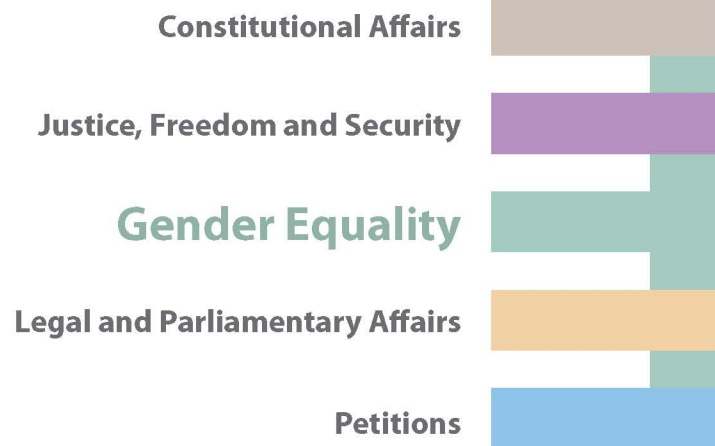


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Gender Quotas in Management Boards

NOTE



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

GENDER EQUALITY

Gender Quotas in Management Boards

NOTE

Abstract

The note reviews the evidence on the effectiveness of legal instruments as compared with voluntary regimes in narrowing the gender gap on corporate management boards. It finds that legal instruments to enforce quotas are an effective and fast means of achieving change. The use of voluntary regimes has led to some increase in the proportion of women on corporate boards, but the effects are significantly smaller and slower. The only instance of achieving 40% of each gender was through the use of legal instruments to enforce quotas. The note identifies and reports on the positions and recommendations of nine international bodies on this matter.

This document was requested by the European Parliament's Committee on Gender Equality.

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EXECUTIVE SUMMARY

The gender gap in corporate management boards has been described as an issue of justice, company economic performance and democracy. The note reviews the evidence on the effectiveness of legal instruments as compared with voluntary regimes in narrowing the gender gap on corporate management boards. It also reports on the recommendations of international bodies on this matter.

Attempts to narrow this gender gap in corporate management boards have drawn on an extensive repertoire of actions, ranging from legal instruments to voluntary regimes. The note identifies the several different forms of legal instruments and voluntary regimes. It finds that legal instruments to enforce quotas are an effective and fast means of achieving change. The use of voluntary regimes has led to some increase in the proportion of women on corporate boards, but the effects are significantly smaller and slower. The only instance of achieving 40% of each gender was through the use of legal instruments to enforce quotas. The use of voluntary regimes has led to some increase in the proportion of women on corporate boards, but the effects are significantly smaller and slower. Very recently further legal instruments have been introduced that take a wide diversity of forms, including of available sanctions; it is likely that such variations will have significant effects on the effectiveness of these legal instruments.

The note identifies and reports on the positions and recommendations of nine international bodies on this matter. These are: the European Parliament, European Commission, Council of Europe, United Nations (UN), OECD, European Women's Lobby, EC Network to Promote Women in Decision Making in Politics and the Economy, European Trade Union Confederation, and the World Economic Forum. All these bodies note the need to narrow the gender gap in economic decision-making and call for policy interventions into this process. They vary as to whether they recommend voluntary measures or legal instruments. There has been a significant recent shift in opinion and practice by governments towards quotas. The note reports on the recent development of legal instruments for quotas on corporate management boards in 13 countries: Austria, Belgium, Denmark, Finland, France, Iceland, Ireland, Israel, Italy, the Netherlands, Norway, Spain and Switzerland.

1. INTRODUCTION

The gender gap in corporate management boards is considered as both an injustice and a drag on company economic performance (McKinsey and Company, 2007; Terjesen et al, 2009; Davies, 2011). In 2010 only 3% of Presidents of the Boards of the largest companies in the EU27 were women as were only 12% of the Members of these Boards. This gender gap has narrowed only a little over recent years in most Member States of the EU.¹

Attempts to narrow this gender gap in corporate management boards have drawn on an extensive repertoire of actions, ranging from legal instruments to voluntary regimes. A series of recommendations and legislative activity has developed in the EU and beyond.

This note has two main parts. The first part reviews the most relevant and recent articles and studies dealing with the issue of gender quotas in corporate management boards and assesses their conclusions regarding the effectiveness of legal instruments in comparison with voluntary regimes. It identifies the several different forms of legal instruments and voluntary regimes; notes the range of evidence available to assess their effectiveness; reviews the literature assessing what works, distinguishing between the arguments about causes; and concludes. The second part provides an overview of the most important recommendations of international bodies regarding the improved participation of women in corporate management boards. It includes recommendations by European and international bodies, and notes recent legislative developments.

2. THE EFFECTIVENESS OF DIFFERENT MECHANISMS

2.1. Introduction

There is a repertoire of actions to narrow the gender gap in top corporate management. There are two major types of mechanisms: legal instruments and voluntary regimes.² Within each group there are significant variations in the practices. The next section details the nature of these legal instruments and voluntary regimes. Data on legal mechanisms are summarised in Annex I.

The key studies, reports and articles discussing the effectiveness of different mechanisms are reviewed. Data on changes in the gender composition of corporate boards are summarised in Annex II. Conclusions are drawn about the effectiveness of the use of legal instruments and voluntary regimes in narrowing the gender gap in top corporate management based on this review.

A considerable amount of the discussion about narrowing the gender gap in corporate boards has focused on its implications for justice, economic performance and democracy. The implications of narrowing the gender gap in corporate boards for these matters was not the focus of this note, which concerns the effectiveness of the different mechanisms for narrowing the gap, rather than the justification for narrowing the gap. A short summary of this other literature is provided in Annex III.

¹ Data from the European Commission Database on Women and Men in Decision-Making. See Annex II.

2.2. Types of mechanism

2.2.1. Legal instruments

This section focuses on legal instruments to narrow the gender gap on corporate management boards.³ The first law to enforce quotas on top corporate boards in a European country was introduced by Norway and it remains the only example of fully implemented legislation (in the sense that the date for meeting the target has passed). Several other countries (including some EU Member States) have recently introduced quota legislation; however, none have yet (in February 2012) reached the date by which it must be implemented. Hence there is considerable attention paid to the Norwegian case; but this is not to the exclusion of these further developments.

2.2.1.1. The Norwegian law

The Norwegian law was passed in 2003. On larger boards, 40% of the members were to be of each gender; a more detailed specification was made for smaller boards (if 2 or 3 members then there should be 1 of each gender; if 4 or 5 members, at least 2 of each; if 6-8 at least 3 of each; if 9 or more then 40%). The law applied to all publicly listed companies and to state owned and inter-municipal companies, later extended to all municipal companies. Companies had 5 years, until January 2008, to comply (though new companies formed after 2006 had to comply from the start). The law was passed as an Amendment to the Companies Act (so the ultimate sanction is de-registration and hence dissolution of the company) (Storvik and Teigen, 2010). The Act contained a clause that if the companies increased the representation of women on their boards to the required level of 40% by 2005 the Act would not come into effect, but this did not happen (Teigen, 2011). In January 2008, 77 companies (out of about 450) in breach received warning letters from the Bronnoysund Registration Center giving them 4 weeks to comply; in February 12 companies got a second letter; in April 2008 all were in compliance (Storvik and Teigen, 2010).

2.2.1.2. Variations in legal instruments

Several countries have recently enacted laws to introduce gender quotas on corporate management boards, including: Austria, Belgium, Denmark, Finland, France, Iceland, Ireland, Israel, Italy, Norway, Spain, Switzerland, and the Netherlands (Davies, 2011; EC Network, 2011; Pande and Forde, 2011; Visser, 2011; Lombardo, 2012). These laws vary in several important regards. Annex I summarises the legal provisions in different countries.

The variations in the legal mechanisms for the implementation of quotas include:

- the severity of the sanctions or penalties for non-compliance (closing down of companies e.g. Norway; comply or explain e.g. Netherlands);

² There is a third potential process, 'the pipeline' in which slow change in gender relations in society are considered to lead to equality everywhere, including corporate boards, without policy intervention. The remit of this paper is restricted to the mechanisms of policy interventions.

³ There are further legal instruments relevant to the creation of the environment in which gender gaps in the economy and decision-making are reduced, such as equal treatment legislation in employment and related matters (Walby, 2011); but these are treated as outside the scope of this report. For example, Burke and Vinnicombe (2008) recommend that targeted initiatives take place within a wider framework in which women's employment and career advancement is supported (e.g. affordable quality childcare; strong work-family reconciliation measures; paid parental leaves; gender equality in pay; anti-discrimination legislation; and shorter working hours).

- the type of law used (Norway used Company law, but had at an earlier date considered using equality law. Storvik and Teigen, 2010);
- the length and nature of the timescale for reaching the target (immediate; several years to implement; step by step implementation of different proportions; no target date);
- incentives (e.g. in Spain the potential to have priority status for government contracts);
- whether the law elapses after a certain period of time (e.g. temporary in the Netherlands and Italy);
- size thresholds for the inclusion of companies in law (e.g. Spain, companies with more than 250 employees and listed companies; smaller companies are sometimes exempted);
- the ownership structure of companies (publicly owned; limited liability; sold on stock exchange; private. The more public the more likely to be included);
- the range of positions included (Board Membership; other Senior Management; e.g. Norway Board only, Netherlands both);

Legal context, national legal frameworks may be more or less amenable to the introduction of quota law⁴ (e.g. French legislation was delayed by discussion of the constitutionality of affirmative action, before quotas were enacted in January 2011, Leclerc and Paddock, 2011).⁵

The newly introduced laws do not exactly copy the Norwegian law. One of the more important variations is the severity of the sanctions available to enforce compliance. In the Norwegian case the sanction of de-registration, effectively the dissolution of the company, was available through the use of company rather than equality law. Under the Italian law, non-compliance results first in sanctions, and ultimately in voiding of the board's actions (Lombardo, 2012; Bianco et al, 2011).

2.2.2. Voluntary regimes

A wide range of measures can be found within the category of 'voluntary regimes'. They include the use of the 'comply or explain' principle; transparency in promotion and recruitment processes; education and training initiatives; corporate governance codes; and charters promoting women in management. These measures have been clustered in different ways.

The Austrian Institute for SME Research (2010), working with several national partners across Europe, produced an inventory of non-legislative initiatives taken by national authorities, social partners and NGOs to promote gender equality in the workplace and

⁴ EU equality law permits the use of quotas in some employment circumstances: EU Treaty: Article 141 (4), Article 157 (4) Lisbon Treaty states: "With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers".

⁵ European Network of Legal Experts in the Non-Discrimination Field, workshop on positive action, annual conference, 4 October 2011, notes a forthcoming report on positive action (including company boards) by Selanec and Senden.

See Burri, S. (2011) 'Discussion Paper, Workshop 1, Positive Action.' Available at:

<http://www.non-discrimination.net/content/media/Positive%20Action%20-%20discussion%20paper.pdf>.

The concept of positive action is also discussed in: Burri, S. and Prechal, S. (2008) *EU Gender Equality Law*, Available at: <http://www.jafnretti.is/D10/Files/Evr%C3%B3pu%C3%B6g.pdf> and Fredman, S. (2009) *Making Equality Effective: the Role of Proactive Measures*. Available at: http://ec.europa.eu/justice/gender-equality/files/makeequalityeffectivefinal2009_en.pdf.

details initiatives taken by individual companies in different industrial sectors (24 multinational enterprises, 1 national company and 5 SMEs). Altogether 133 initiatives were identified and analysed, structured around the main types: labels; prizes/awards; charters; rankings/indices; and compendium of good practice. While some initiatives addressed all employers, others focused on enterprises active in specific sectors. Analysis of specific company initiatives identified seven fields of intervention: recruitment, reconciliation, retention, career opportunities, training, networking and communication. They note that these initiatives can also be further distinguished by the target group, such as all male and female employees, all female staff, or specific sub-groups of women and/or men.

Warth's (2009) review of strategies to promote gender equality in businesses draws on national responses to a questionnaire issued in the context of the 15 year review of the Beijing Declaration and Platform for Action. In addition to the voluntary measures identified above, she includes research and data collection initiatives, which are important in fostering awareness of gender equality and in monitoring progress (an example of this might be the e.g. European Commission Database Women and Men in Decision-Making).

A broader categorisation used by Visser (2011) divides voluntary measures into three categories: Good practice in companies (e.g. setting targets; developing training programmes); cross-company and sector initiatives (e.g. awards, charters); and industry self-regulation instruments (e.g. Corporate Governance Codes).

Good practice in companies: Examples of good practice include training and mentoring or sponsor programmes and the implementation of voluntary gender quotas at a company level (For details of best practices in specific companies see: European Commission, 2007; Maier, 2011; Thomson, 2011; Burke and Mattis, 2005).

Cross-company and Sector initiatives, including: awards, such as the long established 'Catalyst Award'⁶ for outstanding initiatives resulting in women's career advancement; charters (Women on the Board Pledge for Europe, European Commission, 2011a; the Danish Charter for more women in management, see Warth, 2009); databases of women interested in becoming board members (e.g. national databases in Norway, see Storvik and Teigen, 2011); networks (e.g. the European Professional Women's Network); and mentoring initiatives (e.g. the FTSE 100 Cross-Company Mentoring Programme, see Thomson, 2011; the Austrian Government's 'Women-Business-Mentoring Programme and a Cross-Mentoring project in the private sector, see Warth, 2009).

Industry Self-Regulation: The key example of industry self-regulation are Corporate Governance Codes,⁷ which tend to take form of guidelines rather than constituting binding measures, with non compliance requiring explanation in company reports (i.e. use of the 'comply or explain' principle). Corporate Governance Codes are adopted at a national level, and the EU framework promotes their application by requiring that listed companies refer to a code in their corporate governance statement and report on their application of that code (European Commission, 2011b).

The threat of legislation to compel an increase in the percentage of women on Boards if one is not forthcoming on a 'voluntary' basis lies somewhere in between these two forms of 'compulsion' and 'voluntary'. The threat of introduction of quotas in Sweden is sometimes seen as being part of the reason for the success of the 'voluntary' regime in raising the

⁶ Details available at: <http://www.catalyst.org/page/54/catalyst-award>.

⁷ For national codes, see: European Corporate Governance Institute <http://www.ecgi.org/>.

number of women on boards from 6% in 2002 to 22% in 2010 (*The Local*, 2012). In the UK, the Davies (2011: 2) report recommended a business led voluntary approach, but also that: 'Government must reserve the right to introduce more prescriptive alternatives if the recommended business-led approach does not achieve significant change'. The Norwegian law also deployed the threat of coercive action if targets were not reached, which was ultimately activated (Teigen, 2011).

2.3. Assessing effectiveness

2.3.1. What evidence?

This section reviews the effectiveness of legal instruments in comparison with voluntary regimes using evidence from data bases, academic reviews, reports from international bodies and governmental inquiries.

Annex II presents the data on changes in the gender composition of top corporate boards in the EU27 between 2003 and 2010, drawn from the European Commission Data-Base 'Women and Men in Decision-Making'⁸ (annual data collection covering the largest publicly listed companies in each country, covering the positions of president: chairman of the board of directors, and members: members of the board of directors).

There are further sources for data on the gender composition of top business positions including: the World Economic Forum,⁹ Catalyst¹⁰ and GlobeWomen Corporate Women Directors International.¹¹ This shows a similar picture of very small proportions of women in top business positions.¹²

Norway is the only case where legislation has been fully implemented. In several other cases while the law has been enacted, the date by which it must be implemented has not yet been passed. However, there is some evidence of significant increases following the recent adoption of quota legislation in France and Spain (Corporate Women Directors International, 2011).

2.3.2. Assessing the Norwegian case: legally enforceable quotas

Since Norway is the only instance of a fully implemented law on quotas, it is necessarily the main focus of discussions as to the success or otherwise of legally enforceable quotas. However, it is not unreasonable to consider whether the variations in the laws currently proceeding towards their implementation date might make a difference to their outcomes. The overwhelming majority of the studies reviewed consider that data on the increase in

⁸ Available at: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm.

⁹ Corporate Gender Gap Report 2010. Available at: http://www3.weforum.org/docs/WEF_GenderGap_CorporateReport_2010.pdf.

¹⁰ Catalyst (2011) 'Current Female Heads of Companies of the Financial Times Europe 500'. Available at: <http://www.catalyst.org/publication/522/current-female-heads-of-companies-of-the-financial-times-europe-500>.

¹¹ Corporate Women Directors International (2011) *Women Directors of the Fortune Global 200*. Washington: GlobeWomen. Available at: <http://www.globewomen.org/cwdi/CWDI%202011%20Fortune%20Global%20200%20Key%20Findings.htm>

¹² According to Catalyst, women hold 1.8% of Financial Times Europe 500 Chief Executive Officer (CEO) roles, with nine women leading companies ('Current Female Heads of Companies of the Financial Times Europe 500'. Available at: <http://www.catalyst.org/publication/522/current-female-heads-of-companies-of-the-financial-times-europe-500>). Data from 600 companies across 16 different industries in 20 OECD countries indicated that the average number of women holding the CEO level position was less than 5%; the highest percentage of female CEOs was found in Finland, Norway, Turkey, Italy and Brazil (between 11-13%) while 11 countries had no female CEOs among the companies responding to the survey (Corporate Gender Gap Report 2010. Available at: http://www3.weforum.org/docs/WEF_GenderGap_CorporateReport_2010.pdf).

women on corporate boards in Norway demonstrates that legal quotas are the most successful mechanism to narrow the gender gap in corporate boards (Hoel, 2008; Storvik and Teigen, 2010). Visser (2011: 10) concludes that progress on gender equality in economic decision-making has been 'glacially slow'. Legal quotas in law appear to be a speedy solution to this problem: 'This is a radical solution, but would certainly provide change quickly' (Atkinson, 2011: 248). In reviewing the change achieved in Norway following quota legislation, Hoel (2011: 86) concludes: 'The result by the end of 2007 is stunning, compared to international developments.' Despite years of effort in the form of voluntary initiatives in Norway, it was only with the implementation of a law with strong sanctions that rapid progress was achieved (Rasmussen and Huse, 2011; Hoel, 2008; Teigen, 2011). In the absence of quotas, there is a risk of progress stalling (Fagan et al, 2011).

The Norwegian law on quotas worked, in the sense that the proportion of women on corporate boards rose as intended. The percentage of women on corporate boards in Norway increased from 6% in 2002 to 9% in 2004, 12% in 2005, 18% in 2006, 25% in 2007, 36% in 2008, reaching 40% in 2009 (Storvik and Teigen, 2010).

There are no other countries where the percentage of women on corporate boards has reached 40%. The next highest countries are Sweden and Finland, which had 26% of members of top corporate boards in 2010, rising from 18% and 12% respectively in 2003. Sweden and Finland were among the countries that had introduced a voluntary regime, though in at least the Swedish case this has included a threat to legislate if the female presence did not increase. By contrast, in the same period within the EU27 there was a only small increase in the percentage of women on the top 50 corporate boards, from 9% in 2003 to 12% in 2010 (See Annex II for data from the European Commission Database on Women and Men in Decision Making).

However, a series of caveats have been raised. These do not challenge the main argument, which is that quotas are the most successful mechanism to narrow the corporate gender gap; rather they suggest that part of the change in the reported Norwegian statistics may be linked to other factors including: methodological issues in the category of companies affected, additional voluntary changes, more general societal changes, and a specific 'Nordic' effect.¹³

- The definition of the category of companies affected makes a difference to the size of the quota effect. A few companies changed their legal status from public to private in order to avoid the legislation, but this was a small minority of companies (Network to Promote Women in Decision-Making in Politics and the Economy, 2011; Ahern and Dittmar, 2010, cited in Pande and Ford, 2011). While the Norwegian statistics that show an increase from 6% in 2002 to 40% in 2009 are widely cited, the European Commission Database finds a change in Norway from 20% in 2003 to 39% in 2010.

¹³ There is a more theoretical debate about underlying causal pathways or explanations, but this is not the focus of this note, which is oriented to 'what works'. In summary, there are of two main types: first, human capital (skills, qualifications and expertise) and second, networks (are women known to the recruiters to boards) and discrimination (men are preferred) (Atkinson, 2011; Walby, 2011). The human capital argument concerns whether women have sufficient skills, qualifications and expertise to be appointed to boards equally with men. This approach is similar to that concerning the adequate 'supply' of qualified women along the 'pipeline'. There is evidence that new female recruits to boards are at least as well qualified as new male recruits and indeed are more highly educated (Terjesen et al 2008). Hence an insufficient 'supply' of qualified women is not an explanation of their lesser presence. This leaves the alternative explanations, that women do not have sufficient access to networks to be known to recruiters or that there continues to be discrimination against women (whether direct or indirect). The use of active policy interventions through legal mechanisms and voluntary regimes is necessary to address these causal pathways.

This EC database includes only the top 50 companies in each country; while the Norwegian data includes all publicly registered companies, since this is the pool of companies affected by the legislation. Thus methodological issues introduce caveats to the size of the effect, but these do not significantly affect the argument.¹⁴

- Norway did introduce additional voluntary measures at the same time as legally binding quotas. There were efforts to identify relevant women and also to train them to take places on Boards, in particular, four data bases of relevant women were established together with a training programme 'Female Future' (Storvik and Teigen, 2010). The Network to Promote Women in Decision-Making in Politics and the Economy (2011: 11) notes that a number of factors combined to contribute to the success of the Norwegian case, including the following voluntary measures: professional preparation (e.g. training) of qualified female candidates; stakeholder cooperation to create support systems; and the availability of female role models.
- While the wider social, political and economic context can influence the level of women's representation on corporate boards, there is a debate as to how significant this link is. On the one hand, Terjesen and Singh (2008) argue for a strong link based on a 43 country study; on the other hand, data from Storvik and Teigen (2010) cast doubt on the strength of this link, while Hoel (2008) offers data that shows that Norway had a different trajectory from other Nordic countries despite similarities in social structure.

Terjesen and Singh (2008) investigate the relationship between the gender gap in Board membership and gender gaps in management jobs (using the category of legislative, senior official and management occupations), pay (ratio of earned income of men and women) and timing of parliamentary representation. They create a data set of 43 countries using data from a range of sources, centred on 2003-5. They find that female board membership was positively related to higher levels of women in management jobs, which is the pool from which board members are drawn, and to lesser gender inequality in pay. The results on the relationship between Board membership and timing of parliamentary representation are complex. They suggest that they have found that recent participation by women in parliament is more strongly correlated with higher board membership than is earlier participation. However, the data is confounded by treating countries where boundaries between nations and states have been recently re-drawn as if they had no parliamentary tradition or history. Since this is a controversial interpretation, their findings on the link between boards and democracy are less robust. In sum, Terjesen and Singh (2008) show that higher levels of women in corporate boards correlate with higher levels of women in management jobs and with lower levels of gender inequalities in pay in their study of 43 countries.

However, data from Norway suggests that the wider social context is not sufficient to explain the dramatic increase in women's presence on corporate boards. In Norway, while the proportion of women on corporate boards rose, adjacent phenomena such the

¹⁴ A series of tangential issues have been raised that do not directly pertain to the question of what works to increase the proportion of women on corporate boards. There has been debate as to whether the holding of multiple board memberships by women reduces the increase in the overall number of women board members but this does not address the mechanism for reaching the quota target (Seierstad and Opsahl, 2011). There have been allegations that the quotas have a negative effect on women, undermining their professionalism through implying that success may not be due to merit; however, Rasmussen and Huse (2011) argue there is scant evidence for this view and most is anecdotal. Furthermore, in the case of Norway, the initial resistance and heated arguments gradually disappeared (Network to Promote Women in Decision-Making in Politics and the Economy, 2011; Visser, 2011; Hoel, 2008).

proportion of chairs of boards or of top management who are women has remained low. The proportion of the chairs rose only from 3% in 2002 to 5% in 2009; only 2% of CEOs are women; and only 10% of 'top management' is female (Storvik and Teigen, 2010). This shows that the increase in women on corporate boards was not part of a general change in the position of women in senior management.

- Hoel (2008) shows that the changes in the gender composition of corporate boards in Norway were not predominantly due to changes in the shared Nordic social structure. Norway has significant similarities in social, economic and political structure with other Nordic countries, including Denmark and Sweden. This means that if structural context was an important part of the explanation of the changes in the proportion of women in corporate boards, this should have increased in all three countries at the same time. Hoel (2008) presents data on the proportion of female directors in listed companies in the stock exchanges in Copenhagen (Denmark), Stockholm (Sweden) and Oslo (Norway) in 2004 and 2007. In this period, the proportion of female directors increased from 8.5% to 10.0% in Copenhagen, from 16.1% to 19.2% in Stockholm and from 15.9% to 37.0% in Oslo. Further Hoel (2008) notes the speed and timing of company compliance, which is indicative of specific efforts to meet the law rather than general social processes. In 2005 only 17% of companies were in compliance, rising to 30% in 2006, 38% in January 2007, 60% in July 2007 and 77% in December 2007.

Beyond the Norwegian case, there is variation in the legal mechanisms for the implementation of quotas in the new laws that are being enacted. It may be that these make considerable difference to the effectiveness of the law. For example, in the Norwegian case the use of 'company' law, rather than 'equality' law, enabled the use of the very strong sanction of dissolution of any company that did not comply. If the only sanction is a fine, it might be that the willingness to comply will be different. Any variations in outcome can be robustly assessed only after the date for reaching the target is reached, although a weaker effect if the sanction is a fine rather than the dissolution of the company would seem likely.

2.3.3. What are the effects of voluntary regimes?

The argument that legal instruments have been the only way in which the proportion of women on corporate boards has reached 40% does not mean that voluntary regimes do not have some influence on the gender composition of the boards. There is evidence that voluntary regimes make some difference; but it is overwhelmingly the case that it makes less difference and also that it acts more slowly. No country that has used only a voluntary regime has achieved 30% of women on corporate boards, let alone the 40% that has been achieved with legally compelled quotas. This does not mean that it is impossible, just that it has never happened. There are several studies on voluntary regimes, identifying their components, discussing the reasons why they have effects and why these are relatively limited.

Fagan et al (2011) find that 'soft law' recommendations in Corporate Governance Codes are more common than quotas and that their effectiveness varies. They conducted individual analyses of 8 EU countries (Finland, France, Hungary, Norway, Spain, Slovenia, Sweden, and UK) and note the degree of variation in the observed effect of these codes, having had some impact in Norway, Finland and Spain but no major impact in others.

A key problem in 'soft law' appears to lie in the satisfactory application and monitoring of Corporate Governance Codes, an issue that is being consulted on by the European Commission in its green paper on the EU Corporate Governance Framework (European Commission, 2011b). A study of monitoring and enforcement mechanisms (soft law and legislation) in EU Member States reached the following conclusion:

The comply-or-explain approach formally adopted by the European Commission in 2006 enjoys wide acceptance by the corporate as well the institutional investor community. However, its practical implementation suffers some deficiencies, mainly in the form of an unsatisfactory level and quality of information on deviations by companies and a low level of shareholder monitoring (RiskMetrics Group, 2009: 188).

In their study of non-legislative measures, the Austrian Institute for SME Research (2010) suggest that since the initiatives are only one element amongst a host of factors affecting gender equality, it is almost impossible to assess the direct impact. Nevertheless, observations of increasing participation in initiatives and media interest led the Institute to conclude that most of the analysed initiatives could be judged as successful. Such initiatives are also important in terms of creating a broader public awareness of gender issues in the labour market. Factors promoting company acceptance of initiatives (which indirectly impacts upon effectiveness) were identified. These include the flexibility of initiatives (e.g. sensitivity to company size); adaptation in relation to labour market changes; professionalism in organisation of initiatives (e.g. clarity and support for participants); clear monitoring and evaluation criteria; publicity (which can benefit the enterprise as well as improve awareness); and binding commitments with the engagement of management. At the same time, various obstacles were identified, including: a lack of diversity in terms of participating companies (e.g. popularity of initiatives with corporate leaders compared with the difficulty in recruiting smaller companies); engagement in times of economic crisis; and achieving a balance between the quality of an initiative (inducing change in crucial areas) and its accessibility (to secure a company's voluntary engagement). In a comparison of the initiatives in terms of likelihood of achieving long-term effects and sustainable change, it is concluded that each has different advantages and disadvantages and are variously appropriate according to the specific situation (e.g. size of company). More generally, they note that positive initiatives are easier to enforce politically than punishments, and can be valuable in motivating companies to make changes in organizational structures.

Warth (2009) makes similar observations in her discussion of strategies to promote gender equality in businesses, noting that voluntary measures raise public awareness of important issues and can contribute to creating a consensus for more far-reaching measures by governments, social partners and employers. Further, cultural change is perceived as more likely with the voluntary commitment of stakeholders rather than with forced engagement through legislative actions.

McKinsey and Company (2007) investigated which type of company initiative was likely to be more effective, using as evidence interviews with 12 companies noted for their progress in terms of women's representation in the boardroom and top management. They identified four best practices for the development of gender diversity: create transparency by implementing gender diversity key performance indicators; implement measures to facilitate work-life balance (i.e. flexible working hours; long-term career flexibility); adapt the human resource process to ensure systems do not prevent women's advancement; and help women master dominant company codes and nurture their ambition (e.g. via network-building and mentoring).

Voluntary regimes are very varied. There are some examples of effectiveness at the company level and in particular countries (Foust-Cummings, 2008; Austrian Institute for SME Research, 2010; Warth, 2009). Voluntary measures can make contributions towards change by, for example, raising public awareness and promoting change in organisational practices; however, change by such methods has usually been slow and partial (Warth, 2009; Austrian Institute for SME Research, 2010; Thomson, 2011). There is a widely held view that 'soft' programmes are a useful accompaniment to 'hard' measures (e.g. Warth, 2009).¹⁵

2.4. Conclusions

The only policy intervention to have increased the proportion of women on corporate management boards to 40% is that of the legal instrument of quotas. Legal instruments to enforce quotas are an effective and fast means of achieving change. The use of voluntary regimes has led to some increase in the proportion of women on corporate boards, but the effects are significantly smaller and slower.

The evidence base for the literature assessing the different effects of the two approaches is limited by the existence of only one example of a fully implemented law, although there are several voluntary regimes. However, the extent of the critical attention devoted to the Norwegian case suggests that this is a robust finding.

There is considerable variation among the legal instruments that are being recently introduced as well as in the measures contained within voluntary regimes. It is likely that these variations will be important in shaping the outcomes of policies. While it is not possible to be definite about the implications of variations in legal instrument until the target date set by the law is reached, it is likely that the selection of legal instrument (company or equality law) and severity of the sanction (from company dissolution to fine) may have significant impact on compliance. It is already the case that variations in voluntary practices, not least the nature and extent of the pressure to comply 'voluntarily', have been shown to affect the rate of narrowing of the gender gap. This means that in addition to the choice between legal instrument and voluntary regime, decisions about the type of method used are also important.

While the separation of legal instruments and voluntary regimes is generally clear in most cases, there is no reason why in practice they should not be combined. The use of voluntary measures as an accompaniment to legal instruments is widely supported. Further, there are some measures that straddle the two, such as the threat to impose legal sanctions if voluntary measures do not achieve their targets.

¹⁵ Warth (2009: 20) recommends a mix of policies: (a) Systematic analysis of the causes for obstacles to women's career progression; (b) Concrete commitments by employers and social partners to promote equal opportunities at work; (c) Establishment of transparent recruitment and promotion procedures; (d) Further development of mentoring for women and support through professional networks; (e) The introduction of mandatory gender quotas in economic decision-making bodies to establish gender balance and to create role models for women.

3. INTERNATIONAL RECOMMENDATIONS

The most recent significant recommendations on the international level regarding the increased participation of women in corporate management boards are reported below. The bodies include the European Parliament, European Commission, Council of Europe, United Nations (UN), Organisation for Economic Co-operation and Development (OECD), European Women's Lobby, European Commission (EC) Network to Promote Women in Decision Making in Politics and the Economy, European Trade Union Confederation, and the World Economic Forum. The level at which these recommendations have been made varies significantly, from fully agreed policy ratified by many countries, to statements made by senior officers of these institutions.¹⁶ They vary significantly in the extent to which they are tightly worded recommendations about gender gaps in corporate management boards or are general statements about the importance of including women in economic governance and top jobs.

A range of countries has recently introduced legal instruments and voluntary regimes to narrow the gender gap in corporate boards. The legal developments are summarised in Annex I; they are not discussed here since they are not 'international recommendations'.

3.1. European Parliament

The European Parliament has called for action on gender gaps in economic governance. A report¹⁷ in June 2011 on Women and Business Leadership from the Committee on Women's Rights and Gender Equality was followed in July 2011 by the European Parliament adopting a resolution¹⁸ which supported the Commission's action in March 2011 (see below, 4.2). The resolution called for the Commission to propose legislation, including quotas, by 2012 if the steps taken by companies and member states to reach the targets of 30% female representation in management bodies by 2015 and 40% by 2020 are found to be inadequate. It also called for data on female representation in all types of companies in the EU, and measures taken to increase representation, to be presented as soon as possible.

The resolution referred to previous actions in this area, including the report and resolution on Corporate Governance in Financial Institutions. The Committee on Economic and Monetary Affairs report¹⁹ called on the Commission to improve female representation on the boards of directors of financial institutions, emphasising that greater diversity would tend to reduce the sector's vulnerability to crises, contribute to stability, and improve the

¹⁶ Statements are not included if they appear to have no official sanction. For example, this report of the view of the new Managing Director of the IMF was not included since it dates to when she held a previous position. Christine Lagarde, when French Finance Minister, was quoted as stating: "I have now changed my mind about quotas... however offensive" they may seem to their detractors, as she dropped her opposition to the quota bill in France in 2010. Boulton, L. and Hill, A. (16.11.10) 'Lagarde embraces quotas at FT conference', *Financial Times*. Available at:

<http://www.ft.com/cms/s/0/a219537c-f1b0-11df-bb5a-00144feab49a.html#axzz1IX56eNkF>.

¹⁷ European Parliament, Committee on Women's Rights and Gender Equality, Rapporteur Rodi Kratsa-Tsagaropoulou (9.6.2011) Report on women and business leadership. A7-0210/2011. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0210+0+DOC+PDF+VO//EN>.

¹⁸ European Parliament (2011) Resolution of 6 July 2011 on women and business leadership P7_TA(2011)0330. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-0110330&language=EN&ring=A7-2011-0210>.

¹⁹ European Parliament, Committee on Economic and Monetary Affairs, Rapporteur Ashley Fox. (24.3.2011) Report on corporate governance in financial institutions. A7-0074/2011. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2011-074&language=EN>.

quality of debate and decision making. The resolution²⁰ on Corporate Governance welcomed the Commission's Green Paper and recognised that while a 'one size fits all' approach would be inappropriate given the diversity of both corporate structures and approaches to their regulation across the EU, strong minimum standards were nevertheless required to ensure good governance across the financial sector. It called on the Commission to:

32. ... submit a plan to bring about phased increases in gender diversity with the aim of achieving at least 30% representation for each gender on the boards of directors of financial institutions, to ensure that this target is met within a foreseeable period and to consider measures to strengthen diversity in terms of professional, social and cultural background.

3.2. European Commission

Capital Requirements Directive (Impact Assessment)

An impact assessment (European Commission, 2011c: 158) accompanying the recast Capital Requirements Directive reports on changes in board membership in countries implementing gender quotas and comments: 'If the goal is to accelerate the numbers of women on Boards in a short period of time, the figures... tend to show the effectiveness of legislated quotas in increasing the numbers of women directors.'

Equality between Women and Men

The European Commission *Strategy for Equality between Women and Men 2010-2015*²¹ (2011e: 20), notes actions to be taken by the Commission regarding decision-making include:

Consider targeted initiatives to improve the gender balance in decision making.

The Commission recognises that getting more women into senior positions is crucial for Europe's future economic growth and stability (European Commission, 2010a; European Commission, 2011d). The Strategy for Equality translates the principles in the EC Women's Charter²² into specific measures. The Charter²³ restates and strengthens the Commission's commitment to making equality between women and men a reality, with a 'pledge to dedicate the necessary resources to realise it' (European Commission, 2010b: 3). One of the Charter's (2010b: 4) principles regards equality in decision-making:

We reaffirm our commitment to pursue the fairer representation of women and men in positions of power in public life and the economy. We will use our powers,

²⁰ European Parliament (2011) Resolution of 11 May 2011 on corporate governance in financial institutions. P7_TA(2011)0223. Available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0223>.

²¹ European Commission (2011e) *Strategy for Equality between Women and Men 2010-2015*. Luxembourg: Publications Office of the European Union. Available at:

http://ec.europa.eu/justice/gender-equality/files/strategy_equality_women_men_en.pdf.

²² Europa (5.3.10) IP/10/237 'EC strengthens its commitment to equality between women and men.' Available at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/237&format=HTML&aged=0&language=EN&guiLanguage=en>.

²³ European Commission (2010b) *A Strengthened Commitment to Equality between Women and Men. A Women's Charter*. Available at:

http://ec.europa.eu/commission_2010-2014/president/news/documents/pdf/20100305_1_en.pdf.

including Union incentive measures, to promote a greater share of women in positions of responsibility.

The Vice-President of the European Commission responsible for Justice, Fundamental Rights and Citizenship, Viviane Reding stated that:

*"To get the engine of growth going again, Europe should make better use of women's talents. I have not been an advocate of quotas for women in senior business posts in the past, but given the lack of progress in this area, we might in the future have to consider taking initiatives at the European level. I plan to meet with the chief executives of major publicly listed European companies in spring 2011 to discuss the situation and the scope for determined self-regulation. Depending on the outcome of this dialogue with industry, I will consider whether further initiatives will be necessary in 2012".*²⁴

In March 2011, the Commission met with business leaders and social partners to discuss measures to improve gender balance in decision making. The Commission will monitor progress over the next 12 months.²⁵ Reding said that she believed self-regulation could make a difference, but if it fails then she was prepared to take further action at an EU level. She called on publicly listed companies to sign up to the 'Women on the Board Pledge for Europe' by March 2012, voluntarily committing to increasing women's presence on corporate boards to 30% by 2015 and 40% by 2020. The Vice-President said that:

*"A year from now on International Women's Day (8 March 2012), the Commission will assess whether there is significant progress and whether credible self-regulatory initiatives were developed to enhance women's participation in decision-making. If this has happened by March 2012, I will congratulate the European business world. If it has not happened, you can count on my regulatory creativity".*²⁶

Corporate Governance

The Commission's consultation on the EU's Corporate Governance Framework²⁷ has addressed the issue of Board diversity with regard to gender. Media reports²⁸ also suggest that mandatory quotas to ensure at least 30% female representation amongst directors on the boards of banks were originally included in the draft Capital Requirements Directive.

3.3. Council of Europe

Recommendation CM/Rec(2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms, which calls on governments to take or reinforce necessary measures to implement gender equality in practice, addresses the issue

²⁴ Europa (29.9.10) IP/10/1149 'Giving Europe a female touch'. Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1149&format=HTML&aged=0&language=EN&guiLanguage=en>.

²⁵ Europa (1.3.11) IP/11/242 'EU Justice Commissioner Viviane Reding meets European business leaders to push for more women in boardrooms.' Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/242&format=HTML&aged=0&language=EN&guiLanguage=en>.

²⁶ Europa (1.3.11) MEMO/11/124 'EU Justice Commissioner Reding challenges business leaders to increase women's presence on corporate boards with "Women on the Board Pledge for Europe".' Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/124>.

²⁷ European Commission (2011b) Green Paper: The EU Corporate Governance Framework. Available at: http://www.ecgi.org/commission/documents/eu_corporate_governance_framework_5apr2011_en.pdf.

²⁸ Treanor, J. (21.6.11) 'EU calls for women to make up one-third of bank directors', *The Guardian*.

of equality in economic life. The recommendation states that 'elements indicating states' political will and commitment to gender equality' in this regard include:

30. vi) adoption/existence and implementation of legal and administrative measures to promote women's equal participation in economic decision making, including implementation of plans for gender balanced participation in boards and other decision-making structures of economic and financial institutions and private enterprises;²⁹

In 2009 the Committee of Ministers renewed its commitment to equality between women and men, adopting the 'Declaration: Making gender equality a reality' (COM (2009)68). The declaration urged member states to commit themselves fully to closing the gap between law and reality, including action with regard to economic life:

2. ... Adopt and implement specific policies and action plans at different levels and ensure their adequate financing; enable positive action or special measures to be adopted in order to achieve balanced participation, including representation, of women and men in decision-making in all sectors of society, in particular in the labour market and in economic life as well as in political and public decision-making;³⁰

In Resolution 1825 (2011), 'More women in economic and social decision-making bodies', the Parliamentary Assembly stated that 'a balanced representation of women and men at all hierarchical levels, including top management, is a matter of justice, respect for human rights and good governance'. The text added that such representation was conducive to productivity and profitability. The Assembly considered quotas positively, believing that the experience of quotas in the political arena could be transposed into the private sector and socio-economic domain. The Resolution included a call for member states to:

- 7.10. set an example by adopting action plans aimed at improving the representation of women in decision-making bodies in all branches of administration, at local, regional and central levels, as well as in state-owned companies;
- 7.11. adopt legislation requiring that public and private institutions achieve a minimum 40% representation of women in management and decision-making positions within a clearly defined time frame, and put in place the necessary mechanisms for monitoring the implementation of such legislation;
- 7.12. introduce the obligation for state-owned and large private companies to guarantee a minimum 40% representation of women on their governing and management boards;

And for member states to encourage companies, firms and associations in the private and voluntary sector to:

Burgess, K. and Tait, N. (26.6.11) 'Quota plan for female bank chiefs faces axe', *Financial Times*.

²⁹ Council of Europe (2011: 173) *'Make equality in law a reality in fact: Compilation of recommendations of the Committee of Ministers in the field of equality between women and men'*. CM/Rec(2007)17. Available at: http://www.coe.int/t/dghl/standardsetting/equality/O3themes/gender-equality/Compilation_rec_CM_en.pdf.

³⁰ Council of Europe '119th Session of the Committee of Ministers (Madrid, 12th May 2009). Declaration: Making gender equality a reality'. COM(2009)68. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1441675&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

- 8.5. introduce rules aimed at ensuring balanced representation of women and men in top management and decision-making bodies, guaranteeing a minimum 40% representation of women on governing and supervisory boards.³¹

3.4. United Nations

The UN³² **Convention on Elimination of all forms of Discrimination Against Women**³³ contains provisions on the equal participation of women and men in decision making:

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 10 regards equality of rights in the field of education, crucial for women's subsequent advancement to senior positions. **Article 11** calls on State Parties to take measures to ensure equality of men and women in the field of employment, including:

1. (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

Article 11 contains provisions to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, including:

³¹ Parliamentary Assembly, Council of Europe, Resolution 1825 (2011) 'More women in economic and social decision-making bodies.' Available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1825.htm>.

³² For further discussion of international actions on gender equality in employment, see: Wirth, L. (2004) *Breaking through the Glass Ceiling: Women in Management*. ILO: Geneva.

³³ CEDAW. Available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro>.

2. (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

Article 4 allows for the adoption of particular measures to address inequality:

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The **Beijing Platform for Action**³⁴ adopted in 1995 at the UN Fourth World Conference for Women calls for measures to ensure women's equal access to and full participation in power structures and decision making, and increase their capacity to participate in decision-making and leadership.³⁵ It calls for action to:

178. g) Eliminate occupational segregation, especially by promoting the equal participation of women in highly skilled jobs and senior management positions, and through other measures, such as counselling and placement, that stimulate their on-the-job career development and upward mobility in the labour market...³⁶

The **Women's Empowerment Principles: Equality Means Business**, the result of a collaboration between the United Nations Development Fund for Women (UNIFEM, part of UN Women) and the United Nations Global Compact, offer business guidance on how to empower women in the workplace, marketplace and community.³⁷ The principles are the following:

1. Establish high-level corporate leadership for gender equality.
2. Treat all women and men fairly at work – respect and support human rights and non discrimination.
3. Ensure the health, safety and well-being of all women and men workers.
4. Promote education, training and professional development for women.
5. Implement enterprise development, supply chain and marketing practices that empower women.
6. Promote equality through community initiatives and advocacy.
7. Measure and publicly report on progress to achieve gender equality.

³⁴ Beijing Declaration and Platform for Action. Available at: <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>.

³⁵ Women in Power and Decision-making. Available at: <http://www.un.org/womenwatch/daw/beijing/platform/decision.htm>.

³⁶ Women and the Economy. Available at: <http://www.un.org/womenwatch/daw/beijing/platform/economy.htm>.

³⁷ See: http://www.unglobalcompact.org/Issues/human_rights/equality_means_business.html.

Under Principle 2, guidance includes:

Implement gender-sensitive recruitment and retention practices and proactively recruit and appoint women to managerial and executive positions and to the corporate board of directors.

Assure sufficient participation of women – 30% or greater – in decision-making and governance at all levels and across all business areas.³⁸

The **International Labour Organisation** (a United Nations agency) promotes gender equality in education and work, for example, through the 2009 International Labour Conference resolution concerning gender equality at the heart of decent work.³⁹ Its policy on gender equality is operationalized in the ILO Gender Equality Action Plan 2010-2015.⁴⁰

In 2007, the **World Bank** (a United Nations agency) launched the Gender Action Plan: Gender Equality as Smart Economics.⁴¹ A transition plan for 2011-13 was delivered in 2010 to apply the lessons from the Gender Action Plan initiatives.⁴² Both emphasise the importance of women's economic empowerment.

3.5. OECD

The OECD announced its Gender Initiative which addresses gender equality in education, employment and entrepreneurship in 2011. The initiative states:

'The need to introduce quotas for women in boardrooms or in senior management is being widely debated and, conditional on data availability, deserves further analysis to understand its benefits in terms of women's employment outcomes and firm performance.'⁴³

At the MENA (Middle East and North Africa) OECD 2010 Conference on Gender Equality in Government and Business in Paris, one session discussed the pros and cons associated with quotas in politics and corporations. In the draft conclusions of the conference, participants:

Noted that they may not necessarily be in support of quotas, but that evidence has proven that the introduction of quotas is the most efficient means to enhance women's participation in both the public and the private sector.⁴⁴

³⁸ *Women's Empowerment Principles*, available at:

http://www.unwomen.org/wp-content/uploads/2011/10/Women-s-Empowerment-Principles_en.pdf.

³⁹ International Labour Conference, 98th Session, 2009, Report VI Gender equality at the heart of decent work, Geneva: ILO. Available at:

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/elconf/documents/meetingdocument/wcms_105119.pdf

⁴⁰ Available at:

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_141084.pdf.

⁴¹ See Four-Year Progress report. Available at:

http://siteresources.worldbank.org/INTGENDER/Resources/4year_progress_report_May5.pdf.

⁴² Available at:

http://siteresources.worldbank.org/INTGENDER/Resources/3360031241561860207/GAPtransitionplan_may25.pdf.

⁴³ Organisation for Economic Co-operation and Development (2011: 38) *Gender Initiative. Gender Equality: Education, Employment, Entrepreneurship*. Available at:

<http://www.state.gov/documents/organization/171239.pdf>.

⁴⁴ OECD (2010: 2) 'Conclusions' MENA-OECD Conference on Gender Equality in Government and Business. Available at: <http://www.oecd.org/dataoecd/3/50/45157326.pdf>

3.6. European Women's Lobby

In their 'Statement concerning EU Legislation for the Equal Representation of Women and Men on Corporate Boards'⁴⁵, the European Women's Lobby (EWL) emphasise the importance of *binding* measures, referring to the example of Norway where non-binding legislation failed to have significant impact. The EWL comment on the actions already taken by other countries and calls for European legislation to ensure a consistent approach across the EU. The EWL recommends that the EU and Member States:

1. Adopt new legislation requiring European listed and non-listed public companies with more than 50 employees and all state-owned companies to have 40% of women on their boards of directors by 2015 and 50% by 2020, and that includes effective sanctions for non-compliance.
2. Introduce measures to increase the number of women holding the positions of company president or chair.
3. Limit the number of board positions that one person can hold.
4. Introduce accompanying measures to support enterprises in the implementation of such measures and empower women.
5. Use the on-going review of the EU public procurement regulation and the legislation on public procurement in Member States to make it possible to favour companies with a balanced representation of women and men in Boards and that implement other measures to actively promote equality between women and men.
6. Address the root causes of women's under-representation in economic decision-making in corporations and in public institutions at national and EU level, including in relation to work/life balance.⁴⁶

3.7. EC Network to Promote Women in Decision Making in Politics and the Economy

The EC Network to Promote Women in Decision Making in Politics and the Economy was established in 2008, under the European Commission's roadmap for equality between women and men 2006-10.⁴⁷ Members include representatives of the European Platform of Women Scientists, European Women Lawyers' Association, Women's Forum for the Economy and the Society.

In a report on the quota-instrument and the different approaches adopted across Europe, the Network offer key points of advice to improve women's representation in decision-making functions on corporate boards, including one relating to legislation:

Quota legislation has proven to be the most effective tool to accelerate board diversity and reach meaningful levels of women's representation on companies' boards. It should therefore be encouraged widely.

A further point regards corporate governance codes:

⁴⁵ European Women's Lobby (2011) 'Statement concerning EU Legislation for the Equal Representation of Women and Men on Corporate Boards'. Available at: <http://www.womenlobby.org/spip.php?article2176&lang=en>.

⁴⁶ European Women's Lobby (2011: 2) 'Statement concerning EU Legislation for the Equal Representation of Women and Men on Corporate Boards'. Available at: <http://www.womenlobby.org/spip.php?article2176&lang=en>.

⁴⁷ Advisory Committee on Equal Opportunities for Men and Women (2007) *Opinion on EU Network of Women in Economic and Political Decision-Making Positions*. Available at: ec.europa.eu/social/BlobServlet?docId=6235&langId=en.

Best practices on corporate governance codes need to be shared, especially in countries where the debate has not started yet. Involvement of the private sector is crucial and can be the precursor to significant change without legislation.⁴⁸

In their submission to the Consultation on EU Corporate Governance, the European Women Lawyers' Association (EWLA)⁴⁹ stated that the most effective means of achieving greater gender balance on boards is by introducing quota requirements, accompanied by sanctions. The EWLA stated their strong support for the Commissioner Viviane Reding's initiative.

3.8. European Trade Union Confederation

In response to a European Commission consultation on corporate governance, the European Trade Union Confederation agreed with the question '*Should listed companies be required to ensure a better gender balance on boards?*'. They state that while they support the Commissioner Viviane Reding's initiative "Women on the Board Pledge for Europe", which represents a voluntary commitment by publicly listed companies to increase women's presence on corporate boards to 30 per cent by 2015 and to 40 per cent by 2020, they:

... would like to note that voluntary approaches have not proven to be very successful in the past. Therefore, the Commission should consider introducing binding measures if companies do not improve the gender balance on boards.⁵⁰

3.9. World Economic Forum

A quota for participants at the annual meeting in Davos was implemented for the first time in 2011⁵¹ in an attempt to bring about greater gender equality amongst attendees. The Forum's partners (around 100 companies) were told that out of every group of 5 senior executives attending, 1 must be a woman. However, according to reports, female delegates still accounted for only 17% of the total attending the meeting this year.⁵²

3.10. Conclusions

The note identifies and reports on the positions and recommendations of nine international bodies on this matter. These are: the European Parliament, European Commission, Council of Europe, United Nations (UN), OECD, European Women's Lobby, EC Network to Promote Women in Decision Making in Politics and the Economy, European Trade Union Confederation, and the World Economic Forum.

All these bodies note the need to narrow the gender gap in economic decision-making and call for policy interventions into this process. They vary as to whether they recommend

⁴⁸ European Commission's Network to Promote Women in Decision-making in Politics and the Economy (2011: 16) 'The Quota-instrument: Different approaches across Europe. Working Paper' available at: http://ec.europa.eu/justice/gender-equality/files/quota-working_paper_en.pdf.

⁴⁹ EWLA (22.7.11) Statement. Consultation on Green Paper on EU Corporate Governance Framework available at: http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/individual-replies/ewla_en.pdf.

⁵⁰ ETUC (2011: 7) Response. Consultation on the Green Paper 'An EU Framework for Corporate Governance', available at: http://ec.europa.eu/internal_market/consultations/2011/corporate-governance-framework/registered-organisations/etuc_en.pdf.

⁵¹ Moya, E. (1.1.11) 'Davos imposes gender quota', *The Guardian*.

⁵² Martinson, J. (27.1.12) 'Davos: if women are the future, where are they?', *The Guardian*. Reported on a meeting of the forum's female leaders and the forum gender parity board to discuss a document setting out best practices to increase diversity (e.g. mentoring and sponsorship), to be published in March 2012.

voluntary measures or legal instruments. There are several statements that note the slowness and lack of success of voluntary methods in reaching their targets. There has been a recent increase in the use by national governments of legal measures to enforce quotas to narrow the gender gap on corporate management boards.

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ANNEX I

Legal instruments (quotas) to narrow the gender gap in corporate management boards in European and OECD countries

Country (Year introduced)	Applicability	Target for female representation	Year to be reached	Penalties for non-compliance
Austria (2011)	Companies owned 50%+ by state.	2 phases: 25% 35%	2 phases: 2013 2018	No sanctions.
Belgium (2011)	Phased timing by company legal status: State-owned companies Listed companies Small and medium sized listed companies; companies with less than 50% shares listed.	1/3	Phased timing by company legal status: 2012 2016 2018	Temporary loss of financial and non-financial benefits by board members.
Denmark (2000)	State-owned companies.	30%	Immediate	
Finland (2004)	State-owned companies.	40%	2005	
France (2011)	Listed companies; companies with 500+ employees or turnover/asset of €50m+.	2 phases: 20% 40%	2 phases: 2013 2016	Annulment of board appointments.
Iceland (2006)	State-owned and municipal-owned companies.	50% (or as close as possible)	Immediate	
Iceland (2010)	Public and private limited companies with 50+ employees.	40%	2013	

Ireland (2004)	State-owned companies.	40%	No deadline	
Israel (1993)	State-owned companies.	30%	No deadline	
Italy (2011)	Listed companies; companies with public participation and state-ownership.	2 phases: 20% 30%	2 phases: 2012 2015	Verbal sanction by regulatory body (Consob); fine; voiding of board's actions.
Norway (2003)	Public limited companies; state-owned companies; inter-municipal companies.	40%	2008	Official warning; fines; ultimate delisting and dissolution.
Spain (2007)	Public limited companies with 250+ employees.	40%	2015	No penalties; incentive: potential priority status for government contracts.
Switzerland (2006)	State-owned companies.	30%	2011	
The Netherlands (2010)	All companies (regardless of listing, ownership, private/public) with 250+ employees (or turnover criteria).	30% in boards and senior management	2016	No sanctions in law. Comply or explain in annual report and publish action plan to address.

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ANNEX II

Percentage of Presidents and Members of the Boards of Largest Companies who are Women in EU27 and Norway, 2003 and 2010⁵³

	President		Members	
	2003	2010	2003	2010
EU-27	2	3	9	12
Austria	0	0	6	9
Belgium	2	0	6	10
Bulgaria	0	13	11	11
Cyprus	3	5	6	4
Czech Republic	-	9	-	12
Denmark	2	0	11	18
Estonia	0	7	15	7
Finland	0	4	12	26
France	2	3	5	12
Germany	0	3	10	13
Greece	0	0	7	6
Hungary	4	8	11	14
Ireland	0	5	7	8
Italy	4	3	2	5
Latvia	10	9	15	23
Lithuania	-	3	-	13
Luxembourg	0	0	4	4
Malta	-	6	-	2
Poland	-	5	-	12
Portugal	2	0	4	5
Romania	0	0	17	21
Slovakia	0	10	7	22
Slovenia	6	6	20	10
Spain	2	3	3	10
Sweden	0	0	18	26
The Netherlands	0	0	8	15
United Kingdom	0	0	15	13
Norway	2	13	20	39

⁵³ **SOURCE:** European Commission Database: Women and Men in Decision Making. Available at: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm

Notes to table:

- = not applicable , : = not available

Organisations covered The companies covered are the largest publicly listed companies in each country. Publicly listed means that the shares of the company are traded on the stock exchange. The "largest" companies are taken to be the members (max.50) of the primary blue-chip index, which is an index maintained by the stock exchange covering the largest companies by market capitalisation and/or market trades. Only companies which are registered in the country concerned are counted.

Positions covered President: Chairman of the board of directors (supervisory board in case of separated supervisory and executive functions); Members: Members of the board of directors (supervisory board in case of separated supervisory and executive functions). Count includes the chairman.

Main sources of data: Company websites; Stock-exchange websites; Company annual reports.

ANNEX III

The implications of narrowing the gender gap on corporate boards for business

While this report is focused on the merits of one route or another to narrowing the gender gap on corporate boards, this debate is taking place in the context of an adjacent debate on the implications of narrowing the gender gap on corporate boards for business. This Annex summarises the discussion of the evidence on this issue.

The narrowing of the gender gap on corporate management boards has been addressed in debates on quotas as important for justice, skills and democracy (Storvik and Teigen, 2010).

There has been increasing notice of evidence that gender diversity on corporate boards is a 'good thing' for business performance (e.g. McKinsey and Company, 2007; Thomson, 2011; Carter and Wagner, 2011), not only the 'right thing' from a justice perspective.

While some (e.g. Fagan et al, 2011), consider that the empirical evidence is not definitive, given the difficulties in attributing cause in observed correlations (Storvik and Teigen, 2011: 10), an increasing number of studies suggest that increasing the diversity of boards and especially the inclusion of women improves company performance. One authoritative and frequently cited assessment of the link between women on boards and company **performance** was conducted by McKinsey and Company (2007). Across 101 companies, those with three or more women in senior management functions scored higher on measures of organisational excellence (as evaluated by employees) than those companies with no women at the top. A second analysis selected 89 European listed companies with the highest level of gender diversity in top management. Examination of company financial performance (in terms of return on equity, operating result and stock price growth) showed that these companies, on average, had a higher performance than the average for their sector.

In another study using data from 127 large American firms, Erhardt et al (2003) found a positive association between executive board diversity and firm financial performance (as measured by returns on assets and investments).

Warth (2009) also emphasises the benefits that can accrue to companies. She notes that creating better opportunities for women to progress in corporations widens the **talent pool** for firms and can improve both **recruitment** and **retention** of talent, which also reduces costs in terms of hiring and training new employees.

While there have been reports of a link between the presence of women on boards and poorer performance (e.g. Judge, 2003), this may be explained by what has been referred to as the 'glass-cliff' phenomenon. Ryan and Haslam's (2005; 2007) study suggest women are over-represented in precarious leadership positions. They examined archival data on performance of FTSE 100 companies before and after appointment of a male or female board member. They find that during period of stock market decline those companies appointing women to their boards were more likely to have experienced consistently bad performance in preceding months than those appointing men.

Evidence also suggests that achieving a '**critical mass**' of women may be important for the positive influence of having women on corporate boards (Erkut et al, 2008; Rose, 2007; Torchia et al, 2011; McKinsey and Company, 2007). Using survey data from 317 Norwegian

firms, for example, Torchia et al (2011) found that a critical mass of at least three women on company boards was required to exert a significant effect on the level of a firm's organizational innovation, with a mediating role played by the boards' involvement in the strategic process (e.g. decision-making on goals). They suggest that as a minority of only one or two, women remained 'tokens'.

While the number of female chairs in Norwegian companies remains low (Storvik and Teigen, 2011; Fagan et al, 2011), some evidence suggests women's presence on boards of directors does lead to '**spillovers**' (Matsa and Miller, 2011). Data on female share of board membership and the top five executives from a large sample of publicly traded US companies indicate that female representation on corporate boards had a subsequent impact on the gender composition of top management. Matsa and Miller suggest that this relationship could be amplified in the long-term by, for example, the presence of more female role models and mentors.

Since the financial crisis, an increasing amount of attention has focused on the association between gender and **governance**, with the proposal that gender diversity on boards is linked to improved governance and that diversity could have actually lessened the impact of the financial crisis (Davies, 2011; House of Commons Treasury Committee, 2010). Evidence seems to suggest that diversity on boards goes some way to preventing 'group think' (Thomson, 2011; House of Commons Treasury Committee, 2010).

It has been observed that even in Norway there has been a relatively limited impact on the percentage of women leading companies as CEO or Chair. Nevertheless, at 13% it is still far higher than the EU 27 average of 3% in 2010 and evidence suggests that greater representation at the level of boards could have positive effects on women's representation at more senior levels (Matsa and Miller, 2011; Joy, 2008; Terjesen and Singh, 2008).

Quotas can be seen as one means of achieving the 'critical mass' necessary to bring about changes in board dynamics and wider corporate cultures, and can be used to 'kick-start' attitudinal change (Erkut et al, 2008; Villiers, 2010).

Quotas have been seen as one means of ensuring that talent is not wasted, and with regard to the proposed positive association between gender diversity and improved performance, Thomson (2011: 159) concludes that while association does not mean cause: 'It seems fair to say that insofar as the business case for appointing more women to boards is provable, it is proven'.

Quotas have the advantage of simultaneously achieving another European aim, the reform of corporate governance in interests of economic stability and preventing further financial crises. In this way, economic growth, governance reform and gender diversity should not be seen as discrete challenges but rather closely interconnected issues (Thomson, 2011).

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