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

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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.

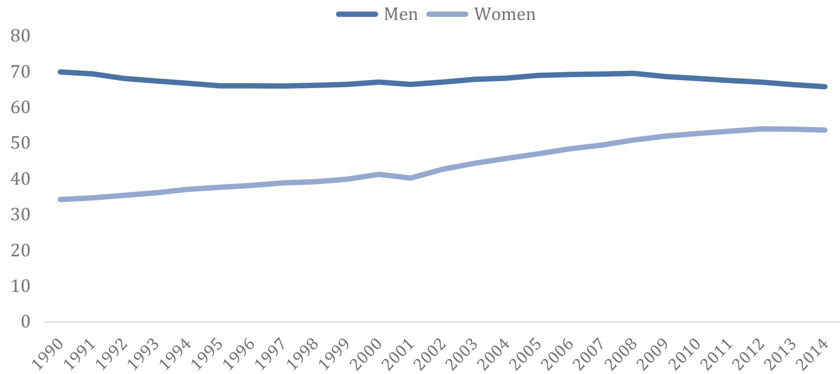

Fig. 3.1 Labour force participation rate by sex, 15–64 years old in Spain (*Source*: OECD data)

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

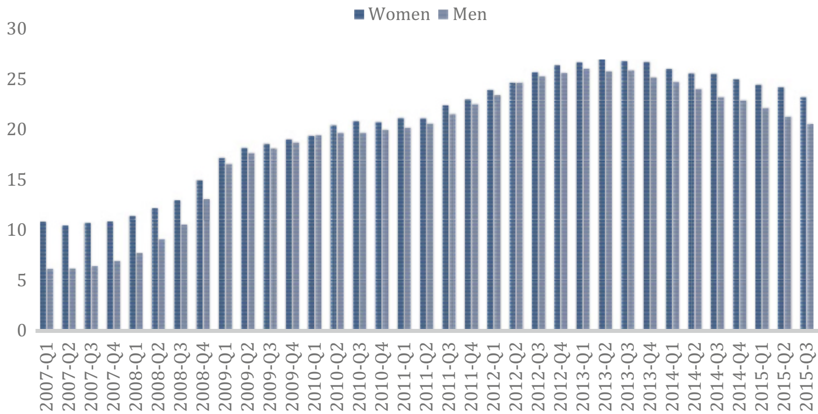

Fig. 3.2 Unemployment rate by sex in Spain (*Source*: OECD data)

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).

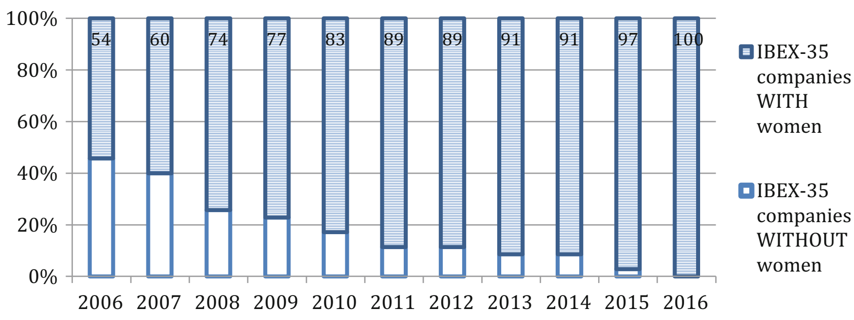

Fig. 3.3 Evolution of the distribution of companies in the IBEX-35 according to the presence of women on boards. Unit: percentage from the 35 companies at the IBEX-35 (*Source*: Own elaboration from CNMV data)

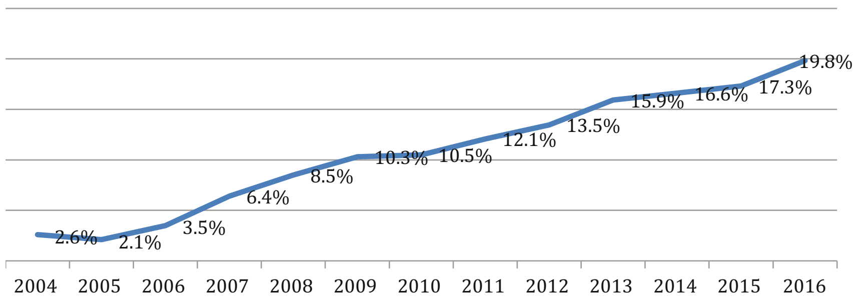

Fig. 3.4 Board seats held by women at the IBEX-35 companies (*Source*: Own elaboration from CNMV data)

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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