universität wien

MASTER THESIS

Titel der Master Thesis / Title of the Master‘s Thesis

„Corporate Law and Legal Strategies to Improve Gender Diversity in the Corporate Boards: EU Perspective“

verfasst von / submitted by

Grad. Maria Perarnau Bayo

angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Laws (LL.M.)

Wien, 2017 / Vienna 2017

Studienkennzahl lt. Studienblatt / Postgraduate programme code as it appears on the student record sheet:	A 992 548
Universitätslehrgang lt. Studienblatt / Postgraduate programme as it appears on the student record sheet:	Europäisches und Internationales Wirtschaftsrecht / European and International Business Law
Betreut von / Supervisor:	Univ.-Prof. DDr. Thomas Ratka, LL.M.

Table of Contents

1. Introduction

Across the European Union, there is under representation of women in the decision-making positions, especially in business. In mid-2016, women comprised 29% of women of lower or single houses of parliaments in European Union countries[1]. The situation is particularly disappointing when it comes to business leadership. By the end of 2016, women occupied only 23.3% of the positions of board members in the largest publicly traded companies' in European Union Countries[2]. There are complex and multiple causes of underrepresentation of the women in the corporate top leadership positions, which calls for a comprehensive legal, cultural and social approach to deal with the problem. They stem from inadequate support for women to establishing a balance in their care responsibilities and work, traditional stereotypes and gender roles, lack of comprehensive legal framework to tackle the problem, and prevalent of corporate cultures that promote men dominance, to just name a few[3].

Individual countries and the EU as a region block are taking various fragmented and unified steps toward ameliorating the board members gender balance. The European Commission is at the forefront of promoting awareness about the situation, ensuring the situation is top on the EU political agenda, and coordinating cooperation among all the stakeholders (including businesses, social partners and governments) in designing and implementing EU-based laws, regulations, policies and activities to attain gender balance in corporate leadership positions[4]. The EU Commission set the issue about women's on corporate boards high on the political agenda after launching its 2010 strategy for establishing equating between women and men. The EU Commission through its document on gender balance in the business leadership, called for companies to undertake credible self-regulation to ensure they have attained better gender balance in their board of directors[5]. A year after the publication of the report, the progress report about the women economic decision-making in the European

[1] European Commission, 'Corporate governance' 2017. Online http://ec.europa.eu/justice/civil/company-law/corporate-governance/index_en.htm

[2] European Commission, 'Legislative powers 2017. Online http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00004/Legislative-powers

[3] Terjesen, Siri, Ruth V. Aguilera, and Ruth Lorenz "Legislating a woman's seat on the board: Institutional factors driving gender quotas for boards of directors." *Journal of Business Ethics* 128, no. 2 (2015): 233-251.

[4] Klarsfeld, Alain, Lize AE Booysen, Eddy Ng, Ian Roper, and Ahu Tatli, eds. *9.78 E+ 12: Country Perspectives on Diversity and Equal Treatment*. Edward Elgar Publishing, 2014.

[5] Martín-Ugedo, Juan Francisco, and Antonio Minguez-Vera. "Firm performance and women on the board: Evidence from Spanish small and medium-sized enterprises." *Feminist Economics* 20, no. 3 (2014): 136-162.

Union indicated there was no clear progress with public consultation confirming that there is needed for further action[6].

In 2012, the European Commission adopted a proposed legislation aimed at achieving 40% of the underrepresented sex in all positions of non-executive corporate board members in EU based publicly traded companies, with an exception of SME's (small and medium enterprises[7]. A directive from the European Union has primacy over national law of each of the Member States and it must be transposed in the national law within a period established in it[8]. Although still in the drafting process this directive shows a firm and unprecedented commitment to tackling the problem. The legislation seeks to accelerate the progress toward having between gender balances in the board of directors of the European companies. Meanwhile in the UK affirmative action survives only if they can be distinguished from quotas. Often seen as a taboo the Q-Word is rarely subject to debate[9]. The purpose of this thesis is thus simple- I aim to compare how public policies affect corporate law in the matter of gender diversity in the board of directors in the European Union.

2. State of the matter

a. EU & Legislative power

EU overrules severs as the Supreme organ for the legal procedures overruling the national decisions. European Commission (EC) is vested with the mandated of proposing legislations which are submitted to the Parliament and Council for the regulation or directive. The Lisbon Treaty gives EC monopoly of legislation to ensure coherent and coordinating drafting of laws in the EU[10]. The ordinary legislative procedure accords the EU parliament and council same weights in wide range of legislative areas such as economic governance and consumer protection. Objectives

[6] Carrasco, A., Francoeur, C., Labelle, R., Laffarga, J., & Ruiz-Barbadillo, E. (2015). Appointing women to boards: is there a cultural bias?. *Journal of Business Ethics*, *129*(2), 429-444.

[7] European Commission, 'Fact Sheets on the European Union' 2017. Online http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.3.8.html

[8] Kogut, Bruce, Jordi Colomer, and Mariano Belinky. "Structural equality at the top of the corporation: Mandated quotas for women directors." *Strategic Management Journal* 35, no. 6 (2014): 891-902.

[9] Rhode, Deborah L., and Amanda K. Packel. "Diversity on corporate boards: How much difference does difference make." *Del. J. Corp. L.* 39 (2014): 377.

[10] European Commission, 'Regulations, Directives and other acts' 2017. Online https://europa.eu/european-union/eu-law/legal-acts_en

that are set out in the EU treaties are attained through different types of legal acts of which some are bonding to the members states and others are not. EU has the mandate to issue regulations, directives, decisions, recommendations, and opinions[11]. Regulations are binding legislative acts, directive sets out the objective that all EU countries should achieve, decision are only binding to whom they are addressed, and recommendations are not binding[12].

The competence of EU to legislate in, matters touching on gender equality dates back the year 1957 when the council recommended the promotion of the balanced participation of both genders in the decision making process. In different resolutions, the EU Parliament has called for legally binding quotas. Promotion of equality forms one of the key pillars of European women charter that was initiated in 2010[13]. In 2010, the EU commission followed through on its commitments to promote equality in corporate roles of women by adopting the 2010 equality between men and women strategy. In 2012, a report by the EU Commission indicated high male dominance in the EU borad of directors with big difference between countries where women make up 26% in Latvia and 27% of the board in large Finnish companies and only 4% and 3% in Cyprus and Malta respectively[14].

The EU regulates the way in which the public entities are governed and managed through company laws, rules and regulations. One of the key rules set out to ensure companies have well-functioning board of directors is the EU corporate governance. The objective of this EU rules is ensure business can be set up anywhere in the EU, ensure business are more competitive and efficient and ensure there is a better composition of the board of directors[15]. Based on its mandate to spearhead unified legislation that are binding to all the EU member states, EC has taken strong and promising steps aimed at breaking the glass ceiling which continues to hinder women talent from taking the top positions in the companies. The Commission proposed

[11] European Commission, 'Company law and corporate governance' 2017. Online http://ec.europa.eu/justice/civil/company-law/index_en.htm

[12] Low, Daniel CM, Helen Roberts, and Rosalind H. Whiting. "Board gender diversity and firm performance: Empirical evidence from Hong Kong, South Korea, Malaysia and Singapore." *Pacific-Basin Finance Journal* 35 (2015): 381-401.

[13] Matsa, David A., and Amalia R. Miller. "A female style in corporate leadership? Evidence from quotas." *American Economic Journal. Applied Economics* 5, no. 3 (2013): 136.

[14] European Commission, 'Women on Boards: Commission proposes 40% objective'. Online http://ec.europa.eu/justice/newsroom/gender-equality/news/121114_en.htm#Press

[15] Tricker, RI Bob, and Robert Ian Tricker. *Corporate governance: Principles, policies, and practices.* Oxford University Press, USA, 2015.

legislation aimed ensuring there EU corporate boards have at least 40% members of underrepresented sex in their non-executive positions[16].

The proposal is a response to the frantic call by the EU parliament and activists of ensuring that there is gender-balanced representation in corporate boards of directors. The slow progress by the EU to enact the law has given rise to fragmented approach by the eleven member states of EU. The eleven member states including Spain, Italy, Belgium, and Greece, have introduced the legal instruments meant to enhance diversity in their boards[17]. Of the eleven countries, eight have introduced legislations that cover public undertakings. There are other eleven EU member states that do not have legislations or self-regulation in place. The legally fragmented approach possess a major risk to the functioning of the common EU market because different laws on gender composition of the boards can cause business complications and deter cross boarder companies investments. For this reason, the EU proposal on having at least 40% of underrepresented sex making up the non-executive board member aims at offering an EU-wide legal framework for taking this kind of positive action rules[18].

Major issue in the EU proposal is to ensure by the year 2020, the board of directors in the EU based publicly traded companies have more than 40% of each gender and by 2018 for any public undertaking[19]. "Flexi quota" is also included in this proposal, which is meant to acts as a complementary measure where the listed companies are obligated to set among themselves self-regulation targets concerning women representation in the board which is supposed to be met by 2020[20]. The proposal requires the companies to make an annual report about the progress that they have made in this respect. Merit and qualification still remains the key criteria to be used when appointing the board members. This EU directive creates a minimum and harmonized requirement for the corporate governance[21]. This is because the

[16] Ferreira, Daniel. "Board diversity: Should we trust research to inform policy?." *Corporate Governance: An International Review* 23, no. 2 (2015): 108-111.

[17] Terjesen, Siri, Ruth V. Aguilera, and Ruth Lorenz. "Legislating a woman's seat on the board: Institutional factors driving gender quotas for boards of directors." *Journal of Business Ethics* 128, no. 2 (2015): 233-251.

[18] Barak, Michàlle E. Mor. *Managing diversity: Toward a globally inclusive workplace*. Sage Publications, 2016

[19] Ben-Amar, Walid, Millicent Chang, and Philip McIlkenny. "Board gender diversity and corporate response to sustainability initiatives: evidence from the Carbon Disclosure Project." *Journal of Business Ethics* 142, no. 2 (2017): 369-383.

[20] McCahery, Joseph A., Zacharias Sautner, and Laura T. Starks. "Behind the scenes: The corporate governance preferences of institutional investors." *The Journal of Finance* 71, no. 6 (2016): 2905-2932

[21] Claessens, Stijn, and B. Burcin Yurtoglu. "Corporate governance in emerging markets: A survey." *Emerging markets review* 15 (2013): 1-33.

appointment decisions for the publicly traded companies will have to be made based on the objective qualification criteria. The directive gives room for the companies' inbuilt safeguards to ensure there is no automatic or unconditional promotion for the underrepresented sex.

In "*positive action",* case the European Court of Justice (ECJ), made a decision that preference should be accorded to a candidate belonging to the underrepresented sex provided they have equal qualification, unless when there is an objective evaluation that factors in all the criteria that is specific to each candidate tilts the balance in the favor of the other sex candidate[22]. The directive allows the member states with a well-established system to maintain it as long as it has equal efficiency with the EU proposed system in achieving the goal of having at least 40% of underrepresented sex forming part of the non-executive members of the board[23]. On addition, member states are at liberty to introduce any measure that goes beyond the proposed system. The EU directive requires the member states to set up proper, dissuasive and appropriate sanction for the companies that will be found in breach of the directive[24]. This directive is not a permanent but a temporary measure meant to expire on 2028, and touches on non-executive directors and publicly listed companies. The focus on the public companies is based on their significance and high visibility in the region.

b. Current trends and situation

European countries, both individually and as a block have adopted strategies that range from disclosure requirements, targets, industry-led agreements or charter to quotas of different kinds (procedural or absolute, industry or individual company levels and fixed or incremental numbers)[25].

---

[22] Balling, Morten, Elizabeth Hennessy, and Richard O'Brien, eds. *Corporate governance, financial markets and global convergence*. Vol. 33. Springer Science & Business Media, 2013

[23] Verriest, Arnt, Ann Gaeremynck, and Daniel B. Thornton. "The impact of corporate governance on IFRS adoption choices." *European accounting review* 22, no. 1 (2013): 39-77.

[24] Keay, Andrew. "Comply or explain in corporate governance codes: in need of greater regulatory oversight?." *Legal Studies*34, no. 2 (2014): 279-304.

[25] Iliev, Peter, Karl V. Lins, Darius P. Miller, and Lukas Roth. "Shareholder voting and corporate governance around the world." *The Review of Financial Studies* 28, no. 8 (2015): 2167-2202.

i. Mandatory Quotas

Mandatory quotas are considered one of the hard law approaches toward enhancement of gender equality in European corporate boards. Across Europe countries such as Netherlands, France, Belgium and Italy have been implementing quotas on their corporate boards ranging from 30% to 40%[26]. While Norway is not a member of the European union its close union its close association and trade importance to the EU trading block makes its laws influence in enactment of EU individual country laws and regional laws. Norway became the first country to adopt a mandatory quota and as such the effectiveness of diversity quotas in the country will form a strong case in overall quota review of quota effectiveness. In 2005, the country required all the listed companies to ensure they have achieved a 40% quota of the female directors by the year 2008, which was attained successfully.

The success of Norway motivated some European countries such as Spain, which in 2007 required its publicly traded companies to have attest 40% of their board members being women by the year 2015. In 2010, Iceland followed suit and recommended public companies to have at least 40 percent of each gender to be represented on the board of directors of the publicly listed companies that have more than 50 employees by the year 2013[27]. In 2011, Netherlands made a requirement for both private and public companies to have at least 30% of each gender represented in their supervisory and executive boards. Netherlands imposed a "comply or "explain" mechanisms for the companies that would fail to achieve the set target[28]. In 2015, German adopted a quota targets for the boards of the large public listed companies. The German law required these companies to reserve at least 30% of the board positions for women by 2016 and 50% by 2018[29].

The efficacy of the quota laws relies on the context in which it was developed and detail of the measure. Norway has imposed stronger penalties for non-compliance with its gender quota law than European countries such as France and Spain, and has short

[26] Bermann, George A., and Katharina Pistor. *Law and governance in an enlarged European Union*. Oxford: Hart, 2004.

[27] Calder, Alan. *Corporate governance : a practical guide to the legal frameworks and international codes of practice*. London Philadelphia: Kogan Page, 2008.

[28] Gold, Michael, Andreas Nikolopoulos, and Norbert Kluge. *The European company statute : a new approach to corporate governance*. Oxford England New York: P. Lang, 2009.

[29] Horn, Laura. *Regulating corporate governance in the EU : towards a marketization of corporate control*. Houndmills, Basingstoke, Hampshire New York, NY: Palgrave Macmillan, 2012

period –two years compared to six in France and eight in Spain. As a sovereign kingdom, Norway constructs its case for using more hard approach to on justification of social justice and equality (with an ultimate diversity twist meant to ensure least resistance or wide acceptance from the business community). Progress in Norway has been quicker than in other countries. However, use of quotas has attracted a contentious debate from scholars, legal experts and affected companies where this debate resting on concerns about their economic efficiency, competency, and fairness. For those in favor, quotas serve as a catalyst for securing a more representation and equal opportunity for women among the decision making positions. They argue for economic efficiency that would be gained by recruiting women of knowledge and skills on the corporate boards.

Quotas are, however, opposed by many employer associations and managers based on the fact that appointment in the positions of directors will no longer be based on merit which is not efficient economically, are unfair and comprise illegitimate encroachment of the business autonomy. In countries like Norway, companies do what is necessary to avoid penalties, which limits the attainment of the legislation objective. The objective of quotas is improving percentage of women participants in corporate boards as a way of affording them equal opportunities. However, In Norway, one woman was elected in the board of 18 different companies after quota law was passed[30]. This means that the quotas are self-defeating because it would be impossible to be effective in 18 boards.

The skepticism that face the quotas legislative measures stem from the fact that companies comprise their boards in the way that they deem appropriate in making rational decisions. This means that quotas can improve diversity but hurt the economic performance of the publicly listed companies. This is because female directors can be promoted merely to serve as figureheads, and much worse companies can promote untrained or inexperienced women to the positions of directors in order to just comply with the quotas[31]. In these scenarios women will not be promoting gender diversity goal, which is to offer unique experience and new perspective to the board. In addition, when the women are included in the board under the scenarios above they would be

[30] Alison Smale & Clare Caine Miller, Germany Sets Gender Quota in Boardrooms, THE NEW YORK TIMES (Mar. 6, 2015), http://www.nytimes.com/2015/03/07/world/europe/german-law-requires-more-women-on-corporateboards.html?_r=0.

[31] Plessis, J. J. *German corporate governance in international and European context*. Berlin, Germany: Springer, 2017

taking the position of the person who would have been more fitted to effectively govern.

Use of quotas has been contentious. For them to be more effective, it is important that they be expressed in more gender neutral terms, designed with longer compliance time frame, and be accompanied by non-discriminatory, transparent and effective recruitment procedures in the positions of the board members. This is because despite their achievement, they do not fit in the EU culture of investor and company choice, free market economy, capitalism, and the overall laissez-faire economic system. Companies should have autonomy in making decisions that will maximize the wealth of their shareholders[32]. Quotas create a conflict between the public policy and private company autonomy to carry out their business in a manner that enhances their effectiveness. As such, while use of quotas in countries such as Germany, and France is helping to promote gender diversity in corporate boards, the overall objective of promoting economic efficiency and maximizing production may be at risk.

ii. Comply or Explain

This is the approach that is commonly included in the codes of corporate governance. It originates from British approach to the corporate governance where listing rules of different stock exchanges in the country require the companies to comply with set governance requirements or make an explanation of their failure to comply. This is a soft approach to law. the Corporate Governance Code in UK recommends that in the appointment of the board members, the companies should base their assessment on merit, due regard to the merits of diversity, and against the objective criteria[33]. In the year 2010, the government of UK commissioned an investigation about the barriers that hinder women from reaching the senior decision making positions in the corporations. The report of this commission maintained a soft law approach by recommending disclosure and voluntary based strategies that is aimed at creating a culture of diversity from within the corporations[34]. The approach indicates UK's

[32] Bajpai, G. N. *The essential book of corporate governance*. Thousand Oaks, California: SAGE, 2016.

[33] Gregoriou, Greg N., and Paul Ali. *International corporate governance after sarbanes-oxley*. Hoboken, N.J: Wiley, 2013.

[34] Douglas M. Branson The Journal of Corporation Law Initiatives to Place Women on Corporate Boards of Directors—A Global Snapshot , The Journal of Corporate Law (37), 2012, available at: http://blogs.law.uiowa.edu/jcl/wp-content/uploads/2013/03/A3-Branson.pdf

commitment to its business motives where the equality has an under-tone influence so as not to trample or overlap upon the autonomy of business. The predominance of business value addition rationale over egalitarian and fairer social norms is what justifies why UK chose soft law or voluntary means against quotas or hard laws adopted by such countries as Norway[35].

iii. Mandatory Disclosure Regimes

This is a regulatory regime where companies are required to disclose their plans for promotion of gender balance in their boards and they are also obligated to disclose on their progress. The governmental agency requirements for the public companies to make plenary disclosures are mostly applied in USA. USA passed the law referred to as "Say on Pay' which requires the publicly traded companies to make a disclosure of the payment of their executives and the ratio of male to female in their boards[36]. In Europe a mandatory disclosure regime is applied in combination with "comply and explain" method used in countries such as Netherlands. The EU corporate laws and directives also require corporate disclosure on various matters relating to corporate governance. Public companies can disclose various issues in relation to diversity: how they consider diversity in board selection; whether they factor in diversity in when assessing candidate for board position; and how the company evaluates the effectiveness of the policy that they chose to adopt[37].

iv. Voluntary Pledges

Some of the European countries have adopted a drastically different route from the mandatory quota regime. In 2008, Dutch created a "Talent to the Top" program that required the companies to increase women in their boards, but only when they subscribe to do this. This led to an increase in the number of women in boards from 7% in 2007 to 20.9% in 2010[38]. This program does not impose strict requirements of

---

[35] Bevir, Mark. *Governance: a very short introduction*. Oxford, United Kingdom: Oxford University Press, 2012.

[36] McCann, Dermot. *The political economy of the European Union: an institutionalist perspective*. Cambridge, UK Malden, MA: Polity, 2010.

[37] McGee, Robert W. *Corporate governance in transition economies*. New York: Springer, 2008

[38] Branson, Douglas M., Women on Boards of Directors: A Global Snapshot, University of Pittsburgh Legal Studies Research Paper No. 2011-05, 1 (Feb. 16, 2011), available at http://ssrn.com/abstract=1762615.

companies that must sign or the number of women that needs to be elevated in the board member status. The company that fails to comply is not punished in any way except that it will not be listed on the website of this program as a pledge company. Consumers and public are left to hold the company accountable. Despite the voluntary approach, 110 largest Dutch companies signed the pledge which includes Heineken, Shell and Wolters Kluer[39]. However, the pledge program in Dutch was more fruitful in increasing the number of unrepresented sex to EU required levels[40]. In 2011, EU required the companies to make a voluntarily pledge of having a thirty percent level by the year 2015. The EC reported that this program had a miserable failure with only 24 companies signing to the pledge by the end of the year[41].

3. Examination of Substantive and Purposed Gender Legislation in the European Union

a. European Union (Union Legislation)

Positive action towards realization of gender equality within the European Union has been part of sex and equality law since the beginning of the Union. In the perspective of Egon Zehnder's Global Board Diversity Analysis, quotas are not the effective route to achieving gender diversity in corporate boards. The need to have corporate boards that mirror the specific requirements and expertise needed for the operations of a company need to be considered inasmuch as quotas may be imposed for purposes of realizing the desired diversity. [42] No country within the European Union has achieved the 40% target of its directors being women.[43] Given the slow and in some instances, inconsistent growth of women representation in corporate boards within European Union and the larger Europe, *the Guardian* reports that the European Commission is pushing for a quota system for women on company boards and senior ranks in publicly

[39] Mullerat, Ramon, and Daniel Brennan. *Corporate social responsibility: the corporate governance of the 21st century*. Alphen aan den Rijn Frederick, MD: Kluwer Law International Sold and distributed in North, Central and South America by Aspen Publishers, 2011.
[40] Ibid 9
[41] Vossestein, G. J. *Modernization of European company law and corporate governance : some considerations on its legal limits.* Austin Alphen aan den Rijn Frederick, MD: Wolters Kluwer Law & Business Kluwer Law International Sold and distributed in North, Central and South America by Aspen Publishers, 2010
[42] Vo, T.T.A. and Bui, P.N.K. 2017. Impact of Board Gender Diversity on Firm Value: International Evidence.
[43] Ibid

listed corporations[44]. The proposal suggests that companies with board non-executive membership of more than 60% males require to give priority to women when considering candidates of equal merit for a post. Attempts in previous instances to cap women representation at 40% minimum have been disenchanted on ideological grounds in Poland and Hungary, and by claims that Brussels was overreaching its domestic affairs by the Netherlands, Sweden and Germany[45]. The only law that provides some universal guidance to all European Union member states is the EU Gender Equality Law.

Development of EU gender equality Law has been a gradual and continuous process. It has developed from the early 1960s when the Treaty that established European Economic Community contained the aspect of gender equality on a single provision (Article 119 EEC Treaty that is presently known as Article 157 Treaty on the Functioning of the European Union).[46] The provision only provided for the principle for equal pay for equal work for both male and female workers. Several provisions and directives have hence been adopted with the aim of prohibiting discrimination on gender grounds. These include the Directive 76/207/EEC on equal treatment of men and women. This was amended by Directive 2002/73/EC and later repealed by Recast Directive 2006/54/EC.[47] The other directive fighting for equal treatment of men and women is Directive 75/117/EEC on equal pay for men and women. Further, Directive 86/378/EEC, which was amended by Directive 96/97/EC outlines the need for equal treatment of males and females within the EU engaged in occupational social security schemes. Directive 96/97/EC has now been repealed by Recast Directive 2006/54/EC. Additionally, the quest for gender equality within the European Union member states led to the formation of Directive 92/85/EEC to ensure fair treatment of pregnant workers, Directive 2004/113/EC that laboured to ascertain equal and fair treatment of men and women in accessing supplies of products and services, Directive 2010/41/EU that repealed Directive 96/34/EEC aiming at ensuring gender fairness in parental leave, and Recast Directive 2006/54/EC.[48] Even though it would be difficult to attach the issue of gender representation in corporate boards, it is not possible to talk of possible

[44] The Guardian Editorial Team. 2017. *EU to push for 40% quota for women on company boards*. [Online]. [Accessed 9 December 2017]. Available from: https://www.theguardian.com/world/2017/nov/20/eu-to-push-for-40-quota-for-women-on-company-boards
[45] Ibid
[46] Geiger, Khan, D.-E., & Kotzur, M: *European Union treaties: Treaty on European Union, Treaty on the Functioning of the European Union*. (München: Beck. 2015)
[47] Ibid
[48] Ibid

legislations in the area without considering the historical legal developments towards ensuring gender equality.

According to the Treaty on European Union (TEU), one of the values on which the European Union is founded is the equality for all sexes. The principle is enshrined in Article 2 TEU.[49] Promotion of equality between men and women within the European Union is one of the principle duties of the Union as articulated in Article 3 (3) of TEU. From the inception of the Lisbon Treaty, Article 8 of Treaty on the Functioning of the European Union (TFEU) articulates that the union shall aim at eliminating inequalities and promoting impartiality between women and men in all its activities.[50] Moreover, Article 10 of TFEU indicates that in the definition and implementation of activities and policies of the Union, it shall aim at combating discrimination based on sexual orientation, disability, age or religion.[51]

Article 10 TFEU, therefore, lays down the obligation for the mainstreaming of gender. It means that the European Union and all its Member States shall take into consideration the objective of equality between men and women in all their activities by formulating laws, policies, administrative provisions and regulations to ensure gender equality.[52] It is important to note that the mentioned provisions and directives do not create enforceable rights for citizens of the EU and its Member States. As such, they cannot be applied in incorporation of women in corporate boards, but provide obligations on Member States to ensure gender equality in all aspects.

The Charter of Fundamental Rights of the European Union (Article 21) forbids discrimination on all grounds; including on the basis of sex.[53] The article recognises the right to equality of all genders. Therefore, the right to equality of men and women is not only limited to employment. Article 23 of the Charter of Fundamental Rights of the European Union recognizes the prospect of positive action for promotion of gender equality.[54] It would be expedient to note the position of positive action provisions within the EU Equality Directives structure. Each of the mentioned directive deals with positive action required for realization of equity in corporate board representation. None of the Directives offers the definition of positive action as an exception to the principle of equal treatment. Contrary to this, the text and provisions of the Directives

---

[49] ACT, F. 1992. Treaty on European Union. *Official Journal C, 191*, p.29.
[50] Ibid, 29
[51] Ibid, 29
[52] P. Eeckhout. *External relations of the European Union: legal and constitutional foundations* (2004)
[53] Ibid
[54] Proclamation, S., 2000. Charter Of Fundamental Rights Of The European Union. *Communities*, **100**(364/8)

explicitly outline positive action as an instrument for promotion of real-life equality. Given that the principle of equal treatment serves principally the same objective, these provisions imply that positive action can be understood as an exception to the equal treatment principle or as parallel legal expressions of ideals of equality.

b. Difference between Civil Law and Common Law

Most sovereign states today follow one of either the two major legal traditions; civil law and common law. As to whether the legal tradition practiced by a country affects the ease with which requirements such as incorporation of all sexes in corporate board of directors remains an issue worth researching. Basing on the list of legal jurisdictions discussed in this paper, Norway, a non-member state of EU that employs Scandinavian civil law, is the only nation that has comfortably realized the gender representation requirement of 40% in its corporate boards. In contrast, Germany, which is also governed by civil law is yet to achieve the 30% baseline gender representation in corporate boards it set to be achieved in 2015. Similarly, Sweden that also practices Scandinavian civil law is yet to surpass 32% in its efforts to reach the EU targets. Spain also uses civil law system with regional variations and is at its all-time lowest in matters pertaining gender equality. The same weak performance in realization of gender-based equality in corporate boards is also evident in the United Kingdom that predominantly uses common law systems.

Accordingly, the directives developed over the years under various provisions of the European Union laws fall under the civil law. These include of Directive 92/85/EEC to ensure fair treatment of pregnant workers, Directive 2004/113/EC that laboured to ascertain equal and fair treatment of men and women in accessing supplies of products and services, Directive 2010/41/EU that repealed Directive 96/34/EEC aiming at ensuring gender fairness in parental leave, and Recast Directive 2006/54/EC among other directives. So far, the European Court of Justice has dealt with the issue of positive action towards the realization of gender equality in a number of occasions. These cases serve as basis for common law upon which related court cases can be decided.

c. European Case Law

Foremost, the infringement case of *Commission v. France*[55] made it clear that exception provided in Article 2 (4) of Directive 76/207/EEC was exclusively and specially designed to permit measures that intended to reduce or eliminate actual instances of inequality inasmuch as the measures appear discriminatory in nature. The other case that provides basis for judgement of cases related to gender inequality akin to the current incorporation of women in European Union corporate boards is the *Kalanke* case.[56] *Kalanke* case provided the legal field another reason to rethink issues of gender equality in corporate-related appointments. The basic framework on gender equality held in the case by ECJ is valid to date. It concerned a positive action measure consisting of employment preference to female candidates who exhibited equal qualification over men competing for the same appointment position since women were underrepresented. In the *Kalanke* case, the court held that sex-based preferences in the case breached prohibition of discrimination based on sex as outlined in Article 2 (4)[57]. The *Kalanke* case is an example of cases leading to common laws that can be confusing in interpretation. On one hand, it is possible to interpret the ruling as a suggestion that the Equal Treatment Directive permits only tremendously limited latitude of sex-based preferences. This opinion holds that the Directive only permitted positive action measures targeting to improve the capacity of women to compete within the European Union on equal footing with men. The other possible interpretation of the *Kalanke* case would be that the criterion of sex could be a decider if it was just one of the several criteria considered socially sensible that could be used as a criterion for selection.[58]

d. Spain

Spain was the second country globally to institute gender balance legislation on composition of corporate boards. The country introduced Organic Law 3/2007[59] (Law of Equality) to ensure that corporate boards incorporate memberships that are balanced

[55] *Commission v. France*, 1997 E.C.R. I. 6959 (1997).
[56] *Kalanke v. Freie Hansestadt Bremen, Case C-450/93*, 1995 I.R.L.R. 660 (1995).
[57] McHarg, A. and Nicolson, D. 2006. Justifying affirmative action: Perception and reality. *Journal of Law and Society*, **33**(1), pp.1-23.

[58] Ibid
[59] Organic Law 3/2007

and all-inclusive in terms of sex. Organic Law 3/2007 (Law of Equality) encourages companies to promote conditions that enhance equality between men and women. According to the law, private companies that have more than employee capacity of 250 and all public corporations as well as public administrations are obliged to develop an action plan and equality assessment scheme.[60] It, therefore, implies that all ministers companies and public bodies operating within Spain are required by law to submit information to the Ministry of Governmental Affairs and the Ministry of Labour and Social Affairs every year on their operative implementation of the equality principle between men and women. Additionally, Spanish Securities and Exchange Commission (CNMV)[61] has gone ahead and instituted Corporate Governance Code, which endorses the idea that boards of listed companies incorporate females with appropriate background of business when seeking additional directors. In the event that a company fails to have at least 40% of women as members of its board, the Corporate Governance Code requires that the company provides an explanation behind its inability or failure to meet the set target.[62]

i. Review of the regulation and examination of the sanction or tax waiver

Laws regulating gender parity in corporate boards within Spain do not outline any elaborate sanction/tax waivers for the promotion of gender inclusion. The legal instruments provided for by Spanish laws do not effectively promote the realization of gender quotas as envisioned by the European Union. Law 3/2007 (Equality Law) gave a period of 8 years to Spanish public companies and listed firms to achieve a 40% representation of women in their boards.[63] The targeted time that elapsed in 2015 did not realize any substantial improvements. This can be attributed to absence of sanctions or waivers for non-compliance or compliance with the statutory policy. Law 3/2007 only established incentives for companies that would comply. The incentives included governmental equality awards for corporates that would stand out in the promotion and

[60] Ibid
[61] Bealing, W.E. 1994. Actions speak louder than words: An institutional perspective on the Securities and Exchange Commission. *Accounting, Organizations and Society*, **19**(7), pp.555-567.
[62] Aguilera, R.V. 2005. Corporate governance and director accountability: An institutional comparative perspective. *British Journal of Management*, **16**(s1).
[63] Law 3/2007

enhancement of equality. The law suggests that such companies be given priority in contracts with the government.[64] Compared to sanction/tax waivers, nullification of decisions made by non-compliant boards as done in Belgium or dissolution of the board and suspension of board members' compensation as done in Norway, enjoying higher probability of getting government contracts and equality awards suggested in Spain are not as effective. Imposing sanction/tax waivers could be a better approach towards ensuring that the quota target for gender representation in corporate boards within Spain is achieved.

ii. Public or Private Nature

Spain uses both public and private laws in its quest for gender-based equality in corporate board representation. The country has instituted a number of public legislations including Law 3/2007As evident from the provisions of Law 3/2007 and Law 62/2003 among other legislations. At the same time, it encourages companies within the country to adopt gender-sensitive policies through a change of company laws. Spanish administration does not target private companies as well as Small and Medium Enterprises in encouraging equal gender representation in management boards. In the beginning, the focus was on all corporations employing more than 250 employees and all publicly listed companies. With time, however, the focus on controlling gender representation in corporate boards narrowed to publicly listed companies. This leaves the private sector to decide on whatever form of gender composition they desire in the running of their corporate duties. A substantial elevation of the percentage of women in corporate boards within the country is, therefore, unlikely unless legal provisions provide for regulation of the private sector as well.

iii. Monitoring Bodies

Gender equality has been institutionalized in Spain from as early as 1983 with the help of the autonomous Women's Institute.[65] This was a legal institution created in response

---

[64] Ibid

[65] Threlfall, M., 2013. Women's Movement in Spain. *The Wiley-Blackwell Encyclopedia of Social and Political Movements*.

to international pressure before Spain could enter the European Community. The 1980s saw the creation of other Autonomous Communities that developed several policy instruments such as gender equality laws, plans and units. The creation of the Ministry of Employment and Social Affairs consolidated the machinery for Spanish gender equality campaign. The ministry was of higher authority concerning issues to do with gender equality than the Women's Institute. In 2004, Spanish government oversaw the creation of Equality Policies General Secretariat.[66] Later in 2008, the government of Spain created a fully-fledged ministry to deal with issues of gender equality; the Ministry Of Equality.[67] Spain further created the Council for Anti-Discrimination of People on the Grounds of Race or Ethnicity in response to Directive 2000/43/EC. Law 62/2003[68] would be officially established in 2007 and became effective since 2009.

Despite the gains made by Spain in institutionalizing gender equality and working towards the realization of equal representation in all aspects of economy such as corporate boards, austerity policies proposed by the European Union and adopted by Spain in response to financial challenges of 2008 have impacted the gains made in gender equality institutions negatively. Institutional restructuring and budget cuts are some of the steps that have curtailed the progress on realization of gender equality. The Ministry of Equality that the Spanish government established in 2008 was downsized and extremely suppressed in 2010 following the necessary budgetary cuts.[69] The ministry was transformed into state Secretariat for Equality and transferred to the Ministry of Health, Social Policy and Equality. The new government that came into force in 2011 did not redeem the gains for gender equality institutionalization in the years before. Instead, it relegated the historic Woman's Institute to be a department within the new Ministry of Health, Social Services, and Equality in a bid to further rationalize and simplify government operations for economic purposes.[70]

Former State Secretariat for Equality was replaced by State Secretariat for Social Services and Equality the same year. The Secretariat took over the duty of eliminating and reducing discrimination in the areas prescribed by the European Union directives.

[66] Bustelo, M. 2016. Three decades of state feminism and gender equality policies in multi-governed Spain. *Sex Roles*, **74**(3-4), pp.107-120
[67] Ibid, 112
[68] Law 62/2003
[69] Bustelo, M. 2016. Three decades of state feminism and gender equality policies in multi-governed Spain. *Sex Roles*, **74**(3-4), pp.107-120
[70] Ibid, 110

Nonetheless, the new secretariat has broad range of competencies that include social inclusion to children, disabled people, dependent and family; an aspect that curtails its ability to concentrate on issues of gender equality.[71] Women's Institute, an institution that was formerly powerful and influential in championing for causes of women inclusion, now depends on Directorate General for Equal Opportunities.[72] The Directorate is a department under the Secretariat. This means the budget for the Women's Institute has been reduced, further curtailing its ability to champion for inclusion of women in spheres such as corporate boards in Spain. Women's Institute is also expected to assume further competencies regarding equal opportunities other than gender equality within the small budget.

There have been further downgrading and elimination of institutions concerned with issues of equality at Murcia, Galicia and Madrid.[73] Additionally, Law 27/2003[74] concerning sustainability and rationalization of local administration has abolished Article 28 of Law 7/1985 that had endowed local governments the competence to institute activities for promotion of women. According to the legal amendment, local authorities only have the mandate to promote activities that enhance gender equality if they obtain task delegation and funding from Autonomous Communities. [75]These institutional changes represent a counter-trend and in broader view the unwillingness of Spanish administration to further causes that encourage equal gender representation. In this sense, it will be unlikely that Spain may get to hit the gender representation targets of at least 40% women representation in corporate boards.

iv. Review of Palpable Results

Despite the fact that Spain was the second to institute and implement legislations aimed at regulating gender diversity of corporate boards, the targets set by the legislations have not been achieved. The failure to achieve these targets have been partly due to the failure of the legislations to apply to Small and Medium Enterprises within the country. The Organic Law 3/2007 consisted of comply-or-explain type of legislation that only called

[71] Ibid, 116
[72] Valiente, C. Spain at the vanguard in European gender equality policies. *Gender politics in the expanding European Union: Mobilization, inclusion, exclusion*, pp.101-117. (2008)
[73] Ibid
[74] Law 27/2003
[75] Ibid

for companies with employees above 250 and publicly listed companies to comply with the 40% target of women members. Essentially, Small and Medium Enterprises make up about 99% of businesses within Spain.[76] They account for 80% of employment for those employed in the business sector.[77] The Organic Law 3/2007 was intended to stimulate companies to develop their own gender parity policies instead of placing sanctions on them. In this spirit, the Spanish government opted for a flexi-quota. Adoption of flexi-quota was I an attempt to emulate the Nordic behaviour that is characterized by successful voluntary system. In the new framework, Spanish government revised the 40% target to 30%.[78] The revised figure applies no more to all large companies but listed companies alone. It, therefore, implies that firms are obliged to give convenient explanations in the event that they fail to achieve the recommended quota without necessarily setting any objectives to reach the targets within a specified timeframe.

Gender disparity is, therefore, still an issue in Spanish corporate boards. The percentage of women in boards of large public companies has so far increased by a measly 2% between 2008 and 2014.[79] As at 2014, the percentage of women in large public company boards was 17% compared to 15% in 2008.[80] This is still far below the European Union target of 40% women representation.[81]

For all intents and purposes, gender equality policies in Spain displayed a trajectory of positive development between the 1980s and 2008. The positive development was characterized by institutionalization of gender equality policy agencies at regional and the central levels as well as the adoption of policies related to gender equality through instruments such as laws and plans. Gender equality was among the top prioritised issues in Spain especially in the years before the 2004-2010 economic crisis. The period was characterised by adoption of important legislations regulating equality in employment, gender-based violence, sexual and reproductive rights and same-sex marriage. Nonetheless, Spain's gender equality institutions and policies between 2009 and 2016 have been incessantly pulled to pieces and is endangered by austerity policies put in

[76] Martín-Ugedo, J.F. and Minguez-Vera, A. 2014. Firm performance and women on the board: Evidence from Spanish small and medium-sized enterprises. *Feminist Economics*, **20**(3), pp.136-162
[77] Ibid
[78] Martín-Ugedo, J.F. and Minguez-Vera, 2014
[79] Hughes, M.M., Paxton, P. and Krook, M.L. 2017. Gender Quotas for Legislatures and Corporate Boards. *Annual Review of Sociology*, (0)
[80] Valiente, 2008
[81] Ibid

place in response to the Spanish 2008 financial crisis. The austerity policies and backlash provoked by the policies has eliminated the prioritization of gender equality legislations and policies in the context of conflicting financial priorities. Even though legal mandate both at the regional and central levels back strategies of gender mainstreaming in Spain, it has not been mainstreamed into policy reforms adopted even as the country responds to economic challenges. The future of gender equality policies in Spain look unstable and uncertain.

e. Germany

March 2015 saw the German Federal Parliament pass a bill that aimed at increasing the number of women in positions of leadership within German publicly-listed companies. The legislation required that German's largest listed private sector employers totalling to just over 100 companies works towards achieving 30% quota for female representation on non-executive supervisory boards as opportunities in the boards become available.[82] The legislation combines two-pronged approach of an increased disclosure and fixed quota requirements. It also required exchange-listed companies in a mandatory but non-binding manner to align composition of management and supervisory boards as well as the two levels of senior management under the management boards to the quota requirements. German Corporate Governance Code outlines the standards of good corporate governance. According to the code, listed stock corporations are required to report their progress on the application of the code under a 'comply-or-explain' structure.[83] The comply-or-explain' principle is outlined in section 161 of German Stock Corporation Act. 4.1.2 of the code recommends that the board's management must have due regard for the benefits of gender diversity in the hiring of executive staff.[84] 5.1.2 of the code recommends that for supervisory of the board, a company must consider gender diversity in its appointment of members of the management board.[85] Further, 5.4.1 makes recommendations for the supervisory board

[82] Bozhinov, V., Koch, C.W. and Schank, T. 2017. Has the push for equal gender representation changed the role of women on German supervisory boards?
[83] du Plessis, J.J. and Low, C.K. eds. *Corporate Governance Codes for the 21st Century: International Perspectives and Critical Analyses*. (Springer: 2017)
[84] German Stock Corporation Act
[85] du Plessis, J.J. and Low, C.K. eds. *Corporate Governance Codes for the 21st Century: International Perspectives and Critical Analyses*. (Springer: 2017)

to make outline policies for its own composition that should include diversity policies and gender balance plans.[86] The code puts special emphases on the understanding of the broader concept of diversity with special focus on gender.

Article 3(2)(2) of the Basic Law is the fundamental source of the country's obligation to take proactive measures towards realization of equality of diverse groups.[87] The article of the German Constitution lays down the role of the state in working towards full equality towards men and women and embracement of substantive equality. Article 3(2)(2) does not, however, contain explicit permission for the introduction of quota.[88] A large majority of legal scholars and courts consider quota as an exception to the equal treatment principle and feel that quota require strict scrutiny on their proportionality. Inasmuch as the Federal Constitutional Court insisted that the Constitution of Germany must be interpreted in accordance with the international treaties on human rights, no German court considered Article 4 CEDAW to be referring to quota.[89]

Pursuant to the German constitutional obligation to realize women's substantive equality, state and federal legislation has been enacted with a view of promoting participation of women in public service. Federal Law on Equality in the Public Service (*Bundesgleichstellungsgesetz*) provides an opportunity for equality in the public service in general at the federal level.[90] The 16 *Länder* laws are closely related and their main instrument is to adopt plans of increasing representation of women on all employment levels. The also ensure that the recruitment procedures and criteria for promoting women do not discriminate against them.[91] These legislations are couched in sex neutral terms and refer to overrepresented sex and underrepresented sex. These laws aim at equal representation of both the male and female sexes.

In Section 5 of the General Equal Treatment Act that implements the European Anti-Discrimination Directives, it is comprehensively permitted that in the event that positive action is used in offsetting or preventing disadvantages based on gender and other grounds outlined in the EU anti-discrimination directives and is appropriate, it is legally

---

[86] ibid
[87] Law, B., 1949. Basic Law for the Federal Republic of Germany. *Parliamentary Council and the German Bundestag, http://www. bundestag. de/htdocs-e/info/gg. pdf*.
[88] Schiek, D. 1996. Positive action in community law. *Industrial Law Journal*, **25**(3), pp.239-246.
[89] Ibid
[90] Federal Law on Equality in the Public Service
[91] Davidson-Schmich, L.K. 2006. Implementation of political party gender quotas: Evidence from the German Länder 1990–2000. *Party Politics*, **12**(2), pp.211-232

permitted.[92] The legislation does not oblige the private sector to implement positive actions or introduce quota for the sake of realizing the desired gender balance.

i. Review of the regulation and examination of the sanction or tax waiver

The German administration understands that the efficiency of a legal rule depends on the sanctions associated with the legislation. Concerning gender quotas there exist a number of general as well as company-law specific sanctions to enhance the realization of gender balance in German corporate boards. The German debate on this issue has concentrated on sanctions that directly bear on company law.

ii. Public or Private Nature

The public sector in Germany is under a duty to achieve substantive equality. It has the role of ensuring equal representation of men and women at all levels of work. The public sector is, therefore, expected to take positive action towards gender equality realization within the dictates of the Constitution. Plans adopted to increase representation of the underrepresented are developed in light of ration of women to men in every stratum within the hierarchy of employment. It is expected of the publicly listed corporations within Germany to implement the gender equality requirement in corporate board representation. German approach has largely been geared towards implementation of public laws. There is little convincing of corporates to institute company changes towards the realization of the gender balance in corporate board representation.

iii. Monitoring Bodies

Measures aiming at establishing institutional mechanisms for women advancement in line with Beijing Platform for Action[93], chapter H, has been established in Germany

[92] General Equal Treatment Act
[93] Neuwirth, J. 2005. Inequality before the law: Holding states accountable for sex discriminatory laws under the Convention on the Elimination of All Forms of Discrimination Against Women and through the Beijing Platform for Action. *Harv. Hum Rts. J.*, *18*, p.19

since 1995. To realize this purpose, the administration of Germany defined three strategic objectives:

- Create and strengthen national machineries and governmental bodies geared towards realization of gender equality
- Generate and disseminate gender-disaggregated information and data
- Integrate gender perspectives into public policies, projects, programmes and legislations [94]

To this end, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has been the institution in charge of coordinating equality policies within different ministries of the federal government.[95] An Inter-Ministerial working Group Gender Mainstreaming was established in 2000 with the aim of coordinating and guiding gender mainstreaming introduced in 1999 as a guiding principle at the Federal Ministries' internal rules of procedure. The institutions put in place did not, however, realize the gender mainstreaming objectives and the United Nations, through CEDAW Committee criticized the ineffectiveness of the gender mainstreaming structures.[96] Germany administration through the stakeholders in gender equality crusaders were advised to reinstitute its gender mainstreaming strategies. Despite the advice, the Federal Government does not pursue any systematic policies for gender equality. Random single equality measures that exhibit no coherence or consistency with each other constitute the basis of policies of equality in the country. In the perspective of the Federal Government, the government regards equality policy as a task that can only be effectively realized by working together with gender mainstreaming. The government presents a list of various measures and its efforts without presenting any workable strategies.[97]

In the event that a woman who wishes to be member of a board feels unfairly dismissed, she may get help from the Federal Anti-Discrimination Agency (ADS).[98] The ADS is responsible for the provision of unbiased support to persons who in one way or the other feel discriminated on grounds of race, ethnicity, disability, sexual orientation, age or

---

[94] Ibid, 19
[95] Haussman, M. and Sauer, B. eds. *Gendering the state in the age of globalization: women's movements and state feminism in postindustrial democracies*. (Rowman & Littlefield Publishers: 2007)
[96] Ibid
[97] Ibid
[98] Lang, S. 2007. Gender governance in post-unification Germany: Between institutionalization, deregulation and privatization. *Changing state feminism*, pp.124-143

gender. The Federal Anti-Discrimination Agency particularly provides legal aid to the discriminated. ADA assesses and outlines the possibilities of taking legal action within the legislative provisions for protection against discriminatory acts. Further, the agency provides referrals to counselling by related institutions all over Germany.[99] In the view of Federal and *Länder* Equality Laws, there are equality commissioners entrusted with the duty of acting on all issues related to anti-discrimination and gender issues at all ranks of governance. This includes at the municipality level.

iv. Review of Palpable Results

In spite of the fact that gender equality is enshrined in Article 3 (2) and section 2 sentence 3 of the German Constitution[100] as well as all constitutions of its 16 states, it is unlikely that the country will meet the EU targets concerning women incorporation in corporate boards. Public and political debates concerning introduction of laws and policies to increase female representation in corporate boards has been going on for almost 2 decades. Gender equality propositions on the issue of 2001 were abolished following resistance from industry associations.[101] The associations agreed to a voluntary commitment to the promotion of equal opportunities and increased number of women in positions of leadership. However, the effect of this voluntary agreement on the number of women in the controlling bodies of the country's largest corporations was insignificant.

Gender mainstreaming was implemented at the federal level, but has not been pursued effectively since 2005. There no longer exists inter-ministerial structure for gender mainstreaming at the federal government. Further, there is no network of contact persons in the federal ministries. Germany ranges under the 8 European Union countries that have regressed in the implementation of Beijing Platform for Action despite the fact that ministries are still legally in charge of implementing the gender mainstreaming policies. The legal obligation bears no positive fruits where there exist no political will. Germany lacks elaborate structures to implement the gender mainstreaming policies.

[99] Ibid, 130
[100] Schiek, D. 1996. Positive action in community law. *Industrial Law Journal*, **25**(3), pp.239-246.
[101] Verloo, M.M.T. 2016. Mainstreaming gender equality in Europe: a critical frame analysis

As in the federal level, the *Länder* level's progress in gender equality relies on political will of each of the 16 *Länder* governments. In some Länder, gender mainstreaming has become a success. These include Land of Berlin that has successfully implemented gender budgeting process. Freiburg, Munich and Cologne have also come up with advanced gender mainstreaming and budgeting strategies. Nonetheless, the political unwillingness of most *Länder* governments and the federal government is likely to deter the realization of the proportion of women advocated for to be in corporate boards by the European Union.

f. Norway

Although Norway is not a member state of the European Union, its progress in realizing gender equality in corporate boards provides interesting insights in the possibilities of realizing the EU gender targets. The journey to realization of equal gender representation in corporate boards in Norway has been a journey characterized with many small steps. The stage for adoption and acceptance of the quota requirement for corporate board membership started with the adoption of Gender Equality Act in 1978. The Act guaranteed that men and women are given equal opportunities in professional advancement, employment, education and cultural engagements.[102] In 2005, the Act was amended with the view of aligning it with other acts dealing with discrimination based on ethnicity and religion, sexual orientation and disability. A new act (LOV-2013-06-21-59)[103] replaced the Gender Equality Act No. 45 in January 2014. The Ministry of Children, Equality and Social Inclusion manages the policies of the country related to gender equality. The country launched an action plan dubbed "Likestilling2014" that advocated for gender equality including the implementation of 86 novel initiatives that require networking of different ministries to meet.[104]

Norway has enforced gender quota legislations since January 2008 for membership of corporate boards of all public limited liability companies. The quota requirement dictates that the companies have at least 40% women representation in their boards.[105]

[102] Gender Equality Act 1978
[103] LOV-2013-06-21-59
[104] Seierstad, C. and Huse, M. Gender Quotas on Corporate Boards in Norway: Ten Years Later and Lessons Learned. In *Gender Diversity in the Boardroom* (pp. 11-45). (Palgrave Macmillan, Cham: 2017)
[105] Terjesen, S., Aguilera, R.V. and Lorenz, R. 2015. Legislating a woman's seat on the board: Institutional factors driving gender quotas for boards of directors. *Journal of Business Ethics*, **128**(2), pp.233-251

Norway's Companies Act amended in 2003 outlines the requirements regarding the representation of both genders on corporate boards. It requires that on the board of directors of public limited companies, both sexes must be represented in the event that the company's board of director is composed of two or three members. In the event that the board has four or five members, each of the sexes will be represented by at least two people.[106] In the event that the board has 6 to 8 members, at least three of each of the sexes will be present in the board. For boards of 9 members, at least 4 must be from each of the sexes. For board of directors of more than 9 members, 40% must be the minimum representation of either of the sexes.[107] The same rule of gender proportions apply to appointment of deputy directors.

i. Review of the regulation and examination of the sanction or tax waiver

Successful implementation of quota legislations in Norway has been because of the tough sanctions spelled out for companies that breach the law. National Business Register is the institution charged with the task to enforce the requirements for company boards as part of the standard system of sanction for all types of companies in the country. In case of non-compliance with the quota requirements, legal sanctions leading to dissolution of a company by a court of law may apply. Dissolution has been a legal consequence in Norway since 1977.[108] Given the tough sanctions out in place, corporations that find themselves in breach of the gender quota requirement often correct their discrepancies before the law catches up with them. Nonetheless, before dissolution is considered, the court may consider imposing less but equally effective punitive measures such as heavy fines and a record of warning to implement the gender balance rule. Even though the likelihood of dissolution is low, the possibility of the same in case of a breach of the quota law has ensured that companies in Norway comply with the legislations.[109]

106 Norway Companies Act 2003
107 ibid
108 Terjesen, S., Aguilera, R.V. and Lorenz, R. 2015
109 Seierstad, C. and Huse, M. Gender Quotas on Corporate Boards in Norway: Ten Years Later and Lessons Learned. In *Gender Diversity in the Boardroom* (pp. 11-45). (Palgrave Macmillan, Cham: 2017)

ii. Public or Private Nature

Realization of desired gender representation in Norway has been as a result of application of public laws as well as private company laws. According to the Norwegian laws, companies are required to ensure they have complied with varying degrees of the gender representation depending on their board sizes. The hard gender diversity laws, such as Norwegian quotas, as an instrument of the economic governance, makes a bold intrusion into the market place. The quota regulation legislations in Norway target the public limited companies rather than the private companies. The quota regulation targeting inter-municipal and state-owned companies came to effect in 2004. Later in 2006, laws regulating quota requirements in new public limited companies came to effect. All public limited companies were expected to effect the quota regulations in 2008. By 2009, all cooperative and municipal companies were expected to comply with the regulations. The corporate board quota legislation of Norway applies to about 2000 companies in the country. These include 230 municipal companies, 52 state companies, 241 inter-municipal corporations, 315 public limited companies and 923 cooperative companies.[110] All these companies are subjected to the quota legislation.

iii. Monitoring Bodies

Equality Commission appointed by the government of Norway in 2011 concluded that Norwegian gender equality policy was not successful. The 12-member commission concluded that despite issues of gender equality taking centre-stage in Norwegian quest for inclusivity, political-administrative structure and institutionalization was too weak to realize any sustainable change.[111] In the view of the commission, the only sure way of achieving gender equality is considering the task as no particular person's responsibility. Mainstreaming calls for the contribution of every individual and institution.

[110] Seierstad, C. and Huse, 2017
[111] Hellum, A., 2017. Norwegian Equality and Anti-discrimination Reform in an Individualist and Market-oriented Context. *NORA-Nordic Journal of Feminist and Gender Research*, **25**(3), pp.211-216

Inasmuch as realization of gender equality and the quota requirement in corporate board membership is a responsibility of all, the Ministry of Children, Equality and Social Inclusion remains the highest government institution directly responsible for tracking the enforcement of related policies and legislations. Additionally, the National Business Register is the institution charged with the task to enforce the requirements for company boards as part of the standard system of sanction for all types of companies in the country.

iv. Review of Palpable Results

Before Norway adopted the mandatory gender quotas on corporate boards, all kinds of company corporate boards were dominated by men. In 2002, only 6% of corporate board members within the country were women.[112] In 2004, the figure rose to 9% and 12% in 2005. Women representation in corporate boards within the country was 18% by 2006 and 25% by 2007. Full enforcement of the quota requirement in 2008 saw a leap of women representation in corporate boards to 36%.[113] The country reached the 40% women representation target in 2009 and has since then not gone below the target.[114]

Although more women are currently being recruited in boards of directors in public companies in Norway, there exists little indication that businesses invest extra resources in getting hold of women candidates for corporate boards. Public companies seldom involve executive companies or selection of candidates from the use of databases that provide the best suited women candidates. As such, people related to company owners and their close friends often fill the boards of directors' positions reserved for women.[115] There is need to increase professionalism in choosing women members of corporate boards to achieve the ultimate management objectives of boards of directors.

[112] Gidlund, A. and Lund, T. The Norwegian Gender Quota Law and its Effects on Corporate Boards (2017)
[113] Gidlund, A. and Lund, T. The Norwegian Gender Quota Law and its Effects on Corporate Boards (2017)
[114] Ibid
[115] Seierstad, C. and Huse, M

g. Sweden

Swedish legislative regulations concerning corporate governance were first considered in the early 1990s. The process of instituting legislations regulating corporate governance began soon after the revision of the Swedish Companies Act.[116] A number of self-regulating institutions began drafting and publishing recommendations and guidelines regarding corporate governance. The Swedish Corporate Governance Code was the first to be published in April 2004. The Code became effective from July 2005. Corporate Governance Code Board was then established to be making necessary revisions to the Code. It also monitors the Code to ascertain that its content is applicable and practical. In order to be in harmony with European Union directives, the Board has done a number of revisions to the Code.[117]

All publicly listed companies in Sweden have to adhere to the legislations and regulations outlined in the Swedish Company Act. As such, the Code is a complementary regulation to the Act. The main objective of the Code is to ensure that companies incessantly enhance their corporate governance. It generates norms and recommendations that are guided by the principles of comply-or-explain.[118] One of the aspects related to good corporate governance is ascertaining that gender inclusion in companies' board of directors is diverse. The government in Sweden, therefore, has instituted policies that strive to combat gender inequality in corporate boards. However, statistics reveal huge disparities in gender composition of corporate boards in Sweden. As at 2016, only 32%[119] of corporate board members in Swedish large corporations were women. This falls below the EU requirement of at least 40% of each gender represented in corporate boards across its jurisdiction.

Discriminatory Act (DA) covers all the grounds of discrimination including discrimination based on gender. It implements all acts of the European Union on non-discrimination. It also ensures a wider protection from other aspects of discrimination.[120] Government gender policies pursue the aims of economic equality, equal distribution of

[116] Swedish Companies Act
[117] Judge, W.Q. and Talaulicar, T. 2017. Board Involvement in the Strategic Decision Making Process: A Comprehensive Review. *Annals of Corporate Governance*, **2**(2), pp.51-169.
[118] Swedish Corporate Governance Code
[119] Judge, W.Q. and Talaulicar, T. 2017
[120] Discriminatory Act

unpaid-house, equal division of influence and power as well as putting an end to violence of men against women.

i. Review of the regulation and examination of the sanction or tax waiver

As already noted, the regulations contained in the Corporate Governance Code are adhered to on a voluntary basis. Inasmuch as the Swedish Company Act and the Code recognise the need for equal gender representation in decision making organs such as company board of directors as an essential aspect of good corporate governance, the legislation does not spell out any special sanctions or tax waivers for failure to adhere to the policies. Instead, companies have the freedom to implement recommendations provided in the Code or explain themselves why they failed to comply. Swedish parliament has also rejected on a number of occasions to institute binding and compulsory quotas for inclusion of gender balance in corporate boards.

ii. Public or Private Nature

Sweden essentially relies on public laws to drive the process of equal gender inclusion in boards of directors of its publicly limited companies. At the same time, the country puts significant efforts in driving the prospects of gender diversity in corporate boards by influencing individual companies to practice good corporate codes. This requires change of individual company laws. Like in all other countries discussed so far, the recommendations and policies to improve representation of women in corporate boards are directed at the publicly limited companies. Private limited companies are not targeted in the implementation of the gender equality policies.

iii. Monitoring Bodies

Responsibilities and structures of governmental institutions charged with the responsibility of furthering the prospects of gender equality in Sweden have changed over the years. Presently, the main responsible actor for ensuring gender equality in all areas including gender representation in corporate boards is the Special Minister for Children, the Elderly and Gender Equality.[121] The Special Minister works under the Ministry for Health and Social Affairs. Gender mainstreaming remains the foundation of gender policies in Sweden. Further, there is the Equality Ombudsman established under the 2008 Discrimination Act that is responsible for dealing with discriminations founded on all areas and grounds under the Act. The ombudsman replaced other related institutions including the Gender Equality Ombudsman.

iv. Review of Palpable Results

Despite falling below the 40% target of the European Union in incorporation of women in corporate boards, Sweden does not seem keen on making situations better for the gender equality directive. In January 2017, the parliament of Sweden failed to pass a bill that would see the country implement a mandatory 40% composition of either gender in corporate boards.[122] The legislation was to impose a fine on listed companies that would fail to comply with the 40% requirement.

Nonetheless, it is commendable to note that despite having sanctions in place to correct companies that fail to increase the number of women representation in their boards, the 32% women representation in the Swedish listed companies' boards is still higher that the 23% EU average. With improved political goodwill and passing of mandatory quota system witnessed in Norway, the Swedish situation will improve and easily surpass the EU target.

h. United Kingdom

i. Review of the regulation and examination of the sanction or tax waiver

United Kingdom has instituted and implemented a number of laws and regulations to ensure equality of gender in line with EU directives. Equality Acts 2006[123] and 2007[124]

[121] Korsvik, T.R., 2014. *Gender equality policies in Norway: „Everybody's job, nobody's responsibility"* (No. 2.1). Working paper.
[122] Korsvik, T.R., 2014.
[123] Equality Acts 2006
[124] Equality Acts 2007

outlaw discrimination based on sexual orientation. It introduces a public duty of all UK citizens and institutions to promote equality on grounds of gender. This was achieved after modification of the Sex Discrimination Act of 1975[125] to promote equality of opportunity between males and females. UK Equality Act 2010[126] provides that positive actions can be taken by private companies towards protecting a discriminate category in a recruitment and appointment process. Gender Equality Duty 2007 also provides gender equality schemes be adopted by involving all stakeholders for refinement and meeting of gender equality objectives.[127] UK Equality Strategy that aims at building a fairer Britain is founded on principles of equal treatment and equal opportunity for both men and women. Think, Act, Report (TAR) of 2011 was a framework developed to encourage volunteer and private sector organizations to help women overcome challenges in their workplace.[128] More than 140 top corporations in the country have committed to identification of issues surrounding gender equality, taking appropriate actions to fix the issues and making public the manner in which other businesses can tackle the identified issues.[129] In spite of the legislations and policies to encourage gender inclusivity in the UK, it has not yielded in the achievement of 40% target of women representation in corporate board membership as per EU directives. Given that these public and private strategies and laws spell no waivers or specific sanctions against corporations that fail to comply, little progress has been realized in the UK corporate board membership gender diversity.

ii. Public or Private Nature

United Kingdom has legislations that guide the prospects of gender equality and in extension posing the possibility of realization of the EU 40% gender diversity composition of corporate boards. These include Equality Acts 2006 and 2007, the Sex Discrimination Act of 1975 and UK Equality Act 2010 among other legislations. At the same time, UK has endeavoured to champion for amendment of company laws through

[125] Sex Discrimination Act 1975
[126] UK Equality Act 2010
[127] Gender Equality Duty 2007
[128] Government Equalities Office. 2017. *Think, Act, Report Mending The Gap*. [Online]. [Accessed 11 December 2017]. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371077/Think__Act__Report__mending_the_gap.pdf
[129] Ibid

strategies such as the 2011 Think, Act, Report (TAR) and UK Equality Strategy that aimed at creating fertile grounds for gender equality through involvement of all stakeholders. Despite these efforts, no significant improvement in gender diversity in corporate boards has been realized.

iii. Monitoring Bodies

At the central level, Government Equalities Office (GEO) is the chief institution for gender equality in the UK. It has the responsibility of implementing specified equality strategies throughout the United Kingdom.[130] GEO replaced the Women and Equality Unit in 2007. GEO moves to different government ministries depending on which Secretary of State is in charge of the equalities office. For instance, GEO moves to the Department of Education when the Secretary of State for Education becomes the Minister for Women and Equalities.

At the states level, gender equality structures are situated in government departments of devolved governments in Northern Ireland, Wales and Scotland. Welsh government hosts Equality, Diversity and Inclusion Division. The Scottish Government's Equality Unit hosts the Gender Equality Team while the Childcare, Gender and Sexual Orientation Unit is hosted in Northern Ireland.[131]

iv. Review of Palpable Results

Despite the significant growth of women representation in large corporate boards and board committees, *the Guardian* reports that UK has fallen behind other countries in its efforts to incorporate more women in company boards[132]. As such, less than a quarter of UK corporate board members are women. The 2016 report reveals that Britain has 23.2% women membership in corporate boards, which is less than the 25% EU average[133]. *Economia* too reports that UK lags behind several European Union members

[130] Government Equalities Office. 2017.
[131] Ibid
[132] The Guardian Editorial Team. 2017. *Women occupy less than a quarter of UK board positions*. [Online]. [Accessed 9 December 2017]. Available from: https://www.theguardian.com/business/2016/apr/27/women-uk-board-positions-gender-equality-europe
[133] Ibid

on gender diversity of corporate board members[134]. In the view of Egon Zehnder's Global Board Diversity Analysis, women in the UK held 26.3 percentage points of total corporate board positions in 2016. The report elaborates that the percentage of women hired as corporate directors within the United Kingdom had declined to 29% in 2016 from 31.1% in 2014.[135] During this period, incorporation of women in corporate boards in Norway, Sweden and France remained relatively high at 39.7%, 37.7% and 37.5% respectively. The survey further reveals that as at 2016, there were no female executive board chairs in the United Kingdom as contrasted with the prevailing global average of 5%. Within the same period of 2014 to 2016, the percentage of non-executive female chairs within the corporate boards in UK fell from 2% to 1%.[136] Considering different committees however, there were encouraging statistics of women taking over roles that are more important. 24.7% of committee members across UK corporates are women with 14.6% of them being the chairpersons of the committees. Additionally, the Egon Zehnder's Global Board Diversity Analysis reported that since the introduction of ambitious board diversity quotas in Italy and France, quick transformation has been experienced in the four years preceding 2016.[137]

In the perspective of Egon Zehnder's Global Board Diversity Analysis, quotas are not the effective route to achieving gender diversity in corporate boards. The need to have corporate boards that mirror the specific requirements and expertise needed for the operations of a company need to be considered inasmuch as quotas may be imposed for purposes of realizing the desired diversity. [138] As such, no country within the European Union has achieved the 40% target of its directors being women.[139] Given the slow and in some instances, inconsistent growth of women representation in corporate boards within European Union and the larger Europe, *the Guardian* reports that the European Commission is pushing for a quota system for women on company boards and senior ranks in publicly listed corporations[140]. The proposal suggests that companies with

---

[134] Fino, J. 2017. *UK lags behind many EU countries on gender board diversity*. [Online]. [Accessed 9 December 2017]. Available from: http://economia.icaew.com/en/news/february-2017/uk-lags-behind-many-eu-countries-on-gender-board-diversity
[135] Ibid
[136] Ibid
[137] Ibid
[138] Vo, T.T.A. and Bui, P.N.K. 2017. Impact of Board Gender Diversity on Firm Value: International Evidence.
[139] Ibid
[140] The Guardian Editorial Team. 2017. *EU to push for 40% quota for women on company boards*. [Online]. [Accessed 9 December 2017]. Available from: https://www.theguardian.com/world/2017/nov/20/eu-to-push-for-40-quota-for-women-on-company-boards

board non-executive membership of more than 60% males require giving priority to women when considering candidates of equal merit for a post. Attempts in previous instances to cap women representation at 40% minimum have been disenchanted on ideological grounds in Poland and Hungary, and by claims that Brussels was overreaching its domestic affairs by the Netherlands, Sweden and Germany[141].

4. Corporate Law versus Public Policy in the Promotion of Diversity in the EU Corporate Boards

a. Diversity promotion strategies and corporate law

Corporate law applies to the conduct, relations and rights of individuals within the corporations. Each country in EU has its own corporate laws meant to ensure these entities function in accordance with the interest of their nations while maximizing the wealth of their shareholders. Strategies used to improve diversity in corporate governance can distort corporate law. For example, imposing mandatory quotas on the percentage of the underrepresented sex in the company's board can affect merit based appointment of the board of directors[142]. On addition, mandatory disclosure of number of women in the board, limits the focus of the board in reporting on overall transparency and objective performance reporting. In EU corporate governance, which forms a large part of the corporate law, directors are given crucial role of ensuring proper management of the company and balancing the interests of all the stakeholders. Directors are expected to maximize the wealth of the investors. Quotas can lead to appointment of members of the board who are not experienced or trained enough to live up to this objective[143].

The basic issue in the corporate law is minimizing the principal–agent problems. On this view, when a principal delegates his property (employees labor and shareholder's capital) into the agent's control (the board), there rises the possibility that the agent will not pursue the interest of the principal which increases the business risk. Corporate law addresses these concerns by ensuring the structure and the

[141] Ibid

[142] Clarke, Thomas, and Douglas Branson. *The SAGE handbook of corporate governance*. London: SAGE, 2012.

[143] Clarke, Thomas. *International Corporate Governance A Comparative Approach*. Florence: Taylor and Francis, 2017.

composition of the board is implemented in a way that promotes the vision, goal and values of the corporation[144]. Diversity laws either by the European Commission or individual states do not consider the role of the director as an agent of the shareholder. Agents are supposed to be willingly elected by the principals to represent them but should not be imposed upon the principals by the operation of public policy or law meant to promote egalitarian and fairer social system. In this respect, by obligating corporations to achieve certain gender parity targets in their boards, the EU and individual country laws reduce the mandate of the shareholders to make rational decisions when coming up with the requisite composition of their boards[145].

Gender laws stem from public policies that support dominance of social fairness over the value addition. Corporate laws seek to promote corporation autonomy and capitalism which is credited for the economic growth and productivity in the EU. From the corporate governance perspective, there is no concrete indication of the ways in which board diversity contributes to the increased firm value or better corporate governance. However, wider and comprehensive analysis of board diversity reveals existing benefits and costs that are associated with board diversity. The positive business effects of introducing the diversity laws include improved access to information (leading to more creativity and enhanced problem solving skills), improve employee relation (by signaling that the company values diversity), better understanding of suppliers, customers and market place and enhanced public image (where the company conforms to the societal expectations)[146]. On the other hand, there are many potential downsides to board diversity. This includes reduced board cohesion (which can lead to communication breakdown, lack of cooperation and distrust), enhanced conflicts of interest (where directors will seek to promote their own ideologies), a more costly and lengthier decision making process and reduction in the decisions' quality (where there is insufficient expertise of the directors that have been selected based on diversity criteria)[147].

---

[144] Kershaw, David. *Company law in context: text and materials*. Oxford, U.K: Oxford University Press, 2012.

[145] Sum, Katarzyna. *Post-crisis banking regulation in the European Union: opportunities and threats*. Switzerland: Palgrave Macmillan, 2016.

[146] Tomasic, Roman. *Routledge handbook of corporate law*. Abingdon, Oxon UK New York: Routledge, 2017.

[147] Tricker, R I. *Corporate governance: principles, policies, and practices*. Oxford, United Kingdom: Oxford University Press, 2015.

The EU corporate board quotas focus on non-executive directors. In corporate law, one of the key functions served by non-executive directors is to promote independence of the board as opposed to gender diversity. Board independence helps to promote transparency in corporate governance reporting, and promotion of accountability of the board. In some countries such as Norway where quotas were implemented in a very short period, some women were appointed in to sit in more than enough boards. The primary objective informing their appointment was compliance with the law, rather than promotion of independence and enhancement of the board's transparency[148]. The company law theory posits that the companies act as a person in political capacity and are created by law to perpetually endue and while they should not contradict the law, regional or national governing bodies cannot be expected to make regulations toward peculiar circumstances of these bodies. This is because corporations are invested with authority to come up with regulations for management of their own affairs and interests[149]. As such, while governments are supposed to inspect corporations with care and erect them with caution, it distorts the corporate law to impose laws that dictates how the company's board is structured which can be against the rationality used by the company to promote its interests[150]. Corporate law could play an important role in improving gender diversity in the board of directors. This is because the right way to improve gender diversity in the board of directors is through amending corporate regulations and not using public policies. The corporate laws are aligned with the goals and interest of the company. On the contrary the public policy is state objectives that relates to wellbeing and morals of the citizenry. Corporate law helps to define the duties, skills, experience knowledge and independence of the directors which enables them to discharge their responsibilities and duties effectively. One way in which corporate laws can play an instrumental role in improving gender diversity of the boards, is making it mandatory to have short directors term with more elections. This increases the possibility of appointing more women based on merit, skills, knowledge, experience and suitability to the role of director[151].

---

148 Yelkova, Irina. *Quotas for women on corporate boards: the call for change in europe*. S.l: anchor academic published in 2015

149 *Women on boards: report*. London: Stationery Office, 2012.

150 Eger, Thomas, and Schäfer. *Research handbook on the economics of European Union law*. Cheltenham, UK Northampton, MA: Edward Elgar, 2012.

151 Finch, Brian. *Financial Times Briefing on Corporate Governance: Financial Times Briefing PDF eBk*. Harlow: Financial Times/ Prentice Hall, 2012.

One of the methods used by corporate laws to enhance consistency in decision making is ensuring that the board members are not appointed at the same time. This means that every year the term of some board members will expire. Implementing this law would increase the possibility of having more women in the board. When the appointment of board members is carried out annually, the replacement of the outgoing board members will have high chance of being a women[152]. Other regulatory measures that have potential to disrupt the male dominance dynamics and which can help to minimize the risk of appointing unqualified director include having easier processes for replacing the underperforming directors and having proxy access where shareholders can nominate new directors directly. The companies should also invest in training, education and development programs that will help to equip the top management with necessary skills that can be applied in the position of director[153].

b. Comparison between modifications in corporate regulations versus public policies

Mandatory laws have an immediate effect with regard to gender balance in corporate boards' composition. This is evidenced in the case of Norway where between 2005 and 2008 all the publicly traded companies were able to modify the board composition by increasing the women percentage to more than 40%[154]. The proposal by the EU to impose sanctions on the companies which do not have boards composed of at least 40% women by 2020 has faced resistance from some countries[155]. The law would require the companies that fail to comply with the set regulations to be barred from state contracts and aids and face administrative fines. The law has, however, generated fatal resistance from some of the EU members. In September 2014, nine countries including UK wrote a letter to the European Commission indicating their strong opposition to any provision regarding number of women on the company

152 Ibid

153 Thomson, Peninah, and Tom Lloyd. *Women and the new business leadership*. Houndmills, Basingstoke, Hampshire, UK New York, NY: Palgrave Macmillan, 2011.

154 Brown, Karen B., and David V. Snyder. *General reports of the XVIIIth Congress of the International Academy of Comparative Law = Rapports Généraux du XVIIIème Congrès de l'Académie Internationale de Droit Compare*. Dordrecht New York: Springer, 2012.

155 Magnier, Véronique. *Comparative corporate governance: legal perspectives*. Cheltenham, UK Northampton, MA: Edward Elgar Pub, 2017.

boards[156]. Other countries such as Germany and Sweden have indicated their resistance to the law. Public policies are dictated by the popular culture and change in the laws stemming on this basis can conflict with corporate culture of the company[157].

While the public policy helps to ensure that the public corporations structure their business and boards in a way that is in line with acceptable social, moral and overall societal well-being, the major question is whether they should be used to impose the way in which companies are governed. Codes of corporate governance play a key role in ensuring that corporate boards are well structured, directors' duties and duties of the board committees are elaborated, and the board members' understands their responsibility to the shareholders. For this reason, change in the corporate laws would help to ensure diversity in boards while at the same time aligning the changes with the interest of the company. This is because while the public policy may stem from activists who are not involved in the day to day management and governance of the corporations, corporate laws come from corporate regulators in liaison with key players in the corporate governance. Corporate laws define the numerous obligations, responsibilities and rights of the corporations and their objective is to facilitate corporations in attaining their objectives while playing an active role in societal development. This means the corporate laws balance between the internal and external business environment while the public policies places more weight to the public perception than company objectives[158].

c. Gender discrimination policies and corporate legislations

The board of directors serves as one of the most vital governance mechanism in the contemporary corporations. In principle the board should be structured and comprised in a way that will help to approve major financial and strategic decisions. While the degree to which a board can fulfill its mandate depends on the type of information they get from the management, corporate governance affects the

156 Ibid
157 Seierstad, Cathrine, Patricia Quiñones, and Heike Klarbach. *Gender diversity in the boardroom*. Cham, Switzerland: Palgrave Macmillan, 2017.
158 Jassaud, Nadege. *Reforming the Corporate Governance of Italian Banks*. Washington: International Monetary Fund, 2014.

suitability of the board to make acceptable decisions by both the management and the shareholders. Gender balance law can affect the corporate governance in the EU[159]. These laws can affect the independence, size and diversity in the board of directors. A study by Ferreira and Kirchmaier (2013) revealed there is a change in the size (the number of board members) in Europe between 2000 and 2010. Implementation of the quotas and other methods meant to increase diversity in these boards has been cited as the major factor affecting the change in the number of board members' for the countries with one board and those with a two-tier board system (governing and supervisory boards)[160].

One way in which companies are seeking to comply with quotas and public pressure to increase their board diversity is marking up the corporate boards. The board creates additional vacancies that are filled by the women. The principles of corporate governance do not dictate the number of board members than the company should have. This is regulated by the company's internal policies, charter and codes of good governance. Gender balance laws, thus, affects the internal tradition, policies, and pre-conceived code of good governance in a corporation. In order to align themselves with legal changes, companies can also reduce the number of board members (by failing to replace the board remember once the term of some directors come to an end). This move is meant to preserve the integrity of the board while at the same time ensuring it has legally acceptable women percentage. While the quota laws are to some degree function of some countries' commitment to egalitarianism and political culture, their implementation can be perceived as a more commitment to the law rather than to the performance[161]

d. Overview of Corporate Legislation Modification and Board Structure

In the gender diversity laws, such as Norwegian laws, companies are required to ensure they have complied with varying degrees of the gender representation

[159] Ibid 58

[160] Ferreira, Daniel, and Tom Kirchmaier. *Corporate boards in Europe: size, independence and gender diversity*. Cambridge University Press, 2013.

[161] Davies, P. L., et al. *Corporate boards in law and practice: a comparative analysis in Europe*. Oxford, United Kingdom: Oxford University Press, 2013.

depending on their board sizes. The hard gender diversity laws, such as Norwegian quotas, as an instrument of the economic governance, makes a bold intrusion into the market place. Given that traditionally corporate law does not concern itself with the issues that are related to the identity-based representation, it is rather striking that Norwegian quotas are not located in equality-based or human rights regulation, but on Norwegian corporate law, which is supposed to be legal regime that gives life to the personality and life of corporations[162]. Various studies indicate that corporate managers and directors have shown significant opposition to the laws. This opposition indicates it ineffectiveness in supporting good corporate governance. However, the inclusion of women on the boards has been linked to profound effect on the affected companies[163]. The main benefit of quota-induced gender diversity relates to women's outsider status and independence.

Overall, modifying corporate legislation could lead to a more diverse corporate board. A bigger size of the board and reelection and renewal could lead to a higher percentage of women in the corporate world. For example, making the process of replacing the board member, whose term has come to an end, easier, more women would meet the requirements, which might increase the number of women. While the public policy laws are important in aligning the values and internal culture of the corporation with general culture of the community in which it operates, corporate law (of which corporate governance and ethics is at the heart), is the most appropriate way to improve gender diversity in the board of directors. The board of directors is a strong pillar of robust framework of corporate governance and links to the responsibility, judgment and accountability[164]. While over the years regulators and the regional governance have placed great emphasis on diversifying the boards, aimed at facilitating a board spectrum of demographic characteristic and attributes into the boardroom, improving corporate laws stands a better chance of motivating the companies to improve their gender diversity.

---

162 Ibid

163 Dhir, Aaron. *Challenging boardroom homogeneity: corporate law, governance, and diversity*. New York, NY: Cambridge University Press, 2015.

164 Fagan, Colette, Maria Menéndez, and Silvia Ansón. *Women on corporate boards and in top management: European trends and policy*. New York: Palgrave Macmillan, 2012.

5. Bibliography

Books

Bajpai, G. N. *The essential book of corporate governance*. Thousand Oaks, California: SAGE, 2016.

Bermann, George A., and Katharina Pistor. *Law and governance in an enlarged European Union*. Oxford: Hart, 2004.

Bevir, Mark. *Governance: a very short introduction*. Oxford, United Kingdom: Oxford University Press, 2012.

Bozhinov, V., Koch, C.W. and Schank, T. Has the push for equal gender representation changed the role of women on German supervisory boards? (2017).

Brown, Karen B., and David V. Snyder. *General reports of the XVIIIth Congress of the International Academy of Comparative Law = Rapports Généraux du XVIIIème Congrès de l'Académie Internationale de Droit Compare*. Dordrecht New York: Springer, 2012.

Calder, Alan. *Corporate governance: a practical guide to the legal frameworks and international codes of practice*. London Philadelphia: Kogan Page, 2008.

Clarke, Thomas, and Douglas Branson. *The SAGE handbook of corporate governance*. London: SAGE, 2012.

Clarke, Thomas. *International Corporate Governance A Comparative Approach*. Florence: Taylor and Francis, 2017.

Davies, P. L., et al. *Corporate boards in law and practice: a comparative analysis in Europe*. Oxford, United Kingdom: Oxford University Press, 2013.

Dhir, Aaron. *Challenging boardroom homogeneity: corporate law, governance, and diversity*. New York, NY: Cambridge University Press, 2015.

Du Plessis, J.J. and Low, C.K. eds. *Corporate Governance Codes for the 21st Century: International Perspectives and Critical Analyses*. (Springer: 2017).

Eeckhout, P. *External relations of the European Union: legal and constitutional foundations* (2004).

Eger, Thomas, and Schäfer. *Research handbook on the economics of European Union law*. Cheltenham, UK Northampton, MA: Edward Elgar, 2012.

Fagan, Colette, Maria Menéndez, and Silvia Ansón. *Women on corporate boards and in top management: European trends and policy*. New York: Palgrave Macmillan, 2012.

Finch, Brian. *Financial Times Briefing on Corporate Governance: Financial Times Briefing PDF eBk*. Harlow: Financial Times/ Prentice Hall, 2012.

Geiger, Khan, D.-E., & Kotzur, M: *European Union treaties: Treaty on European Union, Treaty on the Functioning of the European Union*. (München: Beck. 2015-

Gidlund, A. and Lund, T. The Norwegian Gender Quota Law and its Effects on Corporate Boards (2017).

Gold, Michael, Andreas Nikolopoulos, and Norbert Kluge. *The European company statute: a new approach to corporate governance*. Oxford England New York: P. Lang, 2009.

Gregoriou, Greg N., and Paul Ali. *International corporate governance after sarbanes-oxley*. Hoboken, N.J: Wiley, 2013.

Horn, Laura. *Regulating corporate governance in the EU: towards a marketization of corporate control*. Houndmills, Basingstoke, Hampshire New York, NY: Palgrave Macmillan, 2012.

Jassaud, Nadege. *Reforming the Corporate Governance of Italian Banks*. Washington: International Monetary Fund, 2014.

Kershaw, David. *Company law in context: text and materials*. Oxford, U.K: Oxford University Press, 2012.

Korsvik, T.R. *Gender equality policies in Norway: "Everybody's job, nobody's responsibility"* (No. 2.1). Working paper. (2014).

Magnier, Véronique. *Comparative corporate governance: legal perspectives*. Cheltenham, UK Northampton, MA: Edward Elgar Pub, 2017.

McCann, Dermot. *The political economy of the European Union: an institutionalist perspective*. Cambridge, UK Malden, MA: Polity, 2010.

McGee, Robert W. *Corporate governance in transition economies*. New York: Springer, 2008.

Mullerat, Ramon, and Daniel Brennan. *Corporate social responsibility: the corporate governance of the 21st century*. Alphen aan den Rijn Frederick, MD: Kluwer Law International Sold and distributed in North, Central and South America by Aspen Publishers, 2011.

Plessis, J. J. *German corporate governance in international and European context*. Berlin, Germany: Springer, 2017.

Seierstad, C. and Huse, M. Gender Quotas on Corporate Boards in Norway: Ten Years Later and Lessons Learned. In *Gender Diversity in the Boardroom* (pp. 11-45). (Palgrave Macmillan, Cham: 2017).

Seierstad, Cathrine, Patricia Quiñones, and Heike Klarbach. *Gender diversity in the boardroom*. Cham, Switzerland: Palgrave Macmillan, 2017.

Seierstad, C. and Huse. Gender Quotas on Corporate Boards in Norway: Ten Years Later and Lessons Learned. In *Gender Diversity in the Boardroom* (pp. 11-45). (Palgrave Macmillan, Cham: 2017).

Sum, Katarzyna. *Post-crisis banking regulation in the European Union: opportunities and threats*. Switzerland: Palgrave Macmillan, 2016.

Thomson, Peninah, and Tom Lloyd. *Women and the new business leadership*. Houndmills, Basingstoke, Hampshire, UK New York, NY: Palgrave Macmillan, 2011.

Tomasic, Roman. *Routledge handbook of corporate law*. Abingdon, Oxon UK New York: Routledge, 2017.

Tricker, R I. *Corporate governance: principles, policies, and practices*. Oxford, United Kingdom: Oxford University Press, 2015.

Valiente, C. Spain at the vanguard in European gender equality policies. *Gender politics in the expanding European Union: Mobilization, inclusion, exclusion*, pp.101-117. (2008)

Velkova, Irina. *Quotas for women on corporate boards: the call for change in europe*. S.l: anchor academic publishin, 2015.

Vossestein, G. J. *Modernization of European company law and corporate governance: some considerations on its legal limits*. Austin Alphen aan den Rijn Frederick, MD: Wolters Kluwer Law & Business Kluwer Law International Sold and distributed in North, Central and South America by Aspen Publishers, 2010.

Women on boards: report. London: Stationery Office, 2012.

Case Law

Commission v. France, 1997 E.C.R. I. 6959 (1997).

Kalanke v. Freie Hansestadt Bremen, Case C-450/93, 1995 I.R.L.R. 660 (1995).

Journals

Aguilera, R.V. 2005. Corporate governance and director accountability: An institutional comparative perspective. *British Journal of Management*, 16(s1).

Balling, Morten, Elizabeth Hennessy, and Richard O'Brien, eds. *corporate governance, financial markets and global convergence*. Vol. 33. Springer Science & Business Media, 2013.

Barak, Michàlle E. Mor. *Managing diversity: Toward a globally inclusive workplace*. Sage Publications, 2016.

Bealing, W.E., 1994. Actions speak louder than words: An institutional perspective on the Securities and Exchange Commission. *Accounting, Organizations and Society*, *19*(7), pp.555-567.

Ben-Amar, Walid, Millicent Chang, and Philip McIlkenny. "Board gender diversity and corporate response to sustainability initiatives: evidence from the Carbon Disclosure Project." *Journal of Business Ethics* 142, no. 2 (2017): 369-383.

Bustelo, M. 2016. Three decades of state feminism and gender equality policies in multi-governed Spain. *Sex Roles*, 74(3-4), pp.107-120.

Carrasco, A., Francoeur, C., Labelle, R., Laffarga, J., & Ruiz-Barbadillo, E. (2015). Appointing women to boards: is there a cultural bias?. *Journal of Business Ethics*, *129*(2), 429-444.

Claessens, Stijn, and B. Burcin Yurtoglu. "Corporate governance in emerging markets: A survey." *Emerging markets review* 15 (2013): 1-33.

Davidson-Schmich, L.K. 2006. Implementation of political party gender quotas: Evidence from the German Länder 1990–2000. *Party Politics*, 12(2), pp.211-232.

Ferreira, Daniel. "Board diversity: Should we trust research to inform policy?." *Corporate Governance: An International Review* 23, no. 2 (2015): 108-111.

Haussman, M. and Sauer, B. eds. *Gendering the state in the age of globalization: women's movements and state feminism in postindustrial democracies*. (Rowman & Littlefield Publishers: 2007).

Hellum, A., 2017. Norwegian Equality and Anti-discrimination Reform in an Individualist and Market-oriented Context. *NORA-Nordic Journal of Feminist and Gender Research*, 25(3), pp.211-216.

Hughes, M.M., Paxton, P. and Krook, M.L. 2017. Gender Quotas for Legislatures and Corporate Boards. *Annual Review of Sociology*, (0).

Iliev, Peter, Karl V. Lins, Darius P. Miller, and Lukas Roth. "Shareholder voting and corporate governance around the world." *The Review of Financial Studies* 28, no. 8 (2015): 2167-2202.

Judge, W.Q. and Talaulicar, T. 2017. Board Involvement in the Strategic Decision Making Process: A Comprehensive Review. *Annals of Corporate Governance*, **2**(2), pp.51-169.

Keay, Andrew. "Comply or explain in corporate governance codes: in need of greater regulatory oversight?." *Legal Studies*34, no. 2 (2014): 279-304.

Klarsfeld, Alain, Lize AE Booysen, Eddy Ng, Ian Roper, and Ahu Tatli, eds. *9.78 E+ 12: Country Perspectives on Diversity and Equal Treatment*. Edward Elgar Publishing, 2014.

Kogut, Bruce, Jordi Colomer, and Mariano Belinky. "Structural equality at the top of the corporation: Mandated quotas for women directors." *Strategic Management Journal* 35, no. 6 (2014): 891-902.

Lang, S. 2007. Gender governance in post-unification Germany: Between institutionalization, deregulation and privatization. *Changing state feminism*, pp.124-143.

Low, Daniel CM, Helen Roberts, and Rosalind H. Whiting. "Board gender diversity and firm performance: Empirical evidence from Hong Kong, South Korea, Malaysia and Singapore." *Pacific-Basin Finance Journal* 35 (2015): 381-401.

Martín-Ugedo, J.F. and Minguez-Vera, A. 2014. Firm performance and women on the board: Evidence from Spanish small and medium-sized enterprises. *Feminist Economics*, 20(3), pp.136-162.

Martín-Ugedo, Juan Francisco, and Antonio Minguez-Vera. "Firm performance and women on the board: Evidence from Spanish small and medium-sized enterprises." *Feminist Economics* 20, no. 3 (2014): 136-162.

Matsa, David A., and Amalia R. Miller. "A female style in corporate leadership? Evidence from quotas." *American Economic Journal. Applied Economics* 5, no. 3 (2013): 136.

McCahery, Joseph A., Zacharias Sautner, and Laura T. Starks. "Behind the scenes: The corporate governance preferences of institutional investors." *The Journal of Finance* 71, no. 6 (2016): 2905-2932.

McHarg, A. and Nicolson, D. 2006. Justifying affirmative action: Perception and reality. *Journal of Law and Society*, 33(1), pp.1-23.

Neuwirth, J. 2005. Inequality before the law: Holding states accountable for sex discriminatory laws under the Convention on the Elimination of All Forms of Discrimination Against Women and through the Beijing Platform for Action. *Harv. Hum Rts. J.*, *18,* p.19.

Paredes, T. 2006. The Importance of Corporate Law: Some Thoughts on Developing Equity Markets in Developing Economies. *Pac. McGeorge Global Bus. & Dev. LJ*, *19*, p.401.

Rhode, Deborah L., and Amanda K. Packel. "Diversity on corporate boards: How much difference does difference make?" *Del. J. Corp. L.* 39 (2014): 377.

Schiek, D. 1996. Positive action in community law. *Industrial Law Journal,* **25**(3), pp.239-246.

Terjesen, S., Aguilera, R.V. and Lorenz, R. 2015. Legislating a woman's seat on the board: Institutional factors driving gender quotas for boards of directors. *Journal of Business Ethics*, 128(2), pp.233-251.

Terjesen, Siri, Ruth V. Aguilera, and Ruth Lorenz. "Legislating a woman's seat on the board: Institutional factors driving gender quotas for boards of directors." *Journal of Business Ethics* 128, no. 2 (2015): 233-251.

Terjesen, Siri, Ruth V. Aguilera, and Ruth Lorenz. "Legislating a woman's seat on the board: Institutional factors driving gender quotas for boards of directors." *Journal of Business Ethics* 128, no. 2 (2015): 233-251.

Threlfall, M., 2013. Women's Movement in Spain. *The Wiley-Blackwell Encyclopedia of Social and Political Movements*.

Tricker, RI Bob, and Robert Ian Tricker. *Corporate governance: Principles, policies, and practices*. Oxford University Press, USA, 2015.

Verloo, M.M.T. 2016. Mainstreaming gender equality in Europe: a critical frame analysis.

Verriest, Arnt, Ann Gaeremynck, and Daniel B. Thornton. "The impact of corporate governance on IFRS adoption choices." *European accounting review* 22, no. 1 (2013): 39-77.

Legislations

ACT, F. 1992. Treaty on European Union. *Official Journal C, 191*, p.29.

Basic Law for the Federal Republic of Germany.
Charter of Fundamental Rights Of The European Union. *Communities*, **100**(364/8).
Discriminatory Act (Sweden)
Equality Acts 2006 (UK)
Equality Acts 2007 (UK)
Federal Law on Equality in the Public Service (Germany).
Gender Equality Act 1978 (Norway).
Gender Equality Duty 2007 (UK).
General Equal Treatment Act (Germany).
German Stock Corporation Act
Law 27/2003 (Spain)
Law 62/2003 (Spain)
LOV-2013-06-21-59 (Norway)
Norway Companies Act 2003
Organic Law 3/2007 (Spain)
Sex Discrimination Act 1975 (UK)
Swedish Companies Act
Swedish Corporate Governance Code
UK Equality Act 2010

Websites

Alison Smale & Clare Caine Miller, Germany Sets Gender Quota in Boardrooms, THE NEW YORK TIMES (Mar. 6, 2015), http://www.nytimes.com/2015/03/07/world/europe/german-law-requires-more-women-on-corporateboards.html?_r=0

Branson, Douglas M., Women on Boards of Directors: A Global Snapshot, University of Pittsburgh Legal Studies Research Paper No. 2011-05, 1 (Feb. 16, 2011), available at http://ssrn.com/abstract=1762615.

Brzezińska, Agata. "Gender equality in the case law of the European court of justice." (2009).

Douglas M. Branson The Journal of Corporation Law Initiatives to Place Women on Corporate Boards of Directors—A Global Snapshot , The Journal of Corporate Law (37), 2012, available at: http://blogs.law.uiowa.edu/jcl/wp-content/uploads/2013/03/A3-Branson.pdf

European Commission, 'Company law and corporate governance' 2017. Online http://ec.europa.eu/justice/civil/company-law/index_en.htm

European Commission, 'Corporate governance' 2017. Online http://ec.europa.eu/justice/civil/company-law/corporate-governance/index_en.htm

European Commission, 'Fact Sheets on the European Union' 2017. Online http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.3.8.html

European Commission, 'Legislative powers 2017. Online http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00004/Legislative-powers

European Commission, 'Regulations, Directives and other acts' 2017. Online https://europa.eu/european-union/eu-law/legal-acts_en

European Commission, 'Women on Boards: Commission proposes 40% objective'. Online http://ec.europa.eu/justice/newsroom/gender-equality/news/121114_en.htm#Press

Ferreira, Daniel, and Tom Kirchmaier. *Corporate boards in Europe: size, independence and gender diversity*. Cambridge University Press, 2013.

Fino, J. 2017. *UK lags behind many EU countries on gender board diversity*. [Online]. [Accessed 9 December 2017]. Available from: http://economia.icaew.com/en/news/february-2017/uk-lags-behind-many-eu-countries-on-gender-board-diversity

Government Equalities Office. 2017. *Think, Act, Report Mending The Gap*. [Online]. [Accessed 11 December 2017]. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/371077/Think__Act__Report__mending_the_gap.pdf

The Guardian Editorial Team. 2017. *Women occupy less than a quarter of UK board positions*. [Online]. [Accessed 9 December 2017]. Available from: https://www.theguardian.com/business/2016/apr/27/women-uk-board-positions-gender-equality-europe

Abstract

While women now make up the majority of graduates across the developed world, they make up a smaller share of the workforce the further up the corporate ladder one goes. Policy makers in The European Union share a stated commitment to eradicating gender discrimination. With a view of understanding the legal implications of various corporate laws and public legislations and policies, this paper discusses legal strategies of improving gender diversity in corporate boards with particular interest on policies in the United Kingdom, Sweden, Germany, Spain and Norway. It also examines purposed and substantive gender discrimination laws within the EU and evaluates the manner in which identified strategies are likely to distort and undermine the role of corporate laws. No EU Member State has achieved the 40% gender target in corporate boards. The paper concludes that good corporate governance through compliant corporate laws is achievable only if companies do not feel that public policies and legislations are retrogressive to their existence. Holding this observation constant, modification of corporate legislations could lead to more diverse corporate boards. Further, inasmuch as public policies and legislations are important in determining issues of good corporate governance, modification of corporate laws is the most appropriate way of realizing gender equality in corporate board representation. The paper further concludes that irrespective of the legal system used by a country, the final success of corporate laws and public legislations and policies rely on political goodwill. Complexity of gender mainstreaming structures and institutions does not necessarily translate into better gender representation in corporate boards.

Abstrakt

Während Frauen in den Industrieländern inzwischen die Mehrheit der Absolventen ausmachen, machen sie einen geringeren Anteil der Belegschaft aus, je weiter die Karriereleiter hinaufreicht. Die politischen Entscheidungsträger in der Europäischen Union teilen eine erklärte Verpflichtung zur Beseitigung der geschlechtsspezifischen Diskriminierung. Im Hinblick auf das Verständnis der rechtlichen Implikationen verschiedener gesellschafts- und öffentlich-rechtlicher Vorschriften und Bestimmungen, evaluiert dieser Beitrag rechtliche Strategien zur Verbesserung der Geschlechterdiversität in Unternehmensvorständen, mit besonderem Augenmerk auf die Politik in Großbritannien, Schweden, Deutschland, Spanien und Norwegen. Darüber hinaus werden die in der EU geltenden Gesetze zur geschlechtsspezifischen Diskriminierung untersucht und die Art und Weise bewertet, in der identifizierte Strategien die Rolle von Unternehmensgesetzen wahrscheinlich verfälschen und untergraben. Kein EU-Mitgliedstaat hat bislang das Gender-Ziel von 40% in Unternehmensvorständen erreicht. Dieser Beitrag kommt zu dem Schluss, dass eine gute Corporate Governance durch die Einhaltung von gesellschaftsrechtlichen Bestimmungen nur dann erreicht werden kann, wenn die jeweiligen Unternehmen erkennen, dass die Existenz solcher öffentlichen Maßnahmen und Gesetze nicht rückschrittlich sind. Wenn diese Beobachtung konstant gehalten wird, könnte eine Änderung der Unternehmensgesetzgebung zu einer Vielfalt von Unternehmensvorständen führen. Da die öffentliche Meinung und Gesetzgebung bei Fragen von Corporate Governance eine wichtige Rolle spielen, ist die Änderung der gesellschaftsrechtlichen Vorschriften der geeignetste Weg, die Gleichstellung der Geschlechter in der Unternehmensvertretung zu verwirklichen. Dieses Papier kommt weiter zu dem Schluss, dass ungeachtet des von einem Land verwendeten Rechtssystems der endgültige Erfolg von unternehmens- und öffentlich-rechtlichen Bestimmungen auf politischem Wohlwollen beruht. Die Komplexität von Gender Mainstreaming-Strukturen und -Institutionen führt nicht notwendigerweise zu einer besseren Vertretung der Geschlechter in Unternehmensvorständen.