, however, quotas for gender diversity were introduced in the Code Pensioenfondsen (Code for Pension Funds). As of 1 July 2014, the Pensioenwet (Pensions Act) now contains a provision on diversity concerning the composition of the boards of pension funds. This provision was introduced by the *Wet versterking bestuur pensioenfondsen* (Stb. 2013, 302). Art. 107 of the Pensioenwet provides that the board of directors of a pension fund has to give an account, in its annual report, of the composition of the board in terms of age and gender. In addition, the board of directors has to report yearly on the efforts it has made in order to increase diversity in the organs

of the pension fund. Thus, the law on pension funds itself contains no gender quotas for the composition of the board. On 1 July 2014, however, a quota measure was introduced in the Code Pensioenfondsen. This Code was drafted by the Pensioenfederatie (Pensions Confederation) and the Stichting van de Arbeid (Joint Industrial Labor Council). This is a governance code for all pension funds having a statutory seat in the Netherlands (Code Pensioenfondsen). This Code provides that the board of directors has to contain at least one man and one woman (Norm 67). The application of these provisions in the Code is also based on the 'comply or explain' regime.

Also in the NCR Governance Code for Cooperatives, gender quotas were recently introduced (NCR Governance Code). The Code of the Association of Dutch Cooperatives (the Nationale Coöperatieve Raad, also referred to as the NCR) will be applied voluntarily by Dutch cooperatives. As of 22 May 2015 this Code provides that 'the management board will aim for a diverse composition in terms of [...] gender [...]. At least 30% of the seats on the management board are held by women and at least 30% by men (provision 3.2.2.3 of the Code). Even though this code does not contain any legal obligations, the Code provides for a two-yearly evaluation of compliance with the code by the NCR (rule 2.1.2). The Code is also based on the 'comply or explain' regime, which means that the Code requires cooperatives to explain why they cannot comply with any of the rules therein (Compare www.cooperatie.nl and Rensen 2015). The boards are accountable to the general meeting of members (or the members' council). Any deviation from the provisions of the code has to be clearly explained on the website of the cooperative concerned (provision 2.1.1).

Very Recently: Diversity Policy in the Revised Corporate Governance Code

As was indicated *supra* in section "Governance Structure According to Company Law", the Corporate Governance Code has been revised very recently. The provisions in the Corporate Governance Code are applied on the basis of the 'comply or explain' principle. In their annual report, listed companies have to indicate which provisions of the

Code have not been complied with and the company has to explain why it has failed to comply with these provisions. In the revised Corporate Governance Code, new provisions were introduced on the diversity policy. Art. 2.1.5 of the revised Corporate Governance Code provides that the supervisory board will have to provide a diversity policy concerning the composition of both the executive board and the supervisory board. This policy will have to indicate concrete targets relating to relevant aspects of diversity, such as, for example, gender. In addition, Art. 2.1.6 of the Code provides that the corporate governance statement will have to provide further information on the diversity policy and will have to address: 'i. the policy objectives; ii. how the policy has been implemented; and iii. the results of the policy in the past financial year'. In addition, if the composition of the executive board and the supervisory board differs 'from the targets stipulated in the company's diversity policy and/or the statutory target for the male/female ratio, if and to the extent that this is provided under or pursuant to the law, the current state of affairs should be outlined in the corporate governance statement, along with an explanation as to which measures are being taken to attain the intended target, and by when this is likely to be achieved'. Thus, even though the quotas law has lapsed, similar provisions will still apply to listed companies as of 2017, again on the basis of a 'comply or explain' regime.

Enabling and Hindering Forces and Critical Reflection on the Dutch Case

Without claiming to present a full picture here, we consider that enabling and hindering forces for bringing about more gender-balanced company boards in the Netherlands can be located mainly on the following three levels. To begin with, at the level of the labour market, it has been seen that more than 60% of working women work part time. The statutory right of women to work part time can as such be seen as a hindering factor. While on the one hand this right is beneficial for female labour participation as it enables them to combine work and care responsibilities,

on the other hand, this may have counterproductive effects when it comes to their emancipation in the longer term. It is not only detrimental in terms of its contribution to the persisting gender wage gap, but clearly also affects the advancement of their professional career and being promoted to higher-level positions. The figures presented in section "Facts and Figures" thus show that a fairly high number of women make use of this right around the age of thirty when having children and reduce their working time (36%) or even stop working (11%), so at a crucial moment in their career. The measures that the Dutch government is now taking to allow more flexibility in terms of working time and location so as to combine work and care could enhance women's position on the labour market when these indeed result in women working more hours. Yet it has also been seen above that highly educated women increasingly tend to work full time. The fact that women's level of education continues to be on the rise and now surpasses that of men in the age group up to 45 therefore provides a promising development with a view to the future advancement of women in leading positions (Portegijs and Brakel 2016, p. 54).

Secondly, there is also an important cultural-cognitive dimension to bringing about more gender-balanced boards, which concerns the perception of people as to what women's role ought to be in society, at work and at home. The latest Emancipation Monitor reveals in this regard that a majority of women and 40% of men consider it desirable that the number of women increases in top functions and there is also much appreciation for the efforts of women's organisations to increase this number. Yet these figures reveal that apparently a majority of men do not consider the underrepresentation of women in such functions as being problematic. At least in part, this may be explained by the gender stereotypes people hold on the role of women; around one in six Dutch citizens consider that women with school-aged children ought to stay at home; similarly, almost half of the men consider that women are better caretakers of small children and about a quarter of the women also hold this view (Portegijs and Brakel 2016, p. 277).

Very importantly, implicit gender bias is also present in organisations and reducing the chances of women, as gender stereotype expectations appear to blur both the sight on capacities and ambitions of women, it being more often thought that women do not hold the ambition for a top

function or that they would not be up to such a job (Portegijs and Brakel 2016, p. 278, under reference to Ellemers 2014). Ellemers has also described the career path of women in terms of a labyrinth, in which the ambitions of women are less seen and supported, and when being promoted this relatively often being to functions which bear a low chance of success, for instance leading an organisation in crisis without much support and means to accomplish this. When failing to do a good job, this is more often ascribed to their qualities than in the case of men (Ellemers 2014). Cultural and structural mechanisms, including, for instance, also the old boys' network, are thus considered to complicate the women's route to the top (Portegijs and Brakel 2016, p. 279). At the same time, while 73% of women do indeed believe that they not enjoy the same opportunities as men to obtain a top-level function (as opposed to 61% of men), only a very small number of women support giving women priority in management training (21%) and in the recruitment process (14%) and in imposing fines on companies that have too few women on their boards (16%). For men, these figures are even 5% lower (Portegijs and Brakel 2016, p. 132).

At the legal-regulatory level, a general observation is that it is only fairly recently that the Dutch government has been taking measures to enhance the position of women on the labour market. As seen, it was thus only in the early 1990s that childcare was seen as an importantly state responsibility and that childcare support boosted women's labour participation. While since then, varying policies and rules have been developed geared towards women's emancipation, we see that with regard to tackling the specific problem of women's underrepresentation on company boards, this has been the case only more recent years, as discussed in the previous section. This approach seeks to be enabling, by setting a clear objective and target; however, it has been seen to fall short in terms of providing sufficient progress. In part, this can be explained by the political reluctance to couple the target with effective monitoring and compliance mechanisms, including sanctions. In our view, the governmental position is ambiguous in various respects and can be seen as a typical outcome of the Dutch consensus approach. While, on the one hand, there is a commitment (on paper at least) to enhance women's participation and position on the labour market, actual governmental measures may not be

a particular stimulus for this. Thus, while the currently responsible Minister Bussemaker is a social democrat very much dedicated to the professional advancement of women, she is part of a liberal-led government that wishes to leave things as far as possible to the markets and employers themselves. This is reflected in the current soft legal approach that seeks to incite companies to take the required action themselves, without the government imposing any strict sanctions in the case of non-compliance, or providing for stimulating/rewarding measures for companies that provide a good example. It merely provides for a comply or explain approach, requiring companies to report on the action they have taken to enhance the number of women on boards, with what result and why this possibly failed. As the assessment of the target law has shown, however, companies have not taken this reporting obligation seriously as only about 10% of the companies did report on this in their annual report and accountants not pushing for this. This failure to report can also be seen as a token of corporate indifference or lack of interest in dealing with this problem and bringing about progress. So far, one can thus say that the target law has done little to change corporate culture in this respect.

There are yet other limitations to the Dutch legal approach, one being its limited coverage, not including important organisations such as pension funds. While self-regulatory initiatives have been developed, such as the Code for Pension Funds and the NCR Governance Code for Cooperatives which both contain gender quota, this limited scope can be criticised, in particular also because the target law does not cover the public sector. In the public sector, a target of 30% by 2017 was set solely at an internal policy level and this has been reached in the civil service, the proportion of female senior and top civil servants rising from 28% in 2014 to 31% at the end of 2015. Yet other domains are still problematic, the percentage of female professors, for instance, rising only from 16% in 2012 to 18% in 2015. The exclusion of the public sector from the target law is difficult to understand from the perspective that the state is to lead by example and that imposing more stringent obligations on the private than on the public sector is hard to defend in any convincing way. As such, public authorities should be subject to similar target, deadline and reporting obligations as private bodies. There is some raising of awareness

about this, there now considerable discussion as to whether the next law should also include the setting of a legally established target for the public sector (Portegijs and Brakel 2016, p. 118). Another limitation that one can point to in the Dutch legal approach is that it lacks flanking measures that are needed to bring about progress—for instance, regarding transparent and non-discriminatory recruitment policies.

Reflections of an Actor

Joop Schippers

As the Netherlands has taken several initiatives in order to increase the number of women on corporate boards in the last five years, it was deemed useful to have the perspective of a long-standing actor in the field, who has witnessed the various stages of the national debate and policy. Professor Dr. Joop Schippers is Professor of Economics at Utrecht University and an expert on gender differences and the labour market. He has been directly involved in the matter as a member of the Monitoring Committee Talent naar de Top. Our interview focused on his role and his experiences in the Monitoring Committee as well as on his personal perspectives on the issue.

The task of Professor Schippers in the Monitoring Committee is to review and comment on the analyses of the data that are collected annually by an independent research firm on the development and situation of the share of men and women on company boards over a certain period of time. In addition, the task of the Committee is to make recommendations to the various parties involved. In addition to discussing specific figures concerning the composition of the various boards, the Committee also discusses the figures that show the share of women at higher management levels (just below the board of directors) and a series of aspects of HRM policy, as well as the information companies provide in light of the "comply-or-explain" principle, in their annual reports regarding the (non-)achievement of the objectives. To Professor Schippers, it is a disappointment to see every year how limited the progress is that has been made; and also to observe that in many

companies the total number of women on boards is still zero. As the Committee does not wish to discourage companies, they are critical on the one side, but on the other side they also try to acknowledge the (small) steps forward and to put positive developments into the limelight. The request to always identify also a few good examples and best practices sometimes provides headaches for the Committee. On the one hand, because it often leads the Committee back to the same few companies, and on the other hand because some companies that may have performed well on some aspects regarding gender-balanced boards in one year, may have performed substandardly on others (such as bad customer service, a reorganisation with a great loss of jobs, debatable remuneration policies, the maltreatment of flexible workers etc.). One may wonder whether there is any reason to put those organisations in the spotlight.

Professor Schipper's personal perspective on this issue is that it is certainly a matter of patience and constant attention. Even organisations that generally do well, easily fall back into old, traditional patterns when attention diminishes. In this sense it is no different than paying attention to, for example, hygiene, health and safety at work or budgetary discipline: without regular inspections and monitoring, the sense of discipline may weaken. For hygiene, health and safety at work and the payment of tax it has been fully accepted that there are agencies that regulate and monitor this on a regular basis. This should be the same not only with regard to the gender composition of boards, but for attention to gender issues more generally: frequent visitations are needed to show what is going well and what is not in society. Apart from that, women—as well as men who value gender equality—should work actively to build relevant networks and involve talented women. Also shareholders and works councils have to commit themselves to their role in this issue more seriously. The government, too, could carry out more studies on the positive effects of diversity (e.g., financially, but also in terms of satisfaction and the quality of work). In addition, the executive search firms have the possibility to be the frontrunner in changing business practices, but instead they still appease their clients too much. There are good examples out there, but many agencies still take the easy way by fishing in the traditional pond.

In reply to the question whether he would suggest that the government should take any specific legal measures, professor Schippers replied that he

would suggest that the government should better regulate and institutionalise the monitoring process and extend this to the visitation of government policy in general: put an end to the permissiveness of the comply-or-explain principle. What current consequences are there if a company fails to comply with annual reporting regulations? What consequences does this entail for the accountant? There should be similar consequences for the company and the accountant if a company fails to comply with the gender regulations that the Wet Bestuur en Toezicht provides for. The committee experiences a relatively high 'turnover', because it consists of very busy volunteers. This is understandable from an individual perspective, but less desirable for the continuity and authority of the Committee. From this perspective it is also recommended that a certain level of institutionalisation occurs.

Conclusions

The Netherlands still has a long way to go in moving from an average percentage of women on boards of directors from 10.2% on 31 May 2016 to the target of 30%. The same applies to supervisory boards, where the average female share was 13.1% on 31 May 2016 and which also aims to reach 30%. Even though there has been a slight increase in the number of women on corporate boards, neither of the aforementioned percentages have reached even half of the targeted 30%. As has become clear from the above discussion, an increasing in the number of women on corporate boards is considered to be the responsibility of the companies themselves. The quotas that were introduced in the law on 1 January 2013 provided that larger companies have to aim at (at least) 30% women and 30% men on the board of directors and the supervisory board. However, this legal obligation expired on 1 January 2016. In addition, this measure merely entailed that any company failing to comply with the said quotas was obliged to indicate in its annual report why it had failed to comply, how the company has tried to arrive at a balanced apportionment of the seats and what the company's future policy will be on this issue. A proposal has been submitted to Parliament to prolong the aforementioned law for another four years, which the Second and First Chamber of Parliament

adopted without any further discussion on 19 January 2017 and 7 February 2017, respectively. However, the prolonged law still provides no sanctions for non-compliance with the proposed target. In this context, it is interesting to note that some political parties have included the topic of gender-balanced boards in their programmes for the upcoming elections in March 2017. For example, the left-wing party Groen Links states that the top of listed companies and (semi-)public institutions have to consist of at least 30% women (Groen Links 2017). D66 intends that in 2021 there will be more than 30% women in important functions in society. It is not clear (yet) which measures these political parties suggest in order to realise this and whether these will actually go beyond those contained in the prolonged law.

The above demonstrates the reluctance of the legislator to introduce binding gender quotas for companies. While there has been some progress under the previous law, it has only been very limited and clearly the process takes a great deal of time. We have little expectation that this will change under the prolongation of this law. In that sense, one could argue that the Dutch approach is a symbolic one, meaning the adoption of 'legislation that is not in fact directed towards the enforcement of certain behavioral norms and therewith the realization of the underlying goals, but first and foremost towards the expression of human or spiritual values in the political sphere. Therefore the legislator intentionally fails to provide for sufficient measures ensuring compliance with the law' (Van Klink 2014). We take it that better compliance and enforcement mechanisms, such as those also proposed by Joop Schippers above, are essential for bringing about actual progress. More stringent reporting obligations that are duly and regularly supervised could be a first important step in that direction, but in our view the benefits and legal possibilities for introducing not only a stick but also a carrot approach should be further explored. This could concern, for instance, measures that would use company policies for bringing about gender equality and gender-balanced boards and their results as a criterion or yardstick in the awarding of contracts. We consider that such measures may both enjoy more popular support and lead to more effective results, in terms of bringing about a more gender-sensitive and supportive mindset that is essential for bringing about real change in the long run.

Notes

1. This article builds on previous research (Kruisinga et al. 2016; Senden 2014a, b). The research for this article was completed in February 2017.
2. According to Van Klink, symbolic legislation concerns 'legislation that is not in fact directed towards the enforcement of certain behavioral norms and therewith the realisation of the underlying goals, but first and foremost towards the expression of human or spiritual values in the political sphere. Therefore the legislator intentionally fails to provide for sufficient measures ensuring compliance with the law' (Klink 2014, p. 7, our translation).
3. For a fundamental analysis and evaluation of the Dutch welfare state with numerous policy insights, see Mooij (2006) as cited by Cnossen (2009, pp. 16–17).
4. The Sociaal en Cultureel Planbureau (SCP) (the Social and Cultural Planning Office) and the Centraal Bureau voor de Statistiek (CBS) (Statistics Netherlands).
5. See further on such figures see the section "Women's Participation in the Labor Market" in this chapter.
6. Ten percent work less than 12 hours, 13% between 12 and 19 hours, 27% between 20 and 28 hours, 23% between 29 and 34 hours and 27% more than 35 hours (Portegijs and Brakel 2016, p. 67).

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9

Women's Access to Boards in Germany—Regulation and Symbolic Change

Anja Kirsch

Introduction

After more than 15 years of debate and policy initiatives, women remain starkly underrepresented on both the management and supervisory boards of German companies. In the largest companies in 2015, only around 6% of management board members and around 20% of supervisory board members were women (Holst and Kirsch 2016). The gap between the shares of women and men in these top decision-making bodies is narrowing only very slowly, particularly on the management boards. The development on supervisory boards, which have been the main focus of policy initiatives, has become more dynamic in recent times, not least due to the introduction of a gender quota law in mid-2015.

In the next section of this chapter, I illustrate in broad terms women's position in the German economy and society and portray central aspects of the structure of corporate boards. I then present data on the

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development of women's representation on boards in the largest companies and in listed companies. In the third section of the chapter, I review the historical development of debate and policy initiatives centred on increasing women's representation on boards and in management more generally, identifying key actors in this process. This is followed by details on the content of the regulation introduced in 2015 as well as criticisms of and the state of compliance with the law. In the fourth section, I reflect on the significance of regulation and social legitimacy for women's access to boards as well as on resistance to substantial change. I conclude with a reflection by one of the key actors in the process leading up to the quota regulation, the president of the women's association FidAR (*Frauen in die Aufsichtsräte*—Women to the Boards), Monika Schulz-Strelow.

General Background

Women in the German Economy and Society

Germany is the largest economy in Europe with a population of around 82 million, a labour force of around 45 million and a gross domestic product of around three trillion euros. Women make up around 46% of the labour force in Germany and the employment rate of women aged 15–64 years is around 69%, compared with about 79% for men (Federal Statistical Office 2016a). Although women play an increasingly active role in the labour market, large gender differences remain. This is particularly evident when considering rates of part-time employment: in 2013 almost half of working women were in part-time employment, compared with only around 10% of men (Brenke 2015). Joint taxation of couples, the progressive income tax schedule and free health insurance for married spouses serve as disincentives for women to work full-time. In addition, the lack of full-day childcare and schools constrains many women's labor market choices (Dearing et al. 2007; Geyer et al. 2015).

Women's share in management positions has been increasing only very slowly. Using Labor Force Survey data, the Federal Statistical Office states that women made up around 29% of managers in 2014 (defined as the ISCO-08 major group 1)—a tiny increase from 25.5% in 1992. Overall,

this ranks Germany in the lower third of all Member States of the European Union, where, on average, 33% of managers were women in 2014 (Federal Statistical Office 2014, 2016c). Differentiating between managerial levels, the Institute for Employment Research queries private sector employers about women's share in first- and second-tier management in its establishment panel survey. It too has shown that women's share of first-tier management positions has stagnated at around 25% over the last ten years, but has detected a notable increase in the proportion of women in the second tier, where they held 39% of positions in 2014 (Kohaut and Möller 2016). As less than a third of the establishments surveyed had a second tier of management, however, the increase is of limited magnitude. Differentiating by sector, the share of women managers is highest in the education, health and social welfare sectors, followed by retail, hospitality and public administration; women also make up a significant share of the workforce in these sectors. The finance sector deviates from this pattern: although the majority of employees in the sector are women, their share of managerial positions is below average (Federal Statistical Office 2014; Kohaut and Möller 2016). Studies seeking to explain the continued underrepresentation of women in managerial positions in Germany have pointed to the persistence of certain mindsets among managers that reproduce gender differences and perpetuate women's exclusion (Alemann 2014; Wippermann 2010).

The gender pay gap in Germany is one of the highest in Europe. It stood at 21% in 2015, which was a slight decrease on previous years, something which can be attributed to the introduction of the national statutory minimum wage in 2015. Women's overrepresentation in low-paid occupations, lower working hours, lower average qualifications and fewer promotions account for around two-thirds of the pay gap between women and men. In other words, even with equal qualifications and undertaking comparable tasks, women earned 7% less than men in 2015 (Federal Statistical Office 2016b).

Besides these lasting inequalities in economic participation and opportunity, women are also at a disadvantage in terms of their political empowerment, as the Global Gender Gap Index scores show. In 2015, women held 37% of seats in the lower house of the federal parliament and 41% in the upper house; in addition, some one-third of federal ministers

were women (Inter-Parliamentary Union 2015). Although these figures are approaching a gender balance zone (40–60% of each gender), in an international comparison, Germany ranks just 22nd regarding the share of women in parliament and 20th regarding the share of women in ministerial positions, behind a range of high- and low-income countries (World Economic Forum 2015). Indeed, as some would argue, despite the rise of Angela Merkel and her portrayal in the media as a powerful and competent leader, the dominant ideology of the political arena as a domain of masculinity remains largely unchallenged (Lünenborg and Maier 2015).

The Structure of Corporate Boards

Returning to economic decision-making positions, this section focuses on corporate boards in German companies. The two most widespread corporate forms in Germany are limited liability companies (*Gesellschaft mit beschränkter Haftung*—GmbH) and stock corporations (*Aktiengesellschaft*—AG). Since 2004, corporations may also be European companies (*Societas Europeae*—SE). Limited liability companies are the most frequent form (around 1.2 million companies), followed by stock corporations (around 15,500) and European companies (around 370) (Kornblum 2016). Many large companies in Germany are stock corporations, and in this section I will sketch out the structure, tasks and composition of their boards.[1] It should be noted that only a small fraction of stock corporations is listed—a current estimation is that this classification contains around 570 German companies (Bayer and Hoffmann 2015).

The governance structure of stock corporations is regulated in the Stock Corporation Act 1965 (*Aktiengesetz*—AktG). It mandates three corporate bodies: a shareholders' general meeting, a management board and a supervisory board. The two-tier board structure is a characteristic of German corporate law setting it apart from many other one-tier board systems (Schulz and Wasmeier 2012). The management board directs the company, is responsible for its operative management and represents it in and out of court (see §76 and §78 AktG). The supervisory board

appoints, oversees, advises and dismisses the members of the management board (see §76 and §84 AktG). It examines company records and assets, issues audit assignments to the auditor, and receives reports from the management board on intended business policy, profitability, the state of business, and transactions of considerable impact on the conditions of the company (see §90 AktG). The supervisory board is required to meet at least four times a year; in the case of non-listed companies the board can resolve to meet only twice (see §110 AktG). With that, the formal time commitment of a member of a supervisory board is considerably less than that of a non-executive director in the United Kingdom, for example (Charkham 2005, p. 55). The supervisory board does not issue instructions to the management board regarding the operative management of the company (see §111 AktG). There is also a strict separation between the two boards, so that a single individual cannot sit on both bodies (see §105 AktG).

The management board is a collegial body, meaning that all members of the management board participate in the management of the company on equal terms and are jointly accountable. One member may be nominated as the chairperson, who coordinates the work of the board members but whose position as *primus inter pares* precludes them from issuing directions to the remainder of the board (see §77 and §84 AktG). In an empirical study of large stock corporations in 2004, Gerum (2007) established that the average management board was comprised of 4.7 members.

The supervisory board selects and appoints members to the management board based on the recommendations of its executive committee or human resources committee. In large companies, such committees consist of about four supervisory board members. Preceding this, such a committee will search for appointable candidates. Charkham (2005, p. 47) notes that analyses of this process tend to overlook the issue of patronage: Even though the supervisory board has the power to appoint the management board, the source of nominations is often the management board itself, which frequently puts forward internal nominees. Selection interviews are often conducted jointly by the supervisory board chair and the management board chair (Scheffler 2012).

The supervisory board consists of at least three members. The company's statute may specify a higher number. Depending on the amount of the company's share capital, the maximum number of members is nine, 15 or 21 (see §95 AktG). The supervisory board may be co-determined, meaning that a certain fraction of the supervisory board members is elected by the domestic workforce of the company (see §96 AktG). Co-determination is regulated in several acts; the most important for our purposes are the Co-determination Act 1976 (*Mitbestimmungsgesetz*—MitbestG) and the One-Third Participation Act 2004 (*Drittelbeteiligungsgesetz*—DrittelbG). They apply not just to stock corporations but also to limited liability companies and some other corporate forms. According to the Co-determination Act, in companies that regularly employ more than 2,000 domestic employees, half of the supervisory board members are employee representatives. One of those employee representatives is a managerial employee ("*leitende Angestellte*"). In case of split resolutions, the supervisory board chair, who is generally a shareholder representative, has a casting vote. Depending on the number of employees in the company, the supervisory board consists of 12, 16 or 20 members in total (see §7 MitbG). In a survey of large stock corporations covered by the Co-determination Act in 2004, the average supervisory board had 15.2 members (Gerum 2007). Interestingly, around 25% of these firms had a larger supervisory board than specified in the Co-determination Act, arguably in order to secure additional resources and to increase personal ties with other companies. The One-Third Participation Act specifies that in companies with more than 500 and up to 2,000 employees, one third of the supervisory board members are employee representatives (see §4 DrittelbG). Stock corporations with fewer than 500 employees are not co-determined, unless they were founded before 1994 and were co-determined at that time (v. Werder and Talaulicar 2011).

The shareholder representatives on the supervisory board are elected by the shareholders' general meeting, based on a list of candidates provided by the current supervisory board (see §101 AktG). The Stock Corporation Act was amended in 2015 during the course of the introduction of the gender quota law discussed later in this chapter. It now specifies that women and men must make up at least 30% of supervisory board

members in listed companies to which the Co-determination Act applies. Shareholder and employee representatives decide whether the 30% rule applies to the supervisory board as a whole or to each group of representatives separately (see §96 AktG). This is the first time that any reference to gender diversity is made in the Stock Corporation Act.

The employee representatives are elected directly by the employees of the company or, in larger companies, via delegates (see §9 MitbG and §5 DrittelbG). In companies covered by the Co-determination Act, either two or three of the employee representatives are to be union representatives, depending on the size of the board (see §7 MitbG). These union officials are not company employees. In large companies they may be the national union leaders, of, for example, IG Metall or ver.di. Only rarely are union representatives on the boards of companies to which the One-Third Participation Act applies (see §4 DrittelbG). Lists of candidates for election are put forward by employees and works councils, and, for the union representatives, by the unions; the managerial employees have a separate list (see §6 DrittelbG and §§15–16 MitbG). The One-Third Participation Act specifies that among the employee representatives on the supervisory board, women and men should be represented according to their proportion among the employees in the company, although there are no sanctions for non-compliance (see §4 DrittelbG). This provision on gender diversity among the employee representatives on the supervisory board is not new in this law; in fact, the law that preceded the One-Third Participation Act of 2004, the Works Constitution Act 1952 *(Betriebsverfassungsgesetz*—BetrVG 1952), already contained a similar provision: it specified that if more than half of the employees in a company are women, there should be at least one woman among the employee representatives on the supervisory board (see §76 BetrVG 1952). By contrast, there was no such provision in the Co-determination Act, which was introduced in 1976 for companies with more than 2,000 employees. This Act was amended in the course of the introduction of the gender quota law. It now specifies that women and men must make up at least 30% of the employee representative members (see §7 MitbG).

The Representation of Women on Boards

The gender composition of both supervisory and management boards in the largest German companies is tracked by the German Institute of Economic Research—DIW Berlin, the union-related Hans Böckler Foundation and the women's association FidAR. Their data show that women's representation has slowly increased over the last decade. Figure 9.1 draws on data published by DIW Berlin and the Hans Böckler Foundation. It illustrates the differences in women's representation on supervisory boards and management boards in different types of companies. The dotted lines signify the largest 200 companies as measured by turnover (excluding the financial sector). Many of these companies are non-listed stock corporations or limited liability companies, and include, for example, several major food retail companies and German subsidiaries of foreign firms. The solid lines represent the 160 stock corporations listed

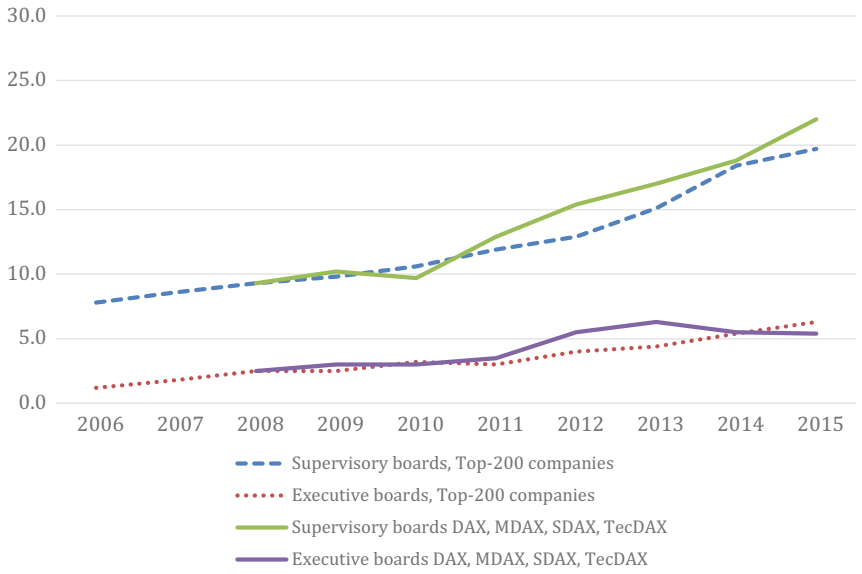

Fig. 9.1 Share of women on supervisory boards and management boards as a percentage, 2006–2015 (*Data sources*: Top-200 companies: (Holst and Kirsch 2014, 2016). DAX, MDAX, SDAX and TecDAX-listed companies: (Pfahl et al. 2016))

in the large cap, mid cap and small cap indices DAX, MDAX and SDAX and the largest technology firms in the TecDAX index. Comparing the development of women's representation on boards across these two groups of companies visualises three facts: First, a gender-balanced board composition is far from achieved in either type of board across both company groups. In the largest 200 companies, just below 20% of supervisory board members were women in 2015 compared with 22% in the listed firms. Yet the share of women on supervisory boards is more than three times greater than their share on management boards. On management boards, a mere 6% of board members were women in the largest companies and 5% in the listed companies in 2015, manifesting a severe imbalance in the gender composition of management boards not just historically but to this very day. Second, we can see that from around 2010 onwards, women's representation on supervisory boards has increased at a faster rate than on management boards. The gap between women's share on management boards compared to supervisory boards in the largest companies was less than 7% in 2006 and had increased to over 13% by 2015. Third, women's representation on boards has tended to be slightly higher in listed companies than in the largest companies. This is particularly the case on supervisory boards in recent years. The observations that: (a) listed companies have more women on their boards than the group of largest companies; and (b) women's representation has increased mainly on supervisory boards suggest that both regulation and a desire to demonstrate visible, if only symbolic, conformity with social norms influence whether or not companies appoint women to their boards. I will discuss these points in the final section of this chapter.

The Hans Böckler Foundation's data on the gender composition of supervisory boards in the 160 DAX, MDAX, SDAX and TecDAX-listed companies distinguish between employee and shareholder representatives. They show that in 2015, the share of women on supervisory boards was around 10 percentage points higher in companies with a co-determined board than in those without (see Table 9.1). Historically, women directors have overwhelmingly been employee representatives, but in recent years, an increasing number of women have joined boards as shareholder representatives. The group of women directors on the supervisory boards of co-determined companies has indeed changed markedly over the past

Table 9.1 Share of women on supervisory boards in listed companies with and without co-determination, as a percentage, 2005 and 2015

	2005 (%)	2015 (%)
No co-determination	3	14 (58 companies)
One third employee representatives	10	24 (24 companies)
One half employee representatives	12	24 (78 companies)

Data source: Weckes (2016)
Note: Refers to 160 DAX, MDAX, SDAX and TecDAX-listed companies

decade: in 2005, 87% of women directors in co-determined companies were employee representatives, but by 2015, this was only the case for 54 percent of women directors (Weckes 2016).

Looking at these data, we can see just how important it is to distinguish between management and supervisory boards and between shareholder and employee representatives when discussing women's representation on boards in Germany.

Enabling and Hindering Forces: New Regulation and Resistances

A Protracted Path to Regulation on Board Gender Composition

The debate about women's underrepresentation in management—and specifically on boards—is not new, and numerous attempts were made to introduce regulation. Initially, public debate and policy initiatives were concerned with women's underrepresentation in management in general, but over time, attention became more explicitly focused on boards, and especially on supervisory boards. In this section I trace the path that culminated in the enactment of the law on equality for women and men in managerial positions (*Gesetz für die gleichberechtigte Teilhabe von*

Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst—FührposGleichberG) in 2015.

When they formed a coalition government in 1998 both the Social Democratic and Green parties announced their intention to pass equal opportunity legislation for the private sector (SPD and Bündnis 90/Die Grünen 1998). In 2001, their plans to introduce a law that would have included targets for increasing women's representation in management were unsuccessful, following opposition from business groups. Instead, business associations struck a voluntary agreement with the government on the promotion of equal opportunities for women and men in the private sector ("*Vereinbarung zwischen der Bundesregierung und den Spitzenverbänden der deutschen Wirtschaft zu Förderung der Chancengleichheit von Frauen und Männern in der Privatwirtschaft*"). This agreement did not specifically address the underrepresentation of women on boards, and, to the disappointment of the Greens, the unions and women's associations, amounted to no more than a loose declaration of intent (Pfarr 2001, p. 6). In the ensuing years, the agreement did not result in any perceptible increase in the representation of women on boards and was widely seen as a failure. Later calls for board gender quotas often referred to this agreement as an example of the ineffectiveness of voluntary measures.

During the 2000s, calls for greater gender equality at the workplace began to focus more explicitly on the underrepresentation of women on boards. Following the passage of an anti-discrimination law in 2006 (*Allgemeines Gleichbehandlungsgesetz—AGG*), motions for a quota for supervisory boards were made by the Greens in 2007 and 2009, but were rejected (Bundestags-Drucksache 16/5279 2007; Bundestags-Drucksache 16/12108 2009). Then, a conservative–liberal coalition (CDU/CSU and FDP) was elected in 2009. Generally opposed to quota legislation, the government, in its coalition agreement, announced its goal to achieve a "substantial" increase in the proportion of women in leadership positions in both the private sector and in the civil service. It advocated a step-by-step plan aimed to increase the proportion of women on management and supervisory boards (CDU et al. 2009).

In the period 2010–2012, discussion about a quota gained traction. Internationally, quota laws had been passed in Norway, France, Belgium,

Italy, Spain, the Netherlands and Iceland, and the idea of introducing an EU-wide quota was under consideration. In a European context in which a diffusion of corporate board quota legislation was taking place (Teigen 2012), it gradually became clear that some form of regulation on board gender composition would be decided upon. First, several steps were taken by proponents of non-statutory regulation. In May 2010 the Commission of the German Corporate Governance Code amended the Corporate Governance Code to include recommendations that a supervisory board "stipulate an appropriate degree of female representation" in its objectives regarding its composition (section 5.4.1) and that supervisory boards aim for "an appropriate consideration of women" when appointing members to management boards (5.1.2).[2] A further amendment recommended that the management board "aim for an appropriate consideration of women" when filling management positions in the company (4.1.5). Companies must disclose any deviation from such recommendations in an annual declaration of conformity ("comply or explain"). Also in 2010, Deutsche Telekom AG publicly announced its target of 30% women in management positions worldwide (Sattelberger 2011). The target was not specifically for boards. In 2011, leaders of the 30 companies listed in the DAX large-cap index attended two summit meetings with the federal government. They presented to the government data on the share of women in management positions in their companies and formulated their own specific targets for increasing women's share in the future (the so-called voluntary commitment—"*freiwillige Selbstverpflichtung*"). However, they also did not specify any targets for management or supervisory boards (BMFSFJ 2011).

Women's associations emerged as key proponents of quota legislation. Particularly active were FidAR (*Frauen in die Aufsichtsräte*), BPW (Business and Professional Women), the women lawyers' association djb (*Deutscher Juristinnenbund*), the rural women's association dlv (Deutscher Landfrauenverband), EWMD (European Women's Management Development) and the women entrepreneurs' association VdU (Verband deutscher Unternehmerinnen). Together with female members of parliament from all parties, they initiated a declaration, the "*Berliner Erklärung*", and a petition calling for a statutory quota of at least 30% for supervisory boards in December 2011.[3] Bührmann (2014) identifies

these groups as belonging to a newly formed moderate wing of the women's movement. She critically notes that they draw heavily on the "business case" and its underlying construction of gender differences as their key argument for increasing the level of women's representation on boards. Perhaps in a more radical vein, one of these groups, the women lawyers' association djb, carried out a campaign titled "Women Shareholders Demand Gender Equality" from 2009 onwards. Their members visited over 300 shareholders' general meetings of large listed companies, and enquired there about the share of women on boards and in management, and about company policies to improve women's representation. If the supervisory board was presenting a list of candidates to the shareholders' general meeting for election, they also specifically asked how the candidates had been recruited (djb 2013). This campaign had significant public impact and placed pressure on companies to justify their policies.

Meanwhile, the opposition parties sought to introduce legislation. In 2010 the Greens presented a bill for a gender quota of 40% on supervisory boards to the lower house of parliament (Bundestags-Drucksache 17/3296 2010), and the state of North Rhine-Westphalia introduced another bill with a 30% quota to the upper house of parliament in 2011 (Bundesrats-Drucksache 87/11 2011). In 2012, the Social Democratic Party tabled a bill in the lower house for the establishment of a gender quota of 40% for both supervisory boards and management boards (Bundestags-Drucksache 17/8878 2012). All three bills were rejected.

Within the government, there was disagreement between the Federal Minister of Labor and Social Affairs, Ursula von der Leyen, who called for the introduction of a quota system, and the Federal Minister for Family Affairs, Senior Citizens, Women and Youth, Kristina Schröder, who advocated voluntary participation and, if necessary, a "flexi-quota", requiring companies to set their own targets. Chancellor Angela Merkel also became involved, and initially opposed the quota idea. This debate within the Christian Democratic Party gained a lot of media publicity and ended with the party's decision to include plans for a statutory quota in its electoral platform (see, for example, Gillmann 2013). The liberal coalition partner at the time, the Free Democratic Party (FDP), opposed all quota plans.

The states of Hamburg and Brandenburg presented a bill advocating a 40% quota for women on supervisory boards to the upper house in 2012 (Bundesrats-Drucksache 330/12 2012). With the votes not only of states ruled by the Green and Social Democratic Parties but also several Christian Democratic states, the upper house voted to introduce an amended version of this bill to the lower house of parliament. It seemed for a while that this bill would be successful drawing on the help of women in the Christian Democratic Party who were proponents of a quota, including Ursula von der Leyen. It was ultimately rejected, however, when the Christian Democratic Party decided to pursue its own quota plans, as explained above (Delhaes 2013).

Following the 2013 federal election, the new Christian Democratic/Social Democratic coalition government announced its intention to introduce a modest statutory gender quota of 30% for new supervisory board appointments in selected companies as well as a "flexi-quota"—meaning that a larger group of companies would need to set their own targets for women's representation on management boards and upper management levels, as well as on supervisory boards for those companies not subject to the statutory quota (CDU et al. 2013). Two years later, the coalition government introduced quota legislation which is discussed in detail in the next section.[4]

The Statutory Regulation: Provisions, Criticisms and Compliance

On 6 March 2015, the lower house of parliament passed a law on equality for women and men in managerial positions (*Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst—FührposGleichberG*) which was enacted on 1 May 2015. The law amends provisions in the Stock Corporation Act, the co-determination acts and other related acts. According to these provisions, a statutory gender quota of 30% applies to the supervisory boards of companies that are listed and subject to full co-determination. In other words, it applies to listed stock corporations and partnerships limited by shares that have more than 2,000 employees,

as well as to those European companies (SEs) in which the supervisory body consists of equal numbers of shareholder and employee representatives. This currently applies to merely around 100 companies. These companies must comply with the quota when they fill supervisory board positions from January 1, 2016, onwards. In the event of non-compliance, appointments are not valid and any seats intended for women board members must remain vacant (the "empty chair" sanction). The company must declare its compliance with the quota in its annual report.

In addition, companies which are *either* listed *or* subject to full co-determination are obliged to set targets to increase the share of women on their supervisory boards, management boards, and on the two management levels below the board. This is the "flexi-quota" component of the law. Companies must report publicly on their targets and whether or not these targets are met. This provision applies to stock corporations, partnerships limited by shares, limited liability companies, registered cooperatives, and mutual insurance companies that usually have more than 500 employees. In total, according to government figures, around 3,500 companies are obliged to set such targets. However, there is no minimum target. Only one limitation applies: if the share of women on a board or on a management level is below 30%, the target is not permitted to be lower than the status quo. This means that if there are no women on a board or management level when the target is set, the target may be zero. Companies had to set their targets by 30 September 2015 with a deadline to meet the targets that did not extend beyond 30 June 2017. Subsequent deadlines may not exceed five years. Companies must report on their targets in their annual reports. There are no sanctions for not meeting targets, but not reporting on targets is an infringement of the Commercial Code and may attract a fine of up to €50,000 (see §289a and §334 HGB).

The new law also included regulations for the public sector. Amendments were made to the Act on Appointments to Federal Bodies (Bundesgremienbesetzungsgesetz—BGremBG) and the Federal Equal Opportunities Act (Bundesgleichstellungsgesetz—BGleiG). For the supervisory bodies of organisations in which the federal government appoints three or more members, a 30% gender quota now applies.

A target of 50% applies from 2018. Further, the federal administration is now obliged to set out specific targets for the representation of men and women at each individual management level. Moreover, specific measures as to how these targets will be met must also be outlined.

A key criticism of the regulation concerns its scope. First, there is a lack of clarity regarding the number of companies affected by the flexi-quota. While the government puts the figure at around 3,500 companies, it may be as low as 2,500 companies according to calculations by legal experts and business associations (Bayer and Hoffmann 2015). Second, the mandatory quota applies only to listed companies subject to co-determination on their supervisory boards. Corporate law specialists have pointed out that some major companies with up to 300,000 employees worldwide are exempt because they are not listed, that there is contention about whether a minimum of 2,000 employees refers to domestic or total employment numbers, and about when exactly companies qualify as "listed" (Bayer and Hoffmann 2015, 2016). In addition to the practical difficulties this definition of scope has brought about, critics have argued that limiting the applicability of the quota in this way seems arbitrary. A consequence that is of particular concern to the unions is that the quota regulation may encourage the use of co-determination evasion strategies—by escaping co-determination regulation, companies can also avoid the gender quota law (DGB 2014, p. 32; Pütz and Weckes 2014, p. 13). Linking the quota's applicability to company size (as measured by the number of employees) would have increased its scope by curtailing exemptions, avoided confusion about its applicability and prevented any unintended consequences for co-determination practice.

In the run-up to the quota's introduction, a constitutional challenge was seen as probable (Waas 2014, p. 141), as some legal experts view a quota as violating constitutional rights to the freedom of property, freedom of association and equality before the law. This argument was also used by the peak business associations in their comments on the draft law. The Confederation of German Employers' Associations (BDA), the Federation of German Industries (BDI), the German Confederation of Skilled Crafts (ZDH) and the Association of German Chambers of Commerce and Industry (DIHK) all issued commentaries opposing the quota law, arguing that it interferes with the property rights of owners,

disregards industry-specific differences, ignores that professional qualification is the main criterion for a supervisory board appointment and has a negative impact on competitiveness (see, for example, BDA and BDI 2015). They have maintained their resistance even after the introduction of the quota law; BDA's website continues to proclaim that a statutory quota is damaging and that it is the wrong path to increasing the share of women in management (BDA 2016).

Reports on the level of compliance with the law are mixed. It appears that the 100 or so companies to which the 30% statutory quota for supervisory boards applies will fulfil it, by and large. But that may be the full extent of its effects: The Hans Böckler Foundation does not expect the law to precipitate significant changes in the gender composition of the supervisory boards of companies to which the fixed quota does not apply, and it conjectures that the 30% minimum quota may in fact become an informal upper limit (Weckes 2016, p. 13). In a preliminary report on the targets firms have set themselves for the share of women on their boards and the top two management levels, FidAR notes that by setting a low initial target with a short deadline such as December 2016, some companies seem to be postponing the requirement to increase the share of women, as the deadline for all subsequent targets can be up to five years. FidAR also notes that the DAX companies frequently refer to the voluntary targets they first formulated in 2011. However, while some of those targets seem ambitious, they are long-term global targets and are at odds with the modest—or even zero growth—targets those same companies have set for the gender composition of their domestic management (FidAR 2016). Similarly, the AllBright Foundation examined what targets the 160 companies listed in the four prime indices had set themselves for the gender composition of their management boards. It found that 110 of those 160 companies had either set a target of zero or not set a specific target at all (AllBright Foundation 2016). The Berlin Center of Corporate Governance (BCCG) regularly surveys listed companies on their acceptance and implementation of the Corporate Governance Code, and it notes in its latest study that over a quarter of the surveyed companies do not intend to comply with the code's recommendation to appropriately consider women when making management board appointments (v. Werder and Turkali 2015). An unresolved issue concerning

compliance is founded in the complications regarding the scope of the law: Legal experts have pointed out that a substantial number of companies, especially limited liability companies, which are supposed to have a co-determined supervisory board according to co-determination law (either one-half or one-third employee representatives) do not actually have one. They may not have a supervisory board at all, or they may have one that has no employee representatives. There is disagreement about the consequences of this for the applicability of the mandatory quota and the flexi-quota (Bayer and Hoffmann 2016). It is unclear whether a company that violates co-determination law is exempt from the quota because it does not have a co-determined supervisory board, or whether it is also in violation of the quota law. Auditors are discussing the implications for their reports (IDW 2016; Schüppen and Walz 2015).

Overall, this account reveals that the regulation has been heavily criticised and has not been widely accepted in the business community. Companies do not seem to be using the law as an opportunity to promote greater gender equality in their management hierarchy and on their boards.

Critical Reflection: Public Visibility, Social Legitimacy and Symbolic Change

Recent developments in the gender composition of supervisory boards show that both the Corporate Governance Code amendments in 2010 and the statutory regulation in 2015 have facilitated women's access to this type of board. While gender parity is far from achieved and women's share of supervisory board seats remains at somewhere between 20% and 30% in Germany's top companies, this constitutes a significant increase compared with the past. By contrast, change is not forthcoming on management boards. The share of women on management boards has been increasing only incrementally, and there is major resistance among companies and business associations to regulation regarding this issue. The management board is, however, where the real power lies, and, hence, women's continued exclusion from these boards puts severe limits on the

advancement of gender equality in economic decision-making in Germany.

The contrast between the progress made on supervisory boards and the enduring underrepresentation of women on management boards provides an opportunity for compelling research into the factors influencing the gender composition of boards. Viewing a gender-balanced board composition as an emerging international social norm and considering the quota and the target requirements as the introduction of new regulations, researchers can adopt a neo-institutionalist perspective to examine companies' strategic responses to these dual pressures (Oliver 1991). The bifurcated development on supervisory and management boards in Germany suggests that changes to the gender composition of supervisory boards may well constitute symbolic management (Elsbach 2003; Westphal and Graebner 2010). Companies may be responding to the legal mandate of the 30% gender quota for supervisory boards by creating a symbolic structure, which does not engender their attention and substantial commitment to the achievement of the legal goal of greater gender equality in economic decision-making (Edelman and Petterson 1999). Through increasing women's share on supervisory boards, corporate leaders can send messages to organisational audiences about the social legitimacy of their organisations and their compliance with institutionalised policies, but they may actually only be increasing externally visible aspects of gender equality without making more far-reaching internal changes. The fact that listed companies, which are more visible and exposed to greater public scrutiny than other types of companies, have increased women's share of supervisory board seats the most is consistent with this interpretation.

In the German case, gender equality on the supervisory board and within a company's management hierarchy are only weakly related: women on supervisory boards who represent shareholders may be members of an owner family, representatives of shareholders' associations, public representatives (politicians, government officials), or experts such as lawyers. On the employee representative side, they could be union officials. None of these types of supervisory board members reflect the state of gender equality in the company or, more broadly, the industry or the private sector as a whole. By contrast, the members of management

boards have very often climbed internal job ladders within the company, or else built their careers in other private sector companies (Freye 2013). Hence, there is a closer tie between women's representation on the management board and in the management hierarchy of a company than is the case for supervisory boards. Rather than mandating a quota for women's representation on management boards and in senior management, the approach taken by the state to augment women's representation here is to require companies to set their own targets for the proportion of women. Sadly, many companies have set targets of zero percent for women on management boards, vividly demonstrating resistance to regulation on this issue.[5]

But why are companies resisting regulation, even though they generally espouse greater gender equality in working life? A large-scale American study of the effectiveness of bureaucratic personnel reforms aimed to increase diversity can offer some indication (Dobbin et al. 2015): It was found that reforms restricting managerial discretion in hiring and promotion met with backlash and resistance from managers, while reforms that increased transparency about job openings and job ladders as well as those that engaged managers in recruiting and training women for managerial positions were more successful. Further, if reforms did restrict managerial discretion, they were more successful if monitoring mechanisms were in place, since monitoring increases the accountability of managers. The current flexi-quota seeks to limit managerial discretion in hiring by requiring companies to set targets for the proportion of women on their boards and in senior management. By setting low targets, however, managers are able to circumvent any restrictions on their discretion. Further, the regulation is weak on monitoring: there are no sanctions for not meeting targets, and beyond the largest stock-listed companies, there is little public information summarising and evaluating companies' targets—this curbs any effects on corporate reputation and its monitoring function. Coupled with a low awareness among managers that women's ascent to management boards and upper management levels is impeded by organisational factors (business groups tend to point to the shortcomings of public policies instead and maintain that professional qualification is the key selection criterion for appointments), it appears unlikely that the flexi-quota will be a catalyst for greater shares of women on management

boards. Thus, if equal participation of women in economic decision making is to be reached in the absence of further regulation, it can only be hoped that: (a) those women who gain access to supervisory boards will become agents of change and will seek to promote more gender equality within companies; and (b) public attention will broaden out from its current focus on the quota for supervisory boards to scrutinise women's continuing underrepresentation in management more generally.

Reflections of an Actor

Monika Schulz-Strelow

President of the women's association FidAR

FidAR (Frauen in die Aufsichtsräte—Women onto Boards) is a women's association that was founded in 2006. We are a small, but very well-known and influential pressure group with around 650 female and male members, and our mission is to increase the share of women on supervisory boards in Germany. The source of inspiration for the establishment of FidAR was a call in 2005 by Berlin's Green Party parliamentary group to increase the share of women on supervisory boards in private listed companies. At that time, even though we had seen that the agreement struck between the federal government and Germany's main business associations in 2001 was not leading to an increase in the share of women in leadership, we were against a quota. However, the financial crisis and the "Lehman Sisters" hypothesis, the introduction of the quota in Norway and our gradual recognition that many men in Germany's top management adhere to very traditional clichés about women's roles led our members to demand a quota in 2008—initially we demanded a 25% quota for women shareholder representatives on supervisory boards. We recognised that established routines would not change without legal pressure. In addition, we saw that the group of people who serve on supervisory boards want to stick with their kind. Four factors—power, reputation, money and networks—are associated with a supervisory board appointment. This elite group does not want to share these things. Especially not with people whom they do not understand given their

old-fashioned, conservative image of women. We cannot get past these factors using business case arguments—we need regulation.

The reason why we focus on supervisory boards is that these committees can initiate change from above. The supervisory board is no longer simply a monitoring body, but increasingly also has a strategic function. Sure, the management board is responsible for operative issues, but it has to coordinate major decisions with the supervisory board. Women who have gained access to supervisory boards can get involved in human resource strategy and criticise women's underrepresentation in management, and they can support other women. Yet many women directors do not want to do these things—they do not want to be pushed into the "quota corner" and they do not want to be associated with a topic that causes agitation and unrest. But they really should! They need to be active and engaged and serve on committees, where the groundwork for decisions is prepared. Another reason why we focus on supervisory boards is that men cannot shift focus to the issue of work–family balance as easily as when debate is about women's underrepresentation in management more generally. When we demand more women on supervisory boards, the companies' answer is "we need more kindergartens". These are clearly two separate areas. The target group for supervisory board appointments starts at 45 to 50 years of age. These women have solved their work–family balance problems, so it is harder to divert attention away from women's underrepresentation on supervisory boards by pointing to issues related to work and family.

We observe some change taking place in nomination processes for supervisory board appointments. Companies still often search within a circle of acquaintances and rarely draw on databases of board-ready women. The employment of headhunters is increasing, but we do not have a code of ethics for headhunters, or any rules stipulating that shortlists should contain a certain share of women like in some other countries. Supervisory boards of large companies increasingly have a nomination committee, and that is an important formal step towards more transparency in the nomination process. I think that in the future, large investment funds will increase their influence on board appointment processes, as they currently exert less influence in Germany than elsewhere.

Looking at the current legislation, implementing the mandatory 30% quota has been unproblematic, as we expected. By contrast, companies and business associations have heavily contested the requirement to set company-specific targets. First, the short timeline for formulating and meeting the initial targets has attracted a lot of criticism. Second, companies do not like anyone interfering with their decision-making structures and they do not like having to admit publicly that they have not seriously attended to the strategic development of their human resources. One problem with the current legislation will come to the fore soon: information on companies' targets and their fulfilment will only become available incrementally when individual companies issue their annual reports. That makes it quite hard for the government to assess the law's efficacy and for stakeholders to form an opinion about companies' targets.

Coming up to the next election, FidAR's plan is to formulate a common demand together with other women's groups, just as we did with the *Berliner Erklärung* in 2011. We will remind the political parties of their promises in the last election and request that they amend the legislation to make it more stringent and encompassing. I would like to see the mandatory 30% quota expanded to apply to the 3,500 companies that are *either* co-determined *or* listed (these are the companies that currently have to formulate their own targets). Regarding the company-specific targets, I would like to see a minimum target that is greater than zero and sanctions for not meeting targets. The coming months will show what the consensus among the women's associations is.

Notes

1. Some of the largest companies, such as Allianz, BASF and SAP, are SEs. SEs may have a monistic or a dualistic board structure and may or may not have co-determination.
2. The German Corporate Governance Code for listed companies was developed by a government commission and adopted in 2002. It is available at www.dcgk.de/en/. The commission continues to review the code annually. The code contains three kinds of rules. First, it summarises statutory regulations that must be observed. Second, it contains recommendations

that companies may deviate from; however, they must disclose any deviation in an annual declaration of conformity ("comply or explain"). Third, the code contains suggestions which companies can deviate from without any explanation.

3. See www.berlinererklaerung.de (accessed 20 December 2016).
4. A government official has described the legislation process in detail, see Seibert (2016). He depicts the process, in which several ministries were involved, as chaotic, prone to errors, and affected by extreme delays as well as great time pressures.
5. A target of zero percent for women on management boards was set, for example, by the following DAX 30 companies: Commerzbank AG, E.ON SE, Heidelberg Cement AG, Infineon Technologies AG and thyssenkrupp AG (FidAR 2016).

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10

Gender Diversity in the Boardroom: The Multiple Versions of Quota Laws in Europe

Patricia Gabaldon, Heike Mensi-Klarbach, and Cathrine Seierstad

Introduction

By writing and editing the two volumes of *Gender Diversity in the Boardroom*, we aimed to make sense of the European women on boards (WoB) landscape in 16 different European countries. There is a lot of

Since finalising this book: On 23 June 2017, Portugal approved the government proposal submitted in February with gender representation regulations (quotas) for both state-owned and listed companies.

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public and scholarly debate surrounding female representation on boards and the use of strategies, and we believe it is now time for a comparative piece to be published, in order to provide a better understanding of the current situation in European countries in this regard. This is particularly important as many European countries have introduced quotas. Furthermore a "European" solution to the underrepresentation of women on boards in the form of a quota law, as suggested at European Union level (see Reding's Foreword) has been debated, yet lacks sufficient support from the EU Member States.[1] The reason for this, among others, is that countries often refer to their particularities and the need of taking the national context into account when designing adequate political strategies. Comparative corporate governance literature has thus revealed that "the historical path dependence among country- and firm-level mechanisms has produced a variety of country- and organization-specific governance systems that tend to work well within the institutional environments in which they have evolved" (Schiehll and Castro Martins 2016, p. 182). Hence, when discussing female representation on boards and existing strategies, it is important to understand and take into account the history and institutional environments in which national policies and initiatives have evolved.

Thus, in order to enrich public and scholarly debate, information about how and why different approaches and "solutions" for increasing the share of women on corporate boards in Europe have come about are presented within the various chapters in both edited volumes. We aim to take a holistic approach focusing on history, corporate governance systems, enabling and hindering forces in addition to a description of the actual strategies in place. Comparing the different policies within sixteen countries, it is apparent that they can be grouped into two types of policy approaches to increasing female representation on boards: The first approach involves the introduction of a form of quota law for corporate boards. The second approach involves a more voluntary way in which targets and suggestions are promoted, yet avoiding the use of compulsory measures in the form of quotas. As a result, Volume 1 and Volume 2 are separated accordingly, with Volume 1 including countries with quota laws and Volume 2 consisting of countries with multiple approaches beyond quotas.

Despite similarities within the two groups of countries, we have observed remarkable differences within each group of countries clustered

together in each volume (the "quota" countries and the "voluntary" initiative countries). Hence, despite referring to two main clusters, there is a need to acknowledge and understand the disparities within these clusters as well. As a result, the aim of this concluding chapter is to discuss and make sense of similarities and differences with regards to approaches and regulations adopted within the eight countries in this volume: Norway, Spain, Iceland, France, Italy, Belgium, the Netherlands and Germany. They all have, to date, introduced quota laws, which are in many debates perceived as a unique tool to increase gender diversity on boards. However, what is evident in this book is that elements such as the corporate governance structures, traditions and history of equality initiatives among others cause significant variation. In addition, different actors and enabling/hindering forces involved in finally implementing a quota law are important to acknowledge when making sense of the content, scope and acceptance of respective national quota laws.

Thus, this chapter will discuss some of the key themes from the individual country cases in a more comparative manner: the corporate governance systems, the actual quota laws, and the key enabling/hindering forces. The chapter is structured as follows. First, the different national corporate governance structures and codes are presented, outlining similarities and differences. Next, we provide a comparative analysis of the different quota regulations aiming to increase the share of women on boards in the different countries. Then, key actors, different hindering and enabling forces and overall stories important for introducing the different quota regulations are presented in a comparative manner. Finally, we will present the key findings and lessons learned from this edited volume and indicate important areas for further research.

Corporate Governance Structures

Corporate governance is highly important in any discussion on corporate boards. Corporate governance includes knowledge about how the rights and responsibilities of stakeholders to a firm are structured and divided (Aoki 2001). The primary goal of "good corporate governance" is protecting, generating and distributing wealth vested in the firm and thereby securing

its long-term survival (Aguilera et al. 2008). Corporate governance is influenced and restricted by many legal prescriptions such as regarding the relation between principal (i.e., shareholders) and agents (i.e., managers) or regarding duties and discretion of executive and supervisory bodies. Legal prescriptions and thus corporate governance differs from country to country as visible in this edited volume. Yet there seems to exist a "universal notion of best practice, which often needs to be adapted to the local contexts of firms or translated across diverse national institutional settings" (Aguilera et al. 2008, p. 475). Thus, we believe it is indispensable to take differences and communalities of corporate governance structures, legal prescriptions and good Corporate Governance Codes into account when making sense of, and comparing, the issue of women on boards and the use of strategies across European countries.

Usually corporate governance literature distinguishes between one- and two-tier or monolithic and dualistic corporate systems. One-tier systems are referred to as typical to the Anglo-Saxon countries, where executive and non-executive boards constitute one joint board. The dualistic board structure is "typical" for continental Europe, such as in Germany. In two-tier systems the executive and the non-executive boards are strictly separated.

Looking at the different chapters within the two edited volumes we learn that there is a need for a more nuanced picture of corporate governance structure in Europe. As an example, Gregoric and Lau Hansen state in Chap. 7, Volume 2 (p. 165): ". . ., the dichotomy is not apt, and causes considerable confusion, in the debate over whether the Danish (and thereby Nordic) system should be labelled two-tier because it consists of two company organs or one-tier because there is effectively only one administrative organ, even though it is functionally divided into an upper and a lower level." They conclude that due to these inconsistencies within either category, the Nordic corporate governance system might be a system sui generis. In addition, Casaca (Chap. 3, Volume 2) defines the Portuguese system as a "Latin one-tier" system (p. 50) pointing to its particularities. Villeseche and Sinani (Chap. 8, Volume 2) explain that the Swiss system could be categorised as a one-tier system, yet "it is also common for day-to-day management to be transferred to the CEO and/or a senior management team, resulting in a *de facto* two-tier board structure . . .". Hence, it is

Table 10.1 Corporate governance structure according to the authors Vol. 1 (white) and Vol. 2 (grey)

Country	One-tier	Two-tier	Mixed Model
Norway			Nordic system
Spain	common		
Iceland		common	
France	common	also possible	
Italy		common	
Belgium	common		
The Netherlands	common	common	
Germany		common	
UK	common		
Portugal	Latin one-tier	also possible	
Slovenia	also possible	common	
Austria	also possible	common	
Sweden			Nordic system
Denmark			Nordic system
Switzerland	common	de facto two-tier	
Hungary	common	common	

apparent that it is not easy to distinguish between one- and two-tier systems, and instead we need to take a closer look at national corporate governance (Table 10.1).

It is important to understand the corporate structure within a country to capture the implications of a quota law and the extent of its application. Some of the national quota laws refer to supervisory boards only (Norway, Iceland, France and Germany), while others prescribe a quota for both supervisory and executive boards (the Netherlands, Belgium, Italy and Spain). Interestingly, it seems to be "easier" for companies to comply with quota regulations for supervisory boards than it is for them to do so for both boards (see compliance situation in 2016 in Table 10.5 later in this chapter).

Differences within the corporate governance system concern the responsibilities and duties of executive and non-executive board members, but also election/nomination procedures; while in most countries supervisory board members are elected by the shareholders within the Annual General Meeting and management is elected by the supervisory boards, there are some exceptions to this rule. In Italy (see Chap. 6, Volume 1), for instance, both boards are directly elected by the shareholders, which

gives substantial power to the shareholders. In Sweden (see Chap. 6, Volume 2), on the other hand, the opposite is the case: the nomination committee for supervisory board positions does also include external experts.

Corporate Governance Codes

As several corporate scandals have suggested that existing corporate governance mechanisms are potentially subject to failure and fraud, scholars, politician and investors raised voices to introduce both more hard law regulations, but also soft law—Corporate Governance Codes—to improve practices. Areas of action include securing transparency and accountability, but also functioning of boards and board composition. The overall target of these codes is to improve the actual practice but also to restore the damaged reputation and trust in corporate governance (Cuomo et al. 2016).

As a result, we have witnessed a global diffusion of Corporate Governance Codes from the early 2000s. Corporate Governance Codes can be understood as codified best practice for corporate governance. Interestingly, in some chapters presented in this edited volume, it is explicitly mentioned that scandals paved the way for introducing Corporate Governance Codes, particularly with regards to board nomination procedures and composition of boards in the sense of desirable diversity (see Chaps. 4 and 7 in this volume for examples).

All countries within this volume have introduced Corporate Governance Codes and all of them include prescriptions about the board nomination processes. In addition and interestingly, in all but one country, codes also included recommendations on board composition and in particular, board composition in relation to gender diversity.

As can be seen from Table 10.2, the issue of gender diversity on boards received increased attention from 2006. By 2010, all countries (except Italy) had recommendations on gender/diversity written in their Corporate Governance Codes. This shows that within all countries in this edited volume the issue of gender diversity on boards has been considered an important area in relation to good corporate governance.

Table 10.2 Content of national Corporate Governance Codes – Vol. 1

	Gender/diversity composition	Nomination process
Norway	Law before	Yes
Spain	Yes (2006)	Yes
Iceland	Yes (2009)	Yes
France	Yes (2010)	Yes
Italy	No	Yes
Belgium	Yes (2009)	Yes
Netherlands	Yes (2008)	Yes
Germany	Yes (2010)	Yes

Ownership Structure

One of the topics addressed by most authors in this volume are the characteristics in relation to the ownership of public listed companies (the types of companies often affected by the quota laws). Of course, ownership concentration of, for instance, families, institutional investors, blockholders or the state heavily influences nomination practices and thus board composition. In addition, it might be that the ownership concentration influences the option and approach in relation to acceptance of quota laws, hence is an important focus for us in understanding the use of strategies to increase the share of women on boards. For example, in the case of Norway, it is evident that the state was the dominant shareholder at Oslo Stock Exchange and, as such, has also been a key driver for the quota law. In contrast, in the Danish case presented in Volume 2, it becomes evident that the strong private ownership concentration and active engagement of owners is perceived as a major hindrance to a potential quota law, but also to gender diversity on boards.

Yet we can also find examples of countries with strong family involvement and concentrated ownership *and* quota laws. Italy and Belgium, for example, both implemented quota laws despite a context of concentrated ownership and strong family involvement. Thus, different rationales for rejecting or accepting regulations become apparent: in some countries the dominant discourse states that family ownership, and thus the claim of owners for discretion with regards to board nominations, is a key argument against state intervention and quota regulations while in others it is not. As a result, these discourses often opt for soft initiatives—that is,

corporate governance recommendations that companies (i.e., their owners) can follow or not. The UK Financial Reporting Council (FRC), for example, points to the positive sides of flexible regulations: "The Code is part of legislation, regulation and best practice standards which aims to deliver high quality corporate governance with in-built flexibility for companies to adapt their practices to take into account their particular circumstances" (FRC 2014—see also Chap. 2, Volume 2). Corporate Governance Codes usually include a 'comply or explain' approach, so that companies that do not comply with the recommendations are obliged to explain why. This is thought to bear the opportunity to flexible adaptation, but at the same time to force companies to do their best to acquiesce. Yet the impact of such soft initiatives is contested, not least because of a lack of formal authorities to monitor and verify the explanations (Arcot et al. 2010). In addition to soft initiatives and good governance codes, all of the countries in this edited volume have implemented some sort of quota regulation which we will discuss below.

Quota Regulations

In 2003 Norway became the first country to implement a quota law. Since 2008, this regulation has been mandatory to all PLCs and state-owned companies (see Seierstad and Huse, Chap. 2). Following this, other countries, such as Spain, Iceland, France, Italy, Belgium, the Netherlands and Germany, have implemented some kind of quota laws for board positions. However, what is apparent is that, over time, each country has adopted and introduced an individualised and distinct approach. In particular, the different quota laws vary according to the country's practices, contexts and realities, such as the corporate governance system discussed above. Although all countries have a quota law for board positions, they differ with regards to goals, in terms of the stated target, the length of the implementing period, and the types of companies and boards affected. We will discuss some of the important differences presented in Table 10.3 in greater detail.

It is apparent that the set gender balance varies among countries. While the first countries to implement these regulations suggested a gender balance of a minimum of 40% of each sex on the boards (Norway,

Table 10.3 Main characteristics of the gender balance quota laws

	Sanctions: yes/no	Target %	Bill passed	deadline	Type of companies	Type of board	Other relevant aspects
Norway	Yes	40	01/01/2003	2008	PLC and state companies	Supervisory board	
Spain	No	40	01/03/2007	2015	All large firms (more than 250 workers and 11,4 mill in assets)	Supervisory and executive boards	– Comply or explain – positive incentive in contracts with the public administration
Iceland	No	40	08/03/2010	2013	All companies with more than 50 workers + new companies	Supervisory board	Comply or explain
France	Yes	40	27/01/2011	2017	Companies with revenues or assets of more than 50 mill and more than 500 workers (listed and not listed)	Non executive directors	Intermediate goal of 20% by the end of 2014
Italy	Yes	33	01/07/2011	2017	PLCs	Supervisory and executive boards	– Intermediate goal of 20% by the end of 2012 – Temporary until 2022
Belgium	Yes	33	28/07/2011	2012: state owned companies 2017: large listed companies 2019: listed SMEs	PLCs and stata companies	Executive and non-executives	

(*continued*)

Table 10.3 (continued)

	Sanctions: yes/no	Target %	Bill passed	deadline	Type of companies	Type of board	Other relevant aspects
Netherlands	No	30	01/01/2014	2023	Large companies	Supervisory and executive boards	– Intermediate goal of 20% by the end of 2012 – Extended until the end of 2017 – new proposal
Germany	Yes	30	30/04/2015	2016	Listed companies or subject to co-determination	Supervisory boards	Listed companies or under parity co-determination have to set individual quantitative objectives of WoB with regard supervisory boards, management boards, and on the two management levels below the board and deadlines to achieve them

Spain, Iceland and France), other countries opted for a lower percentage. We can see how in Italy and Belgium, the gender balance is specified at 33%, while the Netherlands and Germany suggest a 30% representation of each sex on their boards.

We have also observed great differences in terms of companies affected by the regulations. In addition to publicly listed and large corporations, we also find state-owned companies affected by regulations (nevertheless, the focus in the two edited volumes is on private sector boards and regulations—except from the Austrian case in Volume 2 where two distinct policies for privately and state-owned companies are discussed). In addition, depending on the country, other companies might also be affected. We observe that Iceland offers the broadest application of the quota law. In fact, according to the Icelandic quota law, all companies with more than 50 employees need to have a 40% gender balance on their supervisory boards (see Arnardottir and Sigurjonsson, Chap. 4). Germany targets only listed companies or those subject to co-determination, which includes around 100 companies (see Kirsch, Chap. 9). A unique characteristic in the case of Germany is that it also affects the lower hierarchical managerial levels, although by a softer version. German listed companies (or companies subject to co-determination) need to set individual targets for women on "supervisory boards, management boards, and on the two management levels below the board" (Chap. 9, Kirsch, p. 219) and deadlines to achieve them. Hence, it is evident that as countries are following different corporate governance traditions, the type of board that needs to comply with the regulation varies. In the cases of Norway, Iceland and Germany, supervisory/non-executive boards are the ones regulated by the quota law. By contrast, both executive and supervisory boards are affected in Spain, Italy, the Netherlands and Belgium. In the case of France, the quota law applies only to non-executive directors in large listed and non-listed companies (see Zenou, Allemand and Brullebaut, Chap. 5).

It is also apparent from the discussion of the country cases in this volume that there are variations between countries in regard to the period of time given to comply with the specific quota laws. In the case of Norway, after an initial "trial"/voluntary period, proposed as a sunset law (2003–2005), the quota law was introduced in 2006 with a two-year grace period. Spain, on the other hand, set a compliance date eight years

after the bill was passed, hence, after the introduction in 2007, Spanish companies should comply by 2015. Iceland gave the affected companies three years after the introduction of the law to comply with its ingredients. France took a somewhat different approach and introduced intermediate steps—of a minimum gender balance of 20% by 2014 and 40% by 2017. In the case of Belgium, we have seen that different deadlines were introduced for different companies. This includes a six-year implementation period for large listed companies and eight years for listed SMEs. Italy and the Netherlands, on the other hand, have somewhat different approaches as their laws are implemented as temporary laws. In the case of Italy, this means that the current law is to stay in place until 2022. In the case of the Netherlands, the initial goal of 30% was meant to end in 2016. However, this period has been extended to 2020 due to failure to compliance.

Another interesting difference among the countries discussed in this volume is related to the use of sanctions. Norway, Italy, France and Germany opted for a mandatory approach to their quota laws. In these cases, non-compliance with the regulation implies some type of sanctions. Nevertheless, the sanctions vary from monetary penalties as in the case of Italy, to the invalidation of the appointment ("empty chair sanction") as in the case of Belgium, France and Germany. In Norway, the legal sanctions in cases of non-compliance include companies being denied registration as businesses or even dissolved. In France and Germany, companies who are not meeting the required level in terms of gender balance will see their board appointments being nullified (the so-called "empty chair sanction"). In Belgium, non-compliance's sanctions imply the invalidation of the appointment and this is accompanied with a temporary loss of benefits for board members. In Italy, companies not complying get an initial warning by the Italian Stock Exchange Commission giving those four months to comply. If companies still do not comply, companies can get monetary penalties of up to 1 million euros. If there is still a failure to comply, the elected bodies will be considered not valid and removed.

In the case of Spain, Iceland and the Netherlands, there are no clear sanctions for non-compliance which differentiate their approach from the ones discussed above. Nevertheless, in these cases, we also observe some

differences in terms of encouragements to fulfill the quota laws. In the case of Spain, there is a positive reinforcement and companies having sufficient gender balance on their boards are prioritised in contracts with the government. In the case of Iceland, already existing companies can choose whether or not to comply with the law, while new companies need to respect the 40% gender balance regulation. In the case of the Netherlands, the quota is relatively soft: although 30% of the executive boards and supervisory boards of large companies should be of the underrepresented sex, there is neither any sanctions nor incentives.

Enabling and Hindering Forces

Throughout this edited volume, all eight country cases have discussed the role of critical actors and enabling and hindering forces within the country with regard to the introduction of quota laws. We have observed both similarities and differences. While we acknowledge that this can be influenced by the subjective understanding of the different authors and that the choice of mentioning and not mentioning factors, events and actors is a subjective choice, we still believe we can observe interesting similarities and differences between the eight country cases presented.

While the use of quotas on boards is a relatively recent trend, the use of quotas in other settings, such as politics, is more established. To make sense of the introduction of quotas in politics globally, Krook (2007) propose a framework. In particular, she argues for the importance of understanding and comparing actors, motivations of these, the contextual setting and history and how these again point to different "stories" in different countries. In particular, she suggests that there is a need to understand and compare the individual cases in order to have a more comprehensive understanding of the patterns and trends in relation to the use of quotas in politics. She suggests to understand and "map" the different actors, motivations and contexts that influence quota adaptions in different countries to understand similarities and differences in a comparative manner among countries. Seierstad et al. (2017) build on the work of Krook (2007) to make sense of the spread of different national public policies (ranging from quotas to targets) to increase the share of

women on boards in Norway, UK, Germany and Italy. We build on the ideas of Krook (2007) and Seierstad et al. (2017) and aim to make sense of the eight countries discussed in this volume and how the introduction of the different quota laws came about. We argue that there have been different actors (and types of actors) involved in the process of working for the introduction of the quota law in the respective countries and different enabling and hindering forces have been apparent. Nevertheless, to what extent the introduction of the different quota laws are the result of a wide range of important actors or a narrower group of some key actors differ in the European examples presented. We will comment on what authors in this edited volume perceive to be the most important enabling/hindering forces and actors for introducing the different quota laws.

In the first country to introduce a quota law, Norway, we observe that a wide range of actors were involved in the process of introducing the quota law—which lasted for about a decade. Nevertheless, although a wide range of different actors were involved, Seierstad and Huse (Chap. 2) argue that politicians, in particular women politicians, were heavily involved in the process of introducing the law very much supported by the enabling egalitarian context with history of using strategies such as quotas in other areas. In addition to politicians and political parties, Seierstad and Huse argue that women civil servants have been very important in the process.

In the case of Spain, we saw a narrower group of actors involved in the process of introducing the quota law. In particular, we argue that a few individual women politicians and a political party (left-leaning) were very much in charge of suggesting the law, with little involvement (or support) from other actors. Interestingly, the law in Spain was introduced as part of the Equality Act introduced in 2007. As discussed earlier in this chapter, in the case of Spain, there are no sanctions for non-compliance and Gabaldon and Giménez (Chap. 3) suggest that the lack of actors supporting the law might be one of the reasons why the set quota/gender balance have not been met.

In the case of Iceland, the financial crisis was a very important enabling force for introducing the law as "good corporate governance" was put on the agenda. In addition, a wide range of actors, including politicians, political parties, and women's groups, were involved in the process of

pushing for the law building on arguments around fairness, the business case as well as corporate social responsibility lines of argument. The Icelandic history of being an egalitarian country was also an important enabling force highlighted by Arnardottir and Sigurjonsson in Chap. 4.

An enabling force for introducing the quota law in the case of France is also the country's long history of comprehensive equality strategies, including in politics and other decision-making bodies (see Zenou, Allemand and Brullebaut, Chap. 5). It is also evident how several politicians, in particular, the president of the Gender Equality Commission who had proposed a quota law as early as 2006, have been important actors working to introduce the law. Moreover, as discussed by Zenou, Allemand and Brullebaut, the employers' network was also important in putting gender diversity on boards on the agenda.

In the case of Italy, individual women politicians were very much key actors pushing for the law. Moreover, the use of quotas for board positions was rationalised following a utility logic by multiple actors. In Italy, the international focus, pressure and the experience with introducing quotas in other countries were also seen as important enabling forces for introducing the "Golfo-Mosca Law" in 2011, according to Rigolini and Huse (Chap. 6).

Several political parties put the lack of women on boards on the agenda in Belgium and it was the social democratic coalition (and prime minister) who eventually introduced the law. Nevertheless, as illustrated by Levrau (Chap. 7), the law was heavily criticised by multiple fronts when introduced. The discourse in Belgium in relation to women on boards tends to be supported by business case logic and the need to utilise the human capital.

In the Netherlands, the introduction of quotas came relatively late, in 2013, and is also "soft" in nature. Few actors pushed for a quota law in the case of the Netherlands, as increasing the share of women on boards is considered to be the responsibility of companies. In the case of the Netherlands, Kruisinga and Senden (Chap. 8) also describe the role of individual female politicians as key actors pushing for a law with support from some political parties. Nevertheless, in this country few actors beyond politicians and political parties have been highlighted as important in the process of introducing the quota law.

Germany was the last of the countries presented in this volume to introduce a quota law. The introduction of quotas in this country was discussed over multiple years prior to the introduction in 2015 and a wide range of actors have been involved. In particular, Kirsch (Chap. 9) argues that women's groups, associations and networks have been particularly important actors in this process. This is more visible in the case of Germany than in the other countries discussed in the volume. Also in Germany we observed the importance of women politicians as actors. Although a wide range of arguments were used pushing for the law in Germany, utility lines of arguments were particularly important.

It is evident that there are some similarities in the country cases discussed in this volume in relation to the introduction of quotas, the enabling/hindering forces and the role of actors. Krook (2007) presents four common "stories" explaining why and how quotas in politics have been adopted within countries. These are: women mobilise for quotas to increase women's representation; political elites recognise strategic advantages for pursuing quotas; quotas are consistent with existing or emerging notions of equality and representation; and quotas are supported by international norms and spread through transnational sharing. Seierstad et al. (2017) used the same logic looking at the "stories" found in four countries who have introducing different types of policies for introducing the share of women on boards, both quotas and targets.

Based on the eight different chapters in this edited volume, we argue that there are also both similar and different stories we can observe from the authors' description of the country cases. Again, we are cautious that the experiences of the introduction of the quota laws and the role of actors might be subjective, nevertheless, we do believe we can observe some interesting similarities and differences. In order to make sense of these similarities and differences, we propose, in line with Krook (2007) that different "stories" can be seen in different countries, yet we amend Krook's original stories to the specific context of women on boards. Moreover, we add an additional "story" *International/National events* (e.g., financial crisis/ corporate scandals/ increased Corporate Governance Codes) which, we argue, have been important in the women on board debates and the introduction of quotas for some of the countries in this volume and the introduction of voluntary initiatives in Volume 2 (Table 10.4).

Table 10.4 Dominating national stories and actors important for introducing the different quota regulations

	Consistent with existing notions of equality and representation	Women mobilize to increase women's representation	International/ National events (e.g. financial crisis/corporate scandals/ increased Corporate Governance Codes)	Political elites/ actors/ parties recognise strategic advantages	Supported by international norms, pressure spread through transnational sharing	Political actors	Political process (proactive, reactive, late, non-existing)	Political support
Norway	X	X		(x)		Political parties/ women politicians	Proactive	Broad
Spain				(x)		Individual politicians, political parties	Proactive	Limited (declining)
Iceland	X	(x)	X	(x)	(x)	Political parties	Proactive	Broad
France	(x)			(x)	X	Political parties/ women politicians	Reactive	Limited
Italy				X	(x)	Individual politicians	Reactive	Limited
Belgium			(x)	(x)	X	Political parties	Reactive	Limited
Netherlands	(x)				X	Individual politicians	Reactive	Limited
Germany		X		(x)	X	Political parties	Late	Increasing

It is evident that in all countries discussed in this edited volume, implementing quota laws triggered some sort of resistance. Moreover, we observe some key similarities in relation to the role of politicians and political actors and it is evident that in all countries political actors and governments have, unsurprisingly, been very important. Yet it becomes apparent that there have been differences in terms of support, in terms of who the political actors were and in terms of the overall process. We argue that the EU debates about quotas and/or the international learning or "avalanche" (Machold et al. 2013) have been important push/enabling forces in the majority of the countries discussed. Furthermore, we argue that in most countries, we saw multiple "stories" and enabling forces and/or actors that were important for eventually introducing the quota laws. This is why an in-depth country analysis is indispensable in order to make sense of the women on board debates and the use of strategies in Europe as countries often clustered together reveal multiple differences in the process of introducing the quota laws.

Final Thoughts

Usually the debate about women on boards in Europe includes a discussion of whether or not a quota law is considered an appropriate measure. Resultantly, countries with quota laws in place are often clustered together in comparison with countries who do not have this type of strategy in place (this also resonates our separation of the two edited volumes). This clustering to some extent implies that both clusters consist of very similar cases. Yet our analysis clearly demonstrates that this is a very superficial view about quota laws in relation to gender balance for corporate boards. Hence we aimed to highlight the differences between national legal quota laws, reasons for these differences and also hindering and enabling forces leading to the specific quota regulations. It becomes apparent that the historical development, the overall gender equality discourse, but also the corporate governance system influenced the concrete quota design. Moreover, what is clear from the country cases presented in this volume is also the differences in relation to whether or not countries have actually complied with the quota laws. Unsurprisingly, perhaps, we find that the

countries that have complied with the law are countries with strong penalties for non-compliance. Countries with only initiatives, on the other hand, such as is the case for Spain and the Netherlands, have not complied with the laws. Iceland, on the other hand, has, despite there being no sanctions for non-compliance, complied with the law. This might be explained by the enabling forces in the country with a strong focus on equality and the broad support from a wide range of actors, but also by the scope of quota laws: whether supervisory board positions are affected or both boards: executive and non-executive boards (Table 10.5).

It is apparent that all the nuances and differences between the European countries quota laws make comparisons a complicated task. In many cases, in order to simplify, organisations and international statistics do, as discussed in Chap. 1, often compare the largest listed companies when providing comparative data about women on board. We argue that this is problematic as this is not always the (only) companies

Table 10.5 Compliance situation by 2016

	Quota level	Sanctions	Deadline	Compliance by 2016
Norway	40	Yes	2008	Yes
Spain	40	No	2015	No
Iceland	40	No	2013	Yes
France	40	Yes	2017	Intermediate goal achieved
Italy	33	Yes	2017	Intermediate goal achieved
Belgium	33	Yes	2012: state-owned companies 2017: large listed companies 2019: listed SMEs	No[a]
Netherlands	30	No	2020	No
Germany	30	Yes	2016	Yes

[a]"Compliance date varies, based on company type and fiscal year start. State-owned enterprises: 2011–2012; Publicly traded: 2017–2018; Small publicly traded (defined as having <50% shares available for trading or meeting at least two of the following criteria: less than 250 employees; less than or equal to €43 million in assets; or less than or equal to €50 million in annual net turnover): 2019–2020" (Catalyst n.d.)

affected by the specific regulation. Hence, in order to understand the effects and consequences of the specific quota laws or targets, this type of data might be problematic. Moreover, national data are presented as country average, although regulations are defined to make companies comply individually. This implies that national averages in some countries might be around the targeted quota, yet this does not mean that all companies are actually complying. Hence, it is a need for an in-depth understanding of what is actually happening at the individual country level.

One key question proposed in women on boards' debates internationally is what type of regulation is the most effective in increasing the share of women on board. As we have seen in this edited volume, quotas, and in particular quotas with sanctions for non-compliance, is an effective way to reach a specific goal. Nevertheless, we would also like to make a reference to Volume 2 of this edited collection where we find examples, such as in the case of UK and Sweden, where initiatives beyond quotas have also achieved the desired changes and results more successfully than, for example, Spain discussed in this volume. What this indicates is the importance of a nuanced understanding of the women on board debates and the use of strategies. In particular, this confirms our assumption that understanding the specific country characteristics as corporate governance systems, history in relation to equality legislation and other enabling and hindering forces and actors is key to understanding both the introduction of specific policies, but also the chances for actually reaching the suggested changes and goals.

We have, in the process of editing both volumes of *Gender Diversity in the Boardroom*, identified numerous interesting areas for further research. In particular, we argue that the women on board landscape in Europe as well as globally is at an exciting moment in time. In Europe, we are currently witnessing increased focus from policy makers both at national and EU levels and several countries: Slovenia and Portugal, for instance, are currently in the process of drafting quota regulations. Moreover, other countries with quota laws in place, such as Italy and the Netherlands, are coming towards the end of the timed quota period. Norway is increasingly looking at the wider effects of the quota law and to what extent the law has actually increased gender diversity beyond the PLC boards affected by the quota law. Taken together, we argue that there are numerous important

areas for further research about women on boards and we hope that this structured approach, focusing on different countries in the European setting, will fuel the ongoing debates further.

Note

1. At both EU and the individual country levels, the terminology used about strategies to increase the share of women on boards varies. In particular, we find examples such as gender representation regulation, gender balance law, gender quota law, gender law etc. We will in this chapter refer to this as "quota law" for consistency, but acknowledge that other terminologies are also often used.

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Note: Page number followed by 'n' refers to end notes.

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