STUDY

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Women on Boards Policies in Member States and the Effects on Corporate Governance

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Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, provides an overview of women on board policies in the EU Member States. analyses, in more detail, policies and practices as well as their impact on women's board presentation in Spain, France, Italy, the Netherlands and Germany. The study concludes by recommending a timely adoption of the proposed Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012) 614).

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LIST OF ABBREVIATIONS

CEO	Chief Executive Officer
CGC	Corporate Governance Code
CSR	Corporate Social Responsibility
EIGE	European Institute for Gender Equality
EU	European Union
NFRD	Non-Financial Reporting Directive
PIE	Public Interest Entity
ROA	Return on Assets
ROE	Return on Equity
ROI	Return on Investment

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Background

Corporate governance is concerned with how power and control over resources and decision-making in a company are distributed among various actors through formal structures and processes. Corporate boards are an important corporate governance mechanism. Boards approve major strategic and financial decisions and monitor a company's management. Boards also provide advice and counsel to managers, for example by providing expertise in specific areas and contributing to the setting of strategy. In other words, boards are the arena in which the most important economic decisions are made in companies.

In all Member States, men make up the majority of board directors and women are under-represented. This under-representation of women on boards is one of the key gender gaps in the European Union. Without closing this gender gap in board representation, gender equality in economic decision-making cannot be reached.

In recent years, attention to the gender gap on boards has heightened, and an increasing number of Member States have introduced regulation intended to facilitate women's access to boards. Nine Member States have introduced gender quotas for boards. In 18 Member States, Corporate Governance Codes have been amended to include recommendations for the representation of women on boards.

At the EU-level, the Non-Financial Reporting Directive (NFRD)[1] obliges companies to disclose in their corporate governance statement their diversity policies in relation to their administrative, management and supervisory bodies. The proposal for a Corporate Sustainability Reporting Directive (CSRD) [2], submitted in April 2021, specifies that the diversity policies must include a reference to gender. A proposal for a Directive on improving the gender balance among non-executive directors of listed companies[3], submitted in 2012, has not yet been adopted.

Concurrent with this increased attention and regulation, women's share of directorships has grown in recent years. Despite considerable progress in some Member States, very few boards are gender-balanced groups in which men and women each make up between 40 and 60 percent of members. The gender gap remains particularly high in executive directorships, while progress has been greater regarding non-executive directorships. Furthermore, the vast majority of board chair and committee chair positions are held by men.

[1] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

[2] Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting.

[3] Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures.

Aim

This study provides an overview of the women on board policies in the EU Member States. It first compares the board gender quota laws in place in nine Member States. It shows when the quota laws were introduced, and highlights the differences regarding the quota target level. The laws differ in whether or not they fall short of requiring gender-balanced boards, and in how far-reaching the requested change was compared with the representation of women on boards at the time the law was introduced. The laws also differ regarding whether public listing or company size are the criteria used to define the companies to which the quotas apply, and this results in very narrowly to very widely defined scope, and relatedly, an easy or difficult to identify group of companies. The laws vary regarding their duration: some are permanent and others are temporary. The laws also vary regarding whether or not they specify sanctions for non-compliance, and what those sanctions are. The most commonly prescribed sanction for non-compliance is the "open seat".

The study then compares the recommendations regarding board gender diversity in corporate governance codes. It shows that the nine Member States that have a gender quota for corporate boards also have corporate governance codes that include recommendations for board gender diversity. In addition, nine of the Member States that do not have a gender quota nevertheless have corporate governance codes that include recommendations for board gender diversity. This means that there is a third group of nine Member States in which there is no regulation of board gender composition via quota laws or soft law in the form of corporate governance codes.

In Member States that have a gender quota law, the recommendations in the corporate governance codes often reflect the wording of the quota law. In countries without a quota law, the recommendations are often of a rather general and vague nature. Many lack any numerical target and recommend that gender diversity should be considered as an aspect of board composition. In some codes, women's presence on boards is folded into in a broader diversity recommendation, naming other demographic factors such as age and nationality of directors, or referring to diversity in experience and qualifications.

The implementation of code recommendations relies on the 'comply or explain' principle, meaning that companies must either comply with the recommendations contained in the code or explain why not in their annual reports. There are no sanctions.

The NFRD, which all Member States have had to transpose into national law, also relies on disclosure requirements in order to nudge companies to draw up diversity policies for their boards.

This study then provides in-depth information about the women on board policies and their implementation in five Member States. It compares developments in Spain, France, Italy, the Netherlands, and Germany.

The comparative analysis of these five Member States shows that in four of them, legislation has been extended and tightened since its original introduction. The trend after several years' experience with quota legislation is clearly to continue down this path in order to increase and/or maintain a more gender-balanced representation of women and men on boards and to ensure that the achievements brought about by the quota legislation do not remain limited to non-executive directorships. Countries that had introduced temporary quotas have extended them, indicating that the need for regulation is still seen as necessary, and that initial hopes that legislation would only be needed for a short time period have been dispelled.

The comparison also shows that legislation without sanctions – as in Spain and the Netherlands – is less effective in achieving the quota targets than legislation with sanctions. Furthermore, the laws have been more effective in increasing the share of women among non-executive directors than among executive directors.

A comparison of the Corporate Governance Codes reveals that in four countries, the Codes do no more than mirror legislative requirements. In Spain, by contrast, the Code specifies a target of 40 percent within a clear timeframe. In each of the five Member States, existing Codes were amended to include a reference to gender on boards around the time that quota legislation was drafted. The Codes were not the initiators of change regarding board gender composition but rather kept pace with legislative developments.

This study provides an in-depth discussion of research findings about the effect of gender quotas. Research clearly shows that gender quotas are an effective policy for increasing the share of women on boards: countries with quotas have a higher share of women on their boards than countries without quotas. Research has also detected a "trickle-down effect" and shown that companies with women on their boards have more women among their CEOs, top executives, and managers. However, the findings regarding such a trickle-down effect are not unequivocal. Contextual factors may play a role in whether or not an increase in the share of women among board directors is associated with an improvement in women's access to decision-making positions below board level. In addition, more time may need to pass for such an effect to become apparent.

The study also discusses research on the effect of women's representation on boards on economic outcomes for companies. A large stream of research examines "business case" arguments for increasing the presence of women on boards that emphasize economic benefits for companies. Many of these studies indicate that appointing more women to boards will not only improve the financial performance of companies, but will also lead companies to behave in ways that are beneficial for stakeholders and for society as a whole. Nevertheless, such research findings must be carefully interpreted, as the relationships uncovered in individual studies between women's presence on boards and economic outcomes for companies may not be causal, and because the underlying arguments put forward to explain the findings frequently draw on gender stereotypes.

Another stream of research seeks to uncover how board work changes when women are included. It has been found that board discussions, decisions and interactions among board directors change in a positive way when boards become more gender-balanced.

This study summarizes in detail the proposed EU-level gender quota for non-executive directors. The proposal sets a gender quota target of 40 percent of non-executive members of the under-represented sex on the boards of listed companies.

The proposal was submitted by the European Commission (Commission) in November 2012. The European Parliament (Parliament) strongly supported legislative action in November 2013. Since then, the directive has been deadlocked and despite the efforts of recent Presidencies of the Council of the European Union, agreement has not yet emerged.

In considering the national policies and practices in the Member States and the research findings reviewed here, this study recommends adopting the proposed EU-level gender quota directive as an effective instrument for achieving gender equality in economic decision-making that complies with the principles of subsidiarity and proportionality.

1. GENERAL INFORMATION

This study provides an overview of three different types of policies used in the Member States in order to increase the representation of women on corporate boards. They are gender quotas, recommendations in corporate governance codes, and legally mandated disclosure requirements. The study outlines what is known about how effective these policies are in increasing the share of women among board directors. Then, research findings are presented regarding the effect of an increased presence of women on boards on corporate governance. The study summarizes the EU proposal and, finally, policy recommendations are provided.

Before beginning with the overview of the different types of policies, this section provides the necessary background information. It explains what corporate boards are and what role they play in corporate governance. It also provides information about the underrepresentation of women on corporate boards in the Member States.

1.1. Corporate Boards and Their Role in Corporate Governance

Corporate governance is concerned with how power and control over resources and decision-making in a company[4] are distributed among various actors through formal structures and processes. It can be defined as the rights and responsibilities of different stakeholders towards a company (Aguilera & Jackson 2003).

The corporate board is an important corporate governance mechanism. The board is responsible for approving major strategic and financial decisions. It monitors a company's management. It also provides advice and counsel to managers, for example by providing expertise in specific areas and contributing to the setting of strategy (Adams et al. 2010).

Within the Member States, there exist different types of board structures. A basic distinction is made between a unitary (one-tier) board structure whereby executive and non-executive directors serve on one board and a dual (two-tier) board structure where non-executive directors serve on a supervisory board and executive directors serve on a management board. In some countries, companies have a choice between both options (Mallin 2019).

Generally, shareholders elect the members of the board in the unitary system, and they elect the members of the supervisory board in the dual system. In some countries, employees elect some of the supervisory board members. Both types of board delegate some authority to managers – the unitary board appoints a group of managers (top management team), while in the dual system, the supervisory board appoints the members of the management board.

There is a greater formal distinction between the different roles of the board in the dual system than in the unitary system. In a unitary board structure, the board is responsible for all aspects of the company's activities. In the dual system, there is a clear distinction between the supervisory board's role in overseeing the direction of the company's activities and its responsibility for ensuring that financial reporting and control systems are functioning appropriately, and the management board's responsibility for running the business.

4 Company is used as a general reference to a single entity or a corporate group. There are no limits in the legal form or sector unless indicated.

Boards have regular meetings with an agenda regarding matters over which it has the formal right to make decisions. The board chair leads these meetings.

Boards may appoint subcommittees to which they delegate many activities. Common committees are the audit, remuneration and nomination committees. They have committee chairs, and they regularly report to the board. The audit committee is responsible for financial reporting and control. It may appoint and replace external auditors, monitor their independence, and review the outcome of the audit. The remuneration committee is concerned with determining the remuneration of the executive and non-executive directors. The nomination committee is concerned with the appointment of new directors.

1.2. Women's Underrepresentation on Corporate Boards

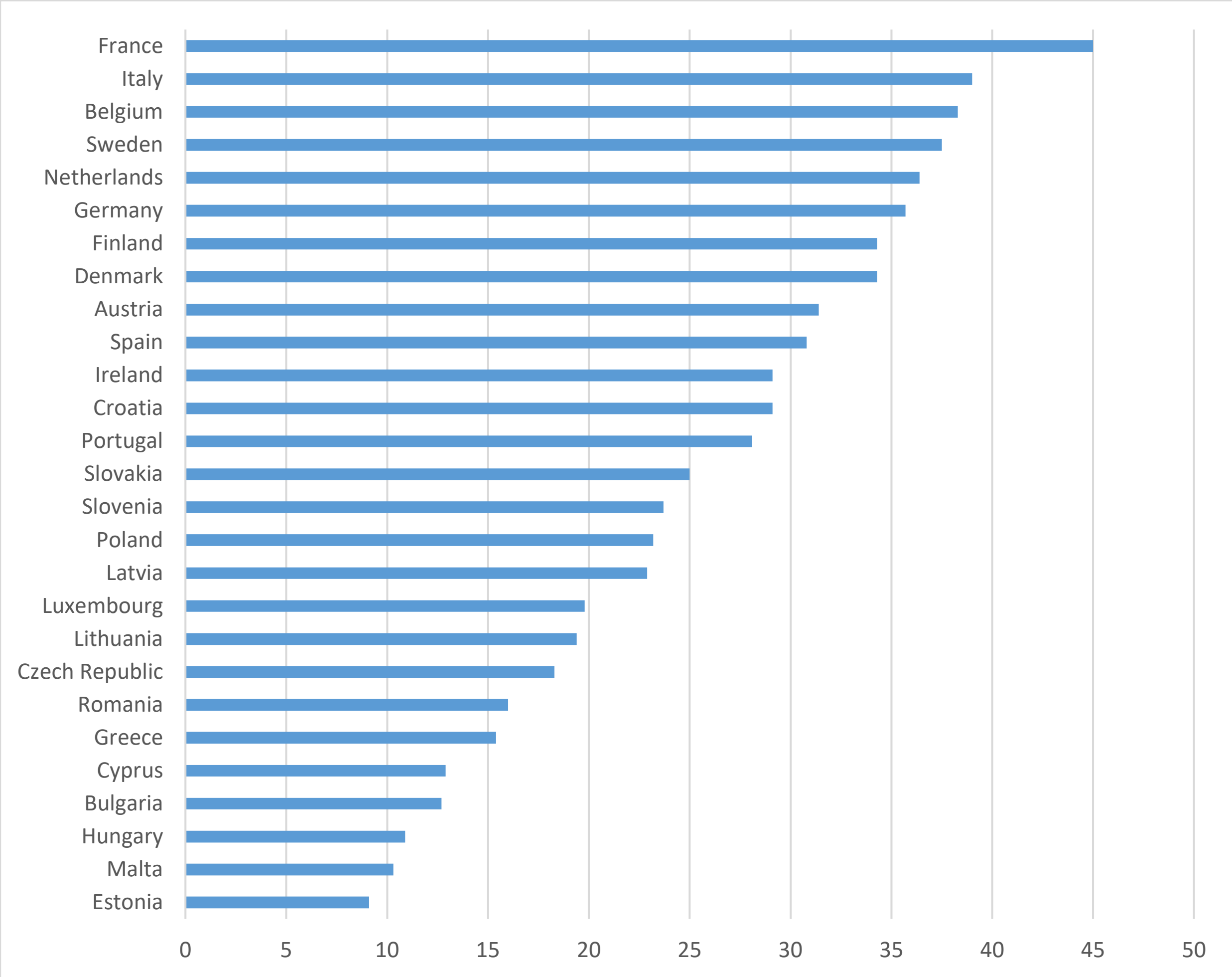
Around the world, men make up the majority of board directors. However, in recent years, attention to this fact has heightened in many countries. Women's underrepresentation on boards is increasingly documented and publicized by consulting companies, women's networks and research institutions [5]

Concurrent with this increased attention, women's share of directorships has grown in recent years. Figure 1 shows the increasing share of female directors in the companies in the primary stock indices of the Member States, as collected by the European Institute for Gender Equality (EIGE). However, it must be noted that a focus on the very largest stock-listed companies does not deliver a comprehensive picture of women's representation on boards, because the situation may be different in companies that do not belong to the very largest group and in companies that are not publicly listed. Women's representation on boards tends to be highest in the very largest, publicly listed companies depicted in Figure 1.

Furthermore, attention to board directorships in general does not illuminate women's access to board chair and committee chair positions, or their membership in committees. Women's share of such positions is lower than their share of board directorships. Figure 1 also does not distinguish between executive and non-executive directorships. Generally, women's share of executive director positions is significantly lower than their share of non-executive director positions.

[5] For example: Burgundy School of Business (2021), Deloitte (2019), Deloitte & Alliance for Board Diversity (2021), FidAR (2021), Kirsch & Wrohlich (2021a), Lückerath-Rovers (2021).

Figure 1: Women's Share in Percent Among Board Members of the Companies Listed in the Primary Blue-chip Index of EU-27 Countries in 2021



Source: The Gender Statistics Database (GSD) of the European Institute for Gender Equality (EIGE), last update 25.5.2021.

2. WOMEN ON BOARD POLICIES IN THE EU MEMBER STATES

Women's participation in decision-making in the *political* sphere has been on the agenda of several international and European organisations since the 1990s, but their participation in decision-making in the *economic* sphere did not gain attention until the mid-2000s, when Norway introduced a gender quota for corporate boards (Lépinard & Rubio-Marín 2018). Since then, the following three main policy approaches have been adopted for increasing women's representation on boards in the Member States:

- gender quota laws for boards,
- recommendations for the representation of women on boards in corporate governance codes, and
- laws that mandate disclosure about the representation of women on boards.

To date, nine EU Member States have introduced gender quota laws for company boards. These countries also have recommendations for the representation of women on boards in corporate governance codes. A further nine EU Member States have recommendations for the representation of women on boards in their corporate governance codes, but do not have a gender quota law. A final group of EU Member States have neither a gender quota nor recommendations for board gender diversity in their corporate governance codes. They are Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Lithuania, Malta, and Slovakia (Arndt & Wrohlich 2019).

The Non-Financial Reporting Directive (NFRD) requires companies to disclose their diversity policies in relation to their administrative, management and supervisory bodies. It has been implemented in national law in all Member States. However, the Directive allows companies to decide what aspects of diversity they report on. It does not explicitly oblige them to include information on gender.

Table 2 provides an overview and the following sections provide more in-depth information about the three types of policy used in the Member States.

Table 1: Women on Board Policies in the EU Member States

Country	Gender quota law	Gender diversity recommendation in CGC	Disclosure requirement about board diversity
Austria	✓	✓	✓
Belgium	✓	✓	✓
Bulgaria			✓
Croatia			✓
Cyprus			✓
Czech Republic			✓
Denmark		✓	✓
Estonia			✓
Finland		✓	✓

France	✓	✓	✓
Germany	✓	✓	✓
Greece	✓	✓	✓
Hungary			✓
Ireland		✓	✓
Italy	✓	✓	✓
Latvia		✓	✓
Lithuania			✓
Luxembourg		✓	✓
Malta			✓
Netherlands	✓	✓	✓
Poland		✓	✓
Portugal	✓	✓	✓
Romania		✓	✓
Slovakia			✓
Slovenia		✓	✓
Spain	✓	✓	✓
Sweden		✓	✓

Source: Based on Arndt & Wrohlich (2019), own additions.

2.1. Gender Quota Laws

Gender quotas define a proportion or number of positions to be filled by, or allocated to, women and to men. The past decades have seen a diffusion of gender quotas across various domains in many European countries. Quotas have been introduced not only for corporate boards, but also for legislative assemblies and public bodies. Lépinard and Rubio-Marín (2018) call this increasing requirement for women's presence in decision-making bodies a "gender quota revolution".

To date, nine Member States have introduced gender quota laws for company boards. The first country to introduce such a quota was Norway in 2003. Spain was the first EU Member State to introduce a quota in 2007. It was followed by Belgium, France, Italy and the Netherlands in 2011. Germany followed suit four years later, in 2015. In 2017, Austria and Portugal adopted a quota, and most recently, Greece adopted a quota in 2020.[6]

The quotas differ regarding their target level. The highest quota level is 40 percent (Spain and France, and most recently the Italian quota has been increased to this level), followed by 33 percent (Belgium, Portugal, and until recently, Italy), 30 percent (The Netherlands, Germany and Austria) and 25 percent (Greece).

These quota target levels differ regarding the effects that they will have on board composition. In her seminal work on the effects of relative numbers of women and men in work groups, Rosabeth Moss Kanter (1977) distinguishes between uniform, skewed, tilted and balanced groups. According to her research, gender-balanced work groups are those in which men and women each make up between 40 to 60 percent of group members. Only three quotas aim to establish gender-balanced boards – Spain, France, and the recently amended quota in Italy. The other quotas aim to establish tilted boards – in these boards, men are still the dominant group and women may still be treated as "tokens", i.e. as representatives of their category (women), rather than as individuals. However, there are enough women present that they can gain some power in group decision-making processes, and men are no longer able to control the group and its culture.

Mensi-Klarbach and Seierstad (2020) compared the quota target levels with the proportion of women already present on the boards of the largest listed companies in each country at the time the quota was introduced.[7] In this way, they were able to assess how progressive the quota targets are. They found that the German quota only requested a very small increase (<5 percent) in the representation of women on boards. The Dutch and Austrian quotas requested a small increase (5-15 percent), the French and Portuguese quotas requested a medium increase (15-20 percent), the Belgian and Italian quotas a large increase (20-30 percent) and the Spanish quota requested a very large increase (>30 percent). The Greek quota requested a small increase (around 12 percent).

[6] For more information on the quota in Greece, see European network of legal experts in gender equality and non-discrimination Flash Report, 16 September 2020, and the translation of the Corporate Governance Law 470/2020. The Greek quota entered into force on July 19, 2021, see Press Release of the Hellenic Capital Market Commission.

[7] Mensi-Klarbach and Seierstad (2020) used the data provided by The Gender Statistics Database (GSD) of the European Institute for Gender Equality (EIGE). It is important to note that this data only covers the very largest, publicly listed companies in each country. Generally, the representation of women on the boards of other companies is lower.

Table 3 provides an overview of the quotas' introduction, target levels, and change aims.

Table 2: Gender Quotas: Introduction, Target Level, Board Composition Aim and Requested Increase

Country	Quota introduction (year)	Quota target level (percent)	Board composition aim	Requested increase
Spain	2007	40	Gender balanced	Very large
Belgium	2011	33.3	Tilted	Large
France	2011	40	Gender balanced	Medium
Italy	2011	33.3, increased to 40	Tilted, then Gender balanced	Large
Netherlands	2011	30	Tilted	Small
Germany	2015	30	Tilted	Very small
Austria	2017	30	Tilted	Small
Portugal	2017	33.3	Tilted	Medium
Greece	2020	25	Tilted	Small

Source: Based on Mensi-Klarbach and Seierstad (2020), own additions.

Mensi-Klarbach and Seierstad (2020) compared the criteria used to define which companies the gender quota applies to. They found that these criteria are different for each country, but are generally based on either company size – which may be measured by number of employees, or the value of the company's assets or its returns – or on public listing, or a combination of both. In Germany, a further criterion was used, namely that a company's board is fully co-determined. However, the applicability of co-determination law to a company's board rests on company size measured by number of employees – so co-determination can be seen as another measure of company size.

The criteria used to define which companies the quota applies to have several consequences. First, they affect the scope of the quota law. In Germany, the quota law applies to around 100 companies, while in Spain and the Netherlands, several thousand companies are within the scope of the law. Mensi-Klarbach and Seierstad (2020) classify the scope of the quota laws based on how many companies a quota actually applies to in relation to its possible scope across the entire economy. They classify the scope of the quota in Germany as narrow, as medium/narrow in Italy, Austria and Portugal, as medium in Belgium and France, and as wide in Spain and The Netherlands. The scope of the quota in Greece is also medium.

Second, the criteria affect how easy or difficult it is to identify which companies the quota applies to. If the scope of the law is publicly listed companies, it is easy for the public to identify them via stock exchange listings and to monitor their compliance with the quota. It is much more difficult to identify which companies should be implementing the quota if company size is used as the criterion (Mensi-Klarbach & Seierstad 2020).

Table 4 provides an overview of the criteria and their consequences for the scope of the quota and the identifiability of the affected companies.

Table 3 Gender Quotas: Criteria for Applicability, Scope and Identifiability

Country	Criteria for applicability of quota	Scope	Identifiability of affected companies
Spain	Company size	Wide	Difficult
Belgium	Public listing	Medium	Easy
France	Public listing + Company size	Medium	Difficult
Italy	Public listing	Medium/Narrow	Easy
Netherlands	Public listing + Company size	Wide	Difficult
Germany	Public listing + Company size	Narrow	Easy
Austria	Public listing + Company size	Medium/Narrow	Difficult
Portugal	Public listing	Medium/Narrow	Easy
Greece	Public listing	Medium	Easy

Source: Based on Mensi-Klarbach and Seierstad (2020), own additions.

The quotas vary regarding their duration. Most quotas have no expiry date, but Italy and the Netherlands introduced temporary quotas. The Italian quota was designed to be valid for three board terms and to then lapse. However, it has been increased to a target level of 40 percent from 2020 onward and extended for another six board terms. The Dutch quota was initially limited to a period of three years and would have expired in 2016. It was extended to January 1, 2020. In early 2021, a new quota law with sanctions for non-compliance was adopted by the lower house of parliament. The law is not yet in force. It stipulates a quota target level of one-third of supervisory board directors of listed companies.

The quotas also vary regarding whether or not the law specifies sanctions for non-compliance, and what those sanctions are. The most commonly prescribed sanction for non-compliance is the "open seat". This means that vacant board positions may only be filled with a member of the under-represented sex. The appointment of a member of the over-represented sex is null and void. This sanction is prescribed in Belgium, France, Germany, Austria and Portugal. It is also specified in the proposed Dutch quota law. In addition, no board fees are paid to the remaining directors as long as the board position is not filled in Belgium and France. In Portugal, the company is fined if the board position is not filled within 360 days. The Italian quota law prescribes fines for companies that do not comply with the quota. In Greece, sanctions for the company and for board members are possible.

The Spanish and the original Dutch regulations do not specify sanctions. The Spanish regulation, however, provides an incentive for compliance: government contracts will only be awarded to companies that comply with the quota regulation. The Dutch regulation requires that companies explain if they do not comply – but there are no sanctions for failure to explain.

Table 5 provides an overview of the duration of the quota laws and the sanctions for non-compliance.

Table 4: Gender Quotas: Duration and Sanctions for Non-compliance

Country	Duration	Sanctions	Type of sanction
Spain	Permanent	No	
Belgium	Permanent	Yes	Open seats, suspension of board fee payments
France	Permanent	Yes	Open seats, suspension of board fee payments
Italy	Temporary	Yes	Monetary penalties
Netherlands	Temporary	No	
Germany	Permanent	Yes	Open seats
Austria	Permanent	Yes	Open seats
Portugal	Permanent	Yes	Open seats, monetary penalties
Greece	Permanent	Yes	Monetary penalties

Source: Based on Mensi-Klarbach and Seierstad (2020), own additions.

2.2. Recommendations in Corporate Governance Codes

Corporate governance codes are non-binding, voluntary measures designed to improve corporate governance practices. The diffusion of such codes around the world has taken place since the 1990s (Aguilera & Cuervo-Cazurra 2009).

There are corporate governance codes at international, national, and individual firm level. First, codes issued by transnational institutions such as the OECD or the International Corporate Governance

Network seek to promote the diffusion of good governance practices around the world. Second, codes issued by country-level institutions such as stock exchanges, national governments, or directors' professional associations seek to improve corporate governance practices at the national level. Third, some individual firms issue their own corporate governance codes in order to communicate their governance principles to stakeholders (Cuomo, Mallin & Zattoni 2016). All 27 EU Member States have country-level corporate governance codes. They apply to listed companies.

The implementation of corporate governance codes mostly relies on the 'comply or explain' principle, meaning that companies must either comply with the recommendations contained in the code or explain why not. However, codes differ regarding whether such disclosure of corporate governance practices is mandatory or voluntary. Disclosure can be required by the listing authority or by law, or it may be completely voluntary with no sanctions imposed if a company does not abide by the comply-or-explain principle.

Corporate governance codes generally include provisions about board nomination processes. However, these provisions may or may not refer to the issue of board gender diversity.

All the nine Member States that have a gender quota for corporate boards also have country -level corporate governance codes that include recommendations for board gender diversity. In addition, nine of the Member States that do not have a gender quota nevertheless have country-level corporate governance codes that include recommendations for board gender diversity.

The recommendations for board gender diversity in these codes may reflect the wording of the quota law. In countries without a quota, the recommendations are often of a rather general and vague nature. Many lack any numerical target and recommend that gender diversity should be considered as an aspect of board composition.

For example, the Latvian Corporate Governance Code of 2020 recommends that both sexes are represented in the supervisory board. The Romanian Code of 2015 states that "the Board and its committees should have the appropriate balance of skills, experience, gender diversity, knowledge and independence to enable them to effectively perform their respective duties and responsibilities".

In some codes, women's presence on boards is folded into in a broader diversity recommendation. For example, the Finnish Corporate Governance Code of 2020 states that "having both genders represented on the board of directors is one element of a diverse board composition" and recommends that "the company shall define and report principles concerning the diversity of the board of directors".

By contrast, the Swedish Corporate Governance Code stated as early as 2004 that "an equal gender distribution on the board is to be an aim".

Table 6 provides an overview of the corporate governance codes that have recommendations regarding board gender diversity and the year in which the topic of gender was first included in the code.

Table 5: Corporate Governance Codes with Recommendations Regarding Board Gender Diversity in EU Member States

Country	Corporate governance code	Year of first inclusion of provisions regarding gender in CGC
Countries with gender quota laws		
Spain	Unified Good Governance Code	2006
Netherlands	Dutch Corporate Governance Code	2008
Belgium	Belgian Code on Corporate Governance	2009
Austria	Austrian Corporate Governance Code	2009
France	Corporate Governance Code of Listed Corporations	2010
Germany	German Corporate Governance Code	2010
Italy	Corporate Governance Code	2011
Greece	Hellenic Corporate Governance Code For Listed Companies	2013
Portugal	Corporate Governance Code	2016
Countries without gender quota laws		
Sweden	Swedish Corporate Governance Code	2004
Finland	Finnish Corporate Governance Code	2008
Denmark	Recommendations on Corporate Governance	2008
Luxembourg	The X Principles of Corporate Governance of the Luxembourg Stock Exchange	2009
Ireland	The UK Corporate Governance Code and Irish Corporate Governance Annex	2010

Romania	Bucharest Stock Exchange Corporate Governance Code	2015
Slovenia	Slovene Corporate Governance Code	2016
Poland	Code of Best Practice for WSE Listed Companies	2016
Latvia	Corporate Governance Code	2020

Source: Arndt & Wrohlich (2019), Mensi-Klarbach, Seierstad & Gabaldon (2017), own additions based on codes published at https://ecgi.global/ .

2.3. Legally Mandated Disclosure Requirements

Corporate governance codes are not the only way to require disclosure about board gender diversity. Rather, legislators can legally mandate the disclosure of such information. In doing so, legislators do not regulate the issue at hand directly. The idea behind such an indirect measure is that companies are given flexibility to address problems identified by the regulators in a way that suits them. Indirect regulation can also mitigate potential political and interest group resistance that may arise if direct measures were taken (Choudhury & Petrin 2018).

The Non-Financial Reporting Directive is an indirect measure that mandates the disclosure of information regarding board composition. It requires that certain large companies (namely large public interest entities (PIEs), which are companies with securities listed on EU-regulated markets, banks and insurance companies) disclose non-financial and diversity information. It amends Article 20 of the Accounting Directive (2013/34/EU[8]) so that certain large companies are obliged to disclose in their corporate governance statement their diversity policies in relation to their administrative, management and supervisory bodies. If they do not have such a diversity policy, they must clearly explain why this is the case (European Commission 2021a).

The EU Member States had to transpose the provisions of Directive 2014/95/EU into national law by 6 December 2016 (European Commission 2021b). The annual reports must include the required non-financial information either in the management report or in a separate document from 2018 onwards.

Currently, Article 20 of Directive 2013/34/EU allows companies to decide what aspects of diversity they report on. It does not explicitly oblige them to include information on gender. However, in April 2021, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive (CSRD), which would amend the existing reporting requirements of the NFRD.[9] This proposal introduces more detailed reporting requirements. Regarding reporting about companies' board diversity policy, the

[8] Directive 2013/34/EU of the European Parliament and of the Councli of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (Text with EEA relevance)

[9] Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting.

proposal would again amend Article 20 of Directive 2013/34/EU to specify that the diversity policy which companies disclose must include a reference to gender (European Commission 2021c).

Furthermore, the proposal extends the scope of the NFRD to a greater number of companies, and requires the audit of the reported information. To date, auditors must only check that information is provided, but not verify its accuracy.

3. COMPARATIVE ANALYSIS OF POLICIES AND PRACTICES IN FIVE MEMBER STATES

This section provides in-depth information about the women on board policies and their implementation in five Member States. It compares developments in

- Spain, which was the first adopter of a gender quota, albeit without sanctions,
- France, which adopted a quota with a gender-balanced board composition target and sanctions,
- Italy, which adopted a temporary quota that has since been extended and tightened,
- The Netherlands, which adopted a temporary quota without sanctions and is awaiting the adoption of a mandatory quota bill with sanctions, and
- Germany, which adopted a quota for supervisory boards that has since been extended to management boards in its two-tier board system.

3.1. Spain

3.1.1. The Spanish Gender Quota

Spain was the first of the EU Member States to introduce a gender quota for corporate boards. It was introduced by a Socialist party government as part of the Act for the Effective Equality of Women and Men in 2007.[10] This Equality Act aims to ensure equal treatment and opportunities for women and men in all areas of life. It includes many different types of provisions regarding gender equality. Regarding the women's presence in decision-making positions, it recommends a gender quota for boards of private sector companies, but also prescribes gender balance on electoral party lists, in the central government and in public bodies, and on the boards of state-owned companies (González Menèndez & Martínez González 2012; Palá Laguna 2014).

The Equality Act states that all companies which are obliged to present unabridged financial statements of income (i.e. have a minimum size as measured by assets, turnover or headcount) should endeavour to include a sufficient number of women on their boards to reach a balanced presence of women and men within eight years of entry into effect of the Act (i.e. by 2015). The Act defines gender balance as meaning that neither sex should account for more than 60 or less than 40 percent of total members. In other words, the gender quota is set at 40 percent with an implementation period until 2015, and it applies to listed and non-listed companies.

However, the Act merely states that companies should endeavour to reach a balanced presence and does not specify any sanctions in case the goal is not reached. That is why the Spanish quota is frequently termed "non-mandatory", "soft" or a "recommendation" (Mateos de Cabo, Terjesen, Escot & Gimeno 2019; Gabaldon & Giménez 2017). The Equality Act only provides the incentive that the

[10] Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres.

government may show preference in awarding public contracts to firms that have gender balanced boards.

Spain has a unitary board structure with three types of directors. They are non-executive directors who represent large shareholders, non-executive independent directors and executive directors (Gómez-Ansón & Cabeza-García 2011). The quota applies to all these types of directors.

The quota target level of 40 percent has not been met, even though the implementation period ended in 2015. While the quota law is still in place, it has little relevance today.

Several reasons have been advanced to explain why the quota was not met. First, the quota law did not include any penalties for non-compliance. Second, it requested a very large increase in the number of female directors within a limited implementation period. Third, after a change in government in 2011 to the conservative People's Party (PP) – which opposed the introduction of the quota – the law received very little political support.

In 2014, the Companies Act was amended to introduce the obligation for board nomination committees of listed companies to specify a target for the representation of the underrepresented gender in the management body and to prepare a policy on how to increase the number of women on the company's board in order to meet that target (Palá-Laguna & Reyes 2016).

3.1.2. Recommendations in the Spanish Corporate Governance Code

The first corporate governance code in Spain, from 1996, did not include any reference to the promotion of the presence of women on corporate boards or in management. In 2006, a new corporate governance code was devised that harmonised and updated several previous codes. This code was developed at the same time that the Equality Act was being drafted.

This Unified Good Governance Code of 2006 included a recommendation regarding gender diversity.[11] It was Recommendation 15: "When women directors are few or non existent, the board should state the reasons for this situation and the measures taken to correct it; in particular, the Nomination Committee should take steps to ensure that: a) The process of filling board vacancies has no implicit bias against women candidates; b) The company makes a conscious effort to include women with the target profile among the candidates for board places." It did not include a target percentage or specify what a "few" women directors are so that companies should explain their non-compliance.

In the following revisions of the Code, the 2015 version stated: "The director selection policy should pursue the goal of having at least 30% of total board places occupied by women directors before the year 2020."[12]

The 2020 revision states: "to promote desirable gender diversity on the board of directors, it is recommended that female directors represent at least 40% of the total number of members by 2022."[13]

[11] Unified Good Governance Code, May 2006.

[12] Good Governance Code of Listed Companies, February 2015.

[13] Good Governance Code of Listed Companies, June 2020.

3.1.3. The Political Debate Surrounding the Quota in Spain

The Equality Law was developed by the Ministry of Labour and Social Issues, led by the Minister Jesús Caldera from the Socialist Government, and the General Secretary of Equality Policies, Soledad Murillo. All political groups in the parliament voted for the Equality Law except the conservative People's Party, who abstained (González Menèndez & Martínez González 2012).

Employers objected to various aspects of the draft Equality Law. Regarding the gender quota for corporate boards, they argued against the specific percentage requirements and the designated time period for implementation. They used the following arguments: (1) that quantifiable goals are not achievable for companies because of differences in women's qualifications, availability and interest in positions in different sectors; (2) that the composition of boards is regulated in Company Law according to participation in capital, which excludes any other criteria; (3) that the establishment of fixed quotas is incompatible with principles of efficiency and best-fit; and (4) that rulings of the European Court of Justice against rigid quotas have established the need to guarantee the objective valuation of candidates on the basis of their merits and abilities (González Menèndez & Martínez González 2012).

Political opposition argued that the law restricted freedom of activity. They favoured a recommendation without a fixed quota or implementation period, but abstained in the vote for the Equality Law (González Menèndez & Martínez González 2012).

Several female entrepreneurs and professionals publicly expressed their opposition to a quota, arguing that quotas are ineffective, negatively impact on freedom of activity, may be unconstitutional, and have the unintended side-effect of calling women's talent and merit into question. They also argued that more time was needed to build up a pool of qualified women for board positions (González Menèndez & Martínez González 2012).

The People's Party launched a challenge to the Law in the Constitutional Court, arguing that it restricted freedom of activity and discriminated by sex. The Court however ruled that the Law did not breach any of the constitutional principles invoked (González Menèndez & Martínez González 2012).

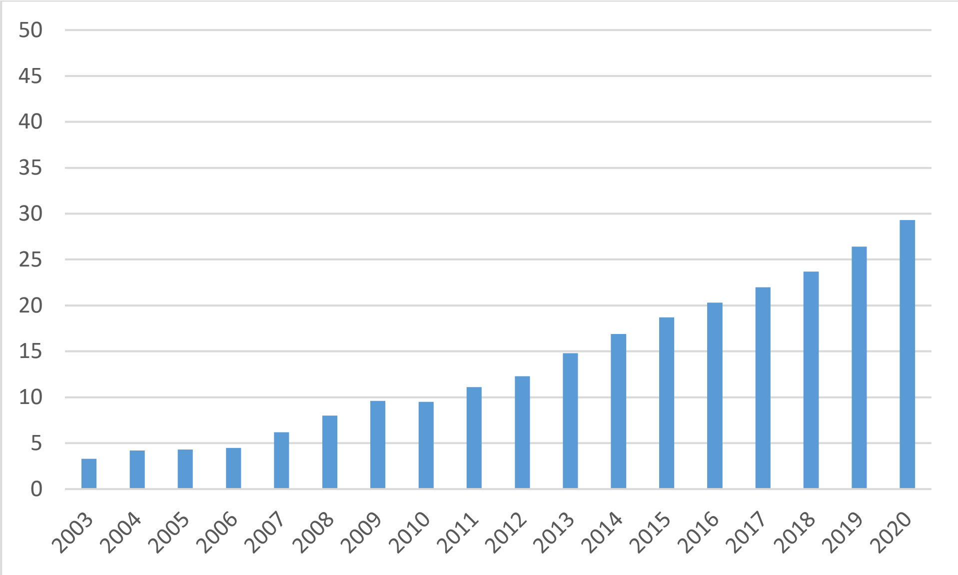
The advocates of the board quota, including women's associations, foregrounded arguments of fairness and equal opportunities and the removal of barriers to women's advancement. They pointed out that the quota was a measure to put an end to Spain's breach of its constitutional principle of gender equality.

The government defended the law with reference to the principle of justice and thereby linked it to the goal of improving democracy. It would also contribute to cultural transformation and societal advancement. Referring to employers' concerns that the quota would undermine the principle of merit and the economic goals of efficiency and competitiveness, the Minister for Labour argued that the quota would remove barriers to women's access to decision-making positions, thereby enabling the principle of merit to be applied (González Menèndez & Martínez González 2012).

3.1.4. Developments in Women's Presence on Boards in Spain

When the quota law was introduced in 2007, the share of female directors on the largest listed companies was around six percent. By the end of the implementation period in 2015, women's share had increased to nearly 19 percent. While the increase was sizeable, it was still very far below the quota target of 40 percent. By 2020, the share of female directors in the IBEX-35 companies had increased to around 29 percent, as shown in Figure 2.

Figure 2: Share of Female Directors on the Boards of Large Listed Companies in Spain, 2003-2020



Source: The Gender Statistics Database (GSD) of the European Institute for Gender Equality (EIGE).

Note : The companies included in this data are listed in the IBEX-35 and registered in Spain. The data includes executive and non-executive directors on the unitary board.

While women's presence on boards has increased, few of the female directors are appointed as executive directors. In 2020, the share of women among executive directors was just over 17 percent, while it reached almost 34 percent among non-executive directors, according to EIGE data.

Many female directors are either connected to ownership (i.e. they represent specific shareholders who hold a significant amount of shares) or independent directors. Independent directors are do not hold any executive position in the company and are not affiliated with any major shareholder. Particularly the appointment of women as independent directors increased after the introduction of the quota; many have political or academic backgrounds (Gabaldon & Giménez 2017; González Menèndez & Martínez González 2012). The lack of female executive directors reflects the persistently low presence of women in senior managerial positions. It is from such positions that women would gain entry to executive board positions.

3.2. France

3.2.1. The French Gender Quota

France adopted a gender quota for boards in 2011.[14] The Copé Zimmermann law applies to listed companies and non-listed companies with a minimum size, measured by revenues, assets or employees (a minimum of 500 employees or a total of revenues or assets over 50 million euros, for three consecutive years). Its scope was enlarged to include companies with a minimum size of 250 employees from 2020 onwards.

[14] Loi n° 2011-103 du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d'administration et de surveillance et à l'égalité professionnelle.

The quota target is 40 percent, with an implementation period of six years, until 2017. An intermediary target of 20 percent was to be reached by 2014.

Companies in France can choose between a unitary or a dual board structure. Around 65 percent of companies have the unitary structure (Zenou, Allemand & Brullebaut 2017). The quota applies to non-executive positions on the unitary board, or in the dual structure, to the supervisory board only.

Very large companies have two employee representatives on their boards. The quota does not apply to them. There are also companies in which employees are the shareholders of more than three percent of share capital. These employee shareholders elect a board member. The quota applies to this board member (Zenou, Allemand & Brullebaut 2017).

In case of non-compliance, the appointments of directors are considered null and void. Furthermore, board attendance fees are not paid to board members as long as the composition of the board is not in compliance with the law.

In May 2021, the National Assembly voted to introduce a gender quota for executive directors and senior managers of companies with over 1,000 employees. The targets set are 30 percent minimum of either gender by 2027, and 40 percent by 2030. Fines for the company are envisaged as the sanction for non-compliance. The law must yet be passed by the Senate (Hird 2021).

3.2.2. Recommendations in the French Corporate Governance Code

The first corporate governance code in France, the Viénot I report from 1995, did not include any reference to the promotion of the presence of women on corporate boards or in management.[15]

The first recommendations regarding board gender diversity were included in 2010. The AFEP-MEDEF Corporate Governance Code of Listed Corporations stated: "Each Board should consider what would be the desirable balance within its membership and within that of the committees of Board members which it has established, in particular as regards the representation of men and women and the diversity of competencies, and take appropriate action to assure the shareholders and market that its duties will be performed with the necessary independence and objectivity. In order to reach such balance, the objective is that each board shall reach and maintain a percentage of at least 20 percent of women within a period of three years and at least 40 percent of women within a period of six years, from the date of publication of this recommendation or from the date of the listing of the company's shares on a regulated market, whichever is later."[16] This amendment was added around the same time that the quota law was drafted. It corresponds to the provisions of the law.

The current version of the Code, amended in 2020, no longer contains the quota targets. Instead, it mirrors the disclosure requirements mandated by the NFRD. It states: "Each Board should consider what the desirable balance of its membership and that of the Board committees should be, particularly in terms of diversity (gender representation, nationalities, age, qualifications, professional experience, etc.). It should make public in the report on corporate governance a description of the diversity policy applied to members of the Board of Directors as well as a description of the objectives of this policy, its implementation measures and the results achieved in the past financial year."[17]

[15] CNPF-AFEP The Boards of Directors of Listed Companies in France, July 1995.

[16] AFEP-MEDEF Corporate Governance Code of Listed Corporations, April 2010.

[17] AFEP-MEDEF Corporate Governance Code of Listed Corporations, January 2020.

3.2.3. The Political Debate Surrounding the Quota in Franc

Marie-Jo Zimmermann, the president of the Gender Equality Commission at the National Assembly had proposed a quota in 2006, but it was not adopted. She proposed the draft of the Copé Zimmerman Law in December 2009. The draft required 50 percent women on boards. This was modified by the National Assembly to 40 percent (Zenou, Allemand & Brullebaut 2017).

Both the Copé-Zimmermann law and the currently proposed law, which was brought before parliament by Marie-Pierre Rixain, enjoyed cross-party endorsement (Hird 2021, Rouault 2017).

There were some criticisms of the quota law, for example that incumbent male directors' mandates were not renewed in order to make way for female directors, that the quota did not account for the particularities of individual companies and sectors, and that the quota forced companies to appoint directors based on gender rather than on skills and competence (Zenou, Allemand & Brullebaut 2017).

Opposition to the proposed law for executive positions emanated from business associations, who saw the law as an interference and opposed financial sanctions (Hird 2021).

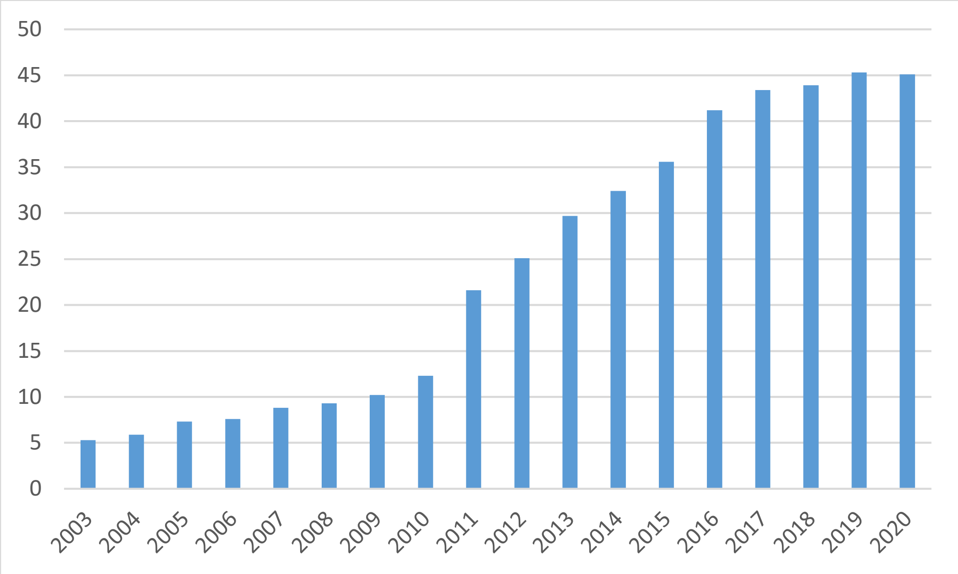
3.2.4. Developments in Women's Presence on Boards in France

In 2011, when the quota law was introduced, the share of female directors in the highest decision-making body of the largest listed companies was nearly 22 percent, as shown in Figure 3. The Figure depicts the share of women on the unitary board, or if the company has a dual board structure, on the supervisory board.

By the end of the implementation period in 2017, the share of female directors was over 43 percent. Among non-executive directors, to whom the quota applies, the share of women was over 46 percent – the target had been more than reached in the largest listed companies.

The share of female directors has continued to increase slightly to over 45 percent in 2020 in the CAC-40 companies, as shown in Figure 3. The share of women was similar in a larger group of listed companies, the SBF-120 (Burgundy School of Business 2021).

Figure 3: Share of Female Directors on the Boards of Large Listed Companies in France, 2003-2020



Source: The Gender Statistics Database (GSD) of the European Institute for Gender Equality (EIGE).

Note : The companies included in this data are listed in the CAC-40 and registered in France.

According to the EIGE data, there is a great disparity between the share of women among executive and non-executive directorships. The share of women among executive directors in the largest listed companies was almost 21 percent in 2020 – far below the share of women among non-executive directors (almost 48 percent in 2020).

In large listed companies, the professional and educational backgrounds and experience of the female directors are similar to those of the male directors. However, female directors are more likely to be foreigners and more likely to be independent directors compared with male directors (Zenou, Allemand & Brullebaut 2017).

3.3. Italy

3.3.1. The Italian Gender Quota

Italy adopted a gender quota for boards in 2011.[18] The Golfo-Mosca law applies to listed companies and state-owned companies. The following sections focus on listed companies.

Listed companies can choose between three types of board structure: the traditional Italian dualistic horizontal model, in which a board of directors (*Consiglio di Amministrazione*) and a board of statutory auditors (*Collegio Sindacale*) are appointed by the shareholders' meeting; a dualistic vertical model similar to the German system, in which the supervisory board appoints the members of the management board; and a monistic model similar to the Anglo-American system.

[18] Legge 12/07/2011 no. 120.

The vast majority of listed companies in Italy have adopted the dualistic horizontal model. In this model, the board of directors includes both executive and non-executive directors. Some of the non-executive directors qualify as independent, meaning that they do not have family or business relationships with the company. The members of the board of statutory auditors have expertise in accounting and legal matters (Rigolini & Huse 2017).

The gender quota law applies to both boards. The quota target was set at 20 percent by 2012 and 33 percent of each gender by 2015. The law was originally valid for three board terms, the duration of which is usually three years each. Thus, the law was intended to lapse in 2022.

However, the law was amended in 2019. From 2020 onwards, the quota target is 40 percent, and the law applies for six board terms.

The Italian Stock Exchange Commission CONSOB evaluates listed companies' compliance with the quota law. In case of non-compliance, CONSOB first issues a warning. Then, after four months, it issues a fine in case of non-compliance. The fine amounts to 100,000 to 1,000,000 euros regarding the board of directors and 20,000 to 200,000 euros regarding the board of statutory auditors. If after another three months, board composition is still not in compliance with the regulation, the board is dissolved (Monaco and Venchiarutti 2017; Rigolini & Huse 2017).

3.3.2. Recommendations in the Italian Corporate Governance Code

The first corporate governance code for listed companies was introduced in 1999. It did not include any recommendations regarding the gender composition of boards.

In 2011, around the time that the quota law was introduced, the code was amended to include a vague reference to board gender composition. It specified that "[t]he Board of Directors shall perform at least annually an evaluation of the performance of the Board of Directors and its committees, as well as their size and composition, taking into account the professional competence, experience, (including managerial experience) gender of its members and number of years as director" (Article 1, Criterion 1.C.1.g).[19]

By 2020, the code has been amended to provide more specific wording regarding board gender composition. It defines a principle that "[t]he company applies diversity criteria, including gender ones, to the composition of the board of directors, ensuring the primary objective of adequate competence and professionalism of its members" (Article 2, Principle VII). It also includes the recommendation that "[t]he company defines the diversity criteria for the composition of the board of directors and the control body and identifies the most suitable tool for their implementation, taking into account its ownership structures. At least a third of the board of directors and the control body, where the latter is autonomous, is to be comprised of members of the less represented gender. Companies adopt measures to promote equal treatment and opportunities among genders within the entire organisation, monitoring their specific implementation" (Article 2, Recommendation 8).[20]

[19] Corporate Governance Code, December 2011.

[20] Corporate Governance Code, January 2020.

3.3.3. The Political Debate Surrounding the Quota in Italy

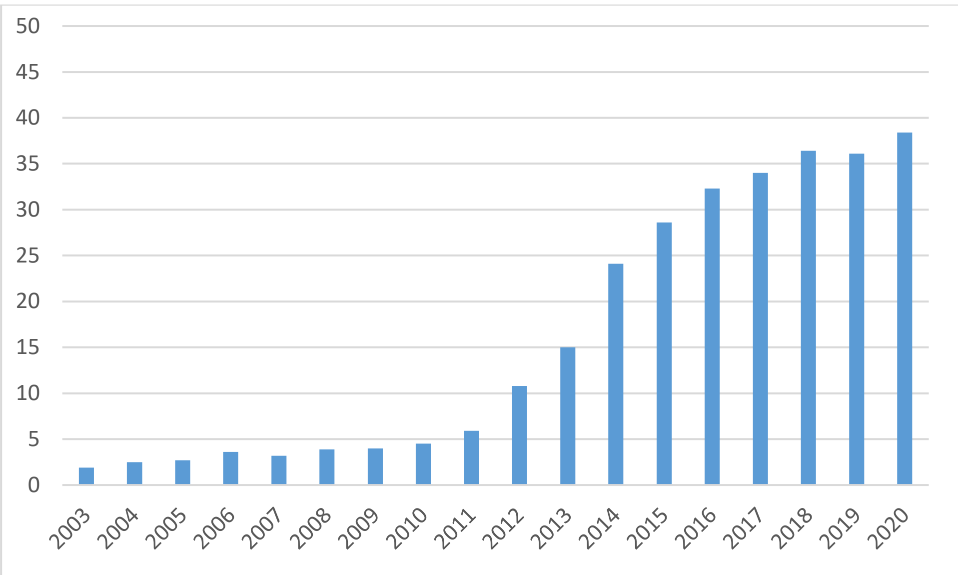
Two quota bills were introduced to parliament in 2009. One was by Lella Golfo of the centre-right PdL party and the other by Alessia Mosca of the centre-left PD party. They were merged and approved unanimously by the lower house of parliament. Resistance to the quota bill by the Italian business community surfaced when the bill reached the upper house. Subsequently, the bill was amended, resulting in an intermediary quota target of 20 percent and the rendering of the quota to a temporary measure for three board terms only. The Golfo-Mosca law was promulgated in July 2011 (Brogi 2013).

Several concerns about the quota law were raised by scholars (Monaco and Venchiarutti 2017). One concern related to the three-term rule. In the Civil Code, board terms are set at a maximum of three years. But companies may reduce the length of a board term to less than three years – for example, to one or two years – in order to reduce the length of time that they are bound by the quota law. Another concern relates to the fact that depending on the size of a board, a certain share of board seats may not be a natural number and requires rounding up or down. A third concern is the absence of any exception clause in the legislation, as the law did not define any legitimate circumstances in which companies could deviate from the quota rule.

3.3.4. Developments in Women's Presence on Boards in Italy

In 2011, when the quota law was introduced, the share of female directors in the largest listed companies (listed in the FTSE MIB) was just below six percent. Following the law's introduction, the share of female directors increased significantly and quickly. By 2015, when the quota target of 33 percent was to be reached, women's share among directors in the largest listed companies was close to 29 percent. It continued to increase slowly, passed the quota target during 2017, and reached just over 38 percent in 2020, as shown in Figure 4.

Figure 4: Share of Female Directors on the Boards of Large Listed Companies in Italy, 2003-2020



Source: The Gender Statistics Database (GSD) of the European Institute for Gender Equality (EIGE).

Note : The companies included in this data are listed in the FTSE MIB and registered in Italy.

According to the EIGE data, there is a great disparity between the share of women among executive and non-executive directorships. The share of women among executive directors in the largest listed companies was just over 13 percent in 2020 – far below women's 45 percent share among non-executive directors.

Before the gender quota law, more than half of female directors had family ties to the company. After the introduction of the law, the share of female directors with family ties has dropped. Many of the newly appointed female directors are independent, and tend to have high academic qualifications and links to elite educational institutions. Female directors with corporate leadership experience also increased (Rigolini & Huse 2017, 2021). A concern that the law would lead to multiple appointments of a small number of women did not hold up.

3.4. The Netherlands

3.4.1. The Dutch Gender Quota

In the Netherlands, a temporary gender quota without sanctions was passed in 2011 and took effect on January 1, 2013. The quota target was set at 30 percent and applied to both management and supervisory boards. It applied to large listed and non-listed companies. Because the law applied to listed and unlisted companies that fulfilled various size thresholds, it is unclear how many companies it applied to. Estimates varied from 4,200 to 6,100 companies (Remery 2014).

There were no sanctions in case of non-compliance with the quota. Instead, the law was based on the comply or explain principle. Companies had to explain in their annual report why they did not appoint board members in line with the quota, how they tried to reach the quota goals, and how they would try to achieve it in the future. However, extremely few companies complied with these reporting obligations (Kruisinga & Senden 2017).

The law expired after three years on January 1, 2016. After its expiry, the law was re-introduced, again as a temporary law without sanctions for the period 2017-2020. It expired in January 2020. Currently, there is no legal requirement regarding the gender composition of boards in the Netherlands.

In 2020, a new bill for a mandatory quota for supervisory boards of listed companies was introduced. It was approved by the lower house of Parliament in February 2021 but is yet to be debated in the upper house. It is expected to be adopted during 2021.

Because the bill is limited to listed companies, it applies to only around 100 companies rather than the previous number in the thousands. In addition, it no longer applies to management boards. The quota target has been increased to 33 percent (one third). A sanction has been introduced: The sanction for non-compliance is the "open seat", with exceptions for reappointments and special circumstances. The law is set to expire after eight years (Lückerath-Rovers 2021).

In addition, similar to the regulation in Germany, large listed and non-listed companies must set their own targets for the representation of women on their supervisory board and management board. (Lückerath-Rovers 2021).

3.4.2. Recommendations in the Dutch Corporate Governance Code

The Dutch Corporate Governance Code was drawn up in 2003. At that time, it did not include any reference to the gender composition of boards. This was changed when the Code was updated in 2008. By that time, the lack of women in leadership positions had become a topic of public debate. However, the Code recommendations did not apply to the composition of management boards, but only to supervisory boards. It recommended that companies should include information about the gender of its supervisory board members in the supervisory board's report. Regarding recommendations for board composition, the Code merely listed gender as one aspect of diversity. Specifically, the Code included the principle that "The supervisory board shall aim for a diverse composition in terms of such factors as gender and age" (Principle III.3).[21]

The revised Code of 2016 continues to recommend the reporting of information regarding the gender of supervisory board members. It further recommends that the supervisory board should draw up a diversity policy for the management board and that this policy "should address the concrete targets relating to diversity and the diversity aspects relevant to the company, such as nationality, age, gender, and education and work background" (Principle 2.1.5). Further, the Code outlines that the corporate governance statement should explain the diversity policy and its implementation, and that "[i]f the composition of the management board and the supervisory board diverges from the targets stipulated in the company's diversity policy and/or the statutory target for the male/female ratio, if and to the extent that this is provided under or pursuant to the law, the current state of affairs should be outlined in the corporate governance statement, along with an explanation as to which measures are being taken to attain the intended target, and by when this is likely to be achieved". (Principle 2.1.6).[22]

3.4.3. The Political Debate Surrounding the Quota in The Netherlands

In April 2008, the Dutch Parliament debated the planned provisions of the Corporate Governance Code. Many members of parliament found the Code's formulations regarding gender diversity in board composition would not suffice. Paul Kalma, a member of the social democratic party PvdA filed a motion that the Corporate Governance Code should include a target of 25-30 percent women on boards. However, the Minister of Finance responded that such a motion would harm the self-regulatory character of the Monitoring Committee that was updating the Corporate Governance Code and suggested that the Parliament should propose a legislative bill if it believed that the provisions of the Code were not sufficient (Lückerath-Rovers 2012). Indeed, when the Code became effective, it did not include any targets, despite political, social and media pressure. It merely contained the vague wording outlined in the section above, recommending that companies pursue a mixed board composition, taking into account factors such as gender and age.

Therefore, in 2009, Paul Kalma, together with a member from the liberal party VVD and the Christian democratic party CDA, introduced a bill outlining a gender quota of 30 percent for supervisory boards and management boards. The liberal party VVD joined in this bill under the conditions that no sanctions were imposed for non-compliance. It was adopted unanimously in the lower house of parliament in

[21] The Dutch Corporate Governance Code, December 2008.

[22] The Dutch Corporate Governance Code, December 2016.

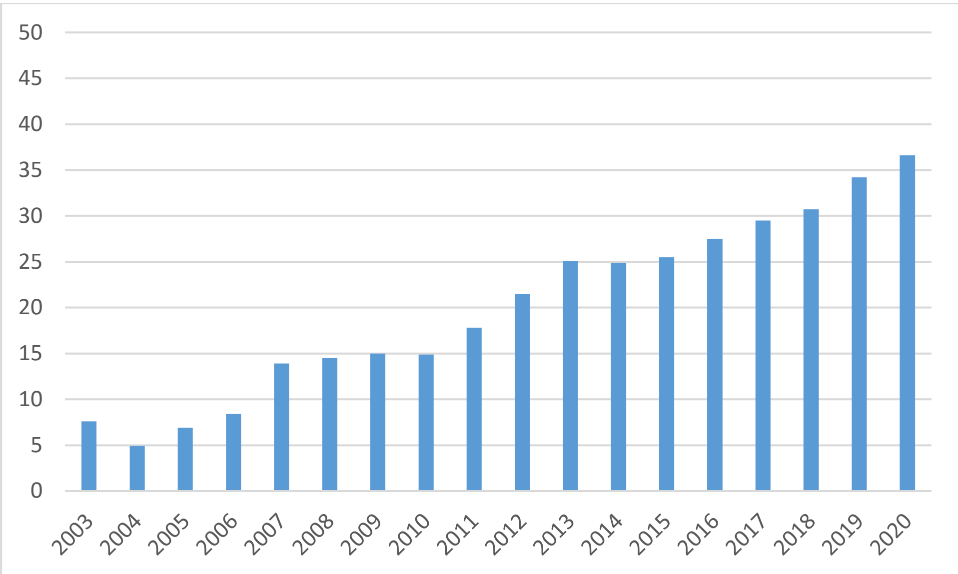
December 2009 (Remery 2014). After some delay and an election, the bill was passed in the upper house of parliament in May 2011. Then, it took almost 19 months until the legislation became effective.

3.4.4. Developments in Women's Presence on Boards in the Netherlands

When the quota law was passed in 2011, the share of women among directors of the largest listed companies (listed on the AEX) contained in the EIGE database was a just below 18 percent. Over the next two years, the share of female directors jumped 3.7 and 3.6 percentage points, respectively, to just over 25 percent in 2013. In the following two years, the share of female directors increased only incrementally, and had not reached the 30 percent target by the time the quota law expired on January 1, 2016 (25.5 percent in late 2015).

Then until 2020, women's share among directors continued to increase and reached more than 36 percent in the largest listed companies in 2020. However, the share of female directors is greater among the large cap companies included in the EIGE database compared with all listed Dutch companies. Based on a larger sample, namely 94 Dutch listed companies, Lückerath-Rovers (2020) found that the share of female directors was just over 24 percent in 2020.

Figure 5: Share of Female Directors on the Boards of Large Listed Companies in The Netherlands, 2003-2020



Source: The Gender Statistics Database (GSD) of the European Institute for Gender Equality (EIGE).

Note : The companies included in this data are listed in the AEX and registered in The Netherlands.

In addition, there are differences in the share of female executive directors and non-executive directors. According to the EIGE data, which is limited to the very largest listed companies, the share of women among executive directors was 21 percent in 2020. As in the other countries examined here, the share of women among non-executive directors was higher – at almost 38 percent. Looking at the more comprehensive sample provided by Lückerath-Rovers (2020), nearly 12.5 percent female executive directors compared with 29.5 percent female non-executive directors. Among both executive and non-executive directors, women were more likely to be foreigners compared to men.

3.5. Germany

3.5.1. The German Gender Quota

In 2015, Germany adopted a gender quota for supervisory boards of listed companies to which full co-determination law applies.[23] This co-determination law applies to companies with more than 2,000 employees. In these companies, half of the supervisory board members are employee representatives. Around 100 companies thus fall within the scope of the quota (Kirsch 2017). In addition, the law also included provisions for public sector organizations. However, the focus here is on the private sector.

The quota target is 30 percent and companies have had to comply with the quota when filling supervisory board positions since January 1, 2016. The quota applies to all supervisory board members – both shareholder representatives and employee representatives. They can choose whether to fulfil the quota target together or separately.

Companies must declare their compliance with the quota in their annual reports. In the event of non-compliance, appointments are not valid and the "open seat" sanction applies.

The law also includes the requirement for a much larger group of companies – around 1,750 – to set their own targets for the representation of women on supervisory boards. This provision applies to companies that are either listed or fully co-determined (but not both). Further, all companies that are listed and/or fully co-determined, were required to set their own targets for the representation of women on management boards.

Because the self-selected targets for the representation of women on management boards were extremely low – in many cases zero – the law was revised. In August 2021, the amended law entered into force.[24] It includes a minimum requirement for the representation of women on management boards. While it is colloquially called a quota, it does not specify a minimum share of women on management boards. Rather it prescribes a minimum requirement of one woman on management boards. It applies to appointments from August 1, 2022 onwards.

The minimum requirement applies to the same group of companies to which the supervisory board quota applies (i.e. listed and fully co-determined companies), provided that their management board consists of at least four members. Thus, it applies to a sub-group of the quota companies – a total of 64 companies at the point in time when the requirement was introduced. Because most of these companies have management boards with four to six members, the implicit quota ranges between 16.7 and 25 percent (Sondergeld and Wrohlich 2021).

3.5.2. Recommendations in the German Corporate Governance Code

When the German Corporate Governance Code for listed companies was introduced in 2002, it did not include any reference to board gender composition. In an amendment in 2010, recommendations were introduced that a supervisory board "stipulate an appropriate degree of female representation" in its

[23] Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst.

[24] Gesetz zur Ergänzung und Änderung der Regelungen für die gleichberechtigte Teilhabe von Frauen an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst.

objectives regarding its composition (section 5.4.1) and that supervisory boards aim for "an appropriate consideration of women" when appointing members to management boards (5.1.2). In addition, it recommended that a management board "aim for an appropriate consideration of women" when filling management positions in the company (4.1.5). Companies must disclose any deviation from such recommendations in an annual declaration of conformity ("comply or explain").[25]

In its current version from 2019, the Code summarizes the statutory regulations current at that time. Regarding the composition of the supervisory board, it notes that "the legal gender quota must be considered" (Principle 11) and recommends that "[t]he Supervisory Board shall determine specific objectives regarding its composition, and shall prepare a profile of skills and expertise for the entire Board while taking the principle of diversity into account" (Recommendation C.1).

Regarding appointments to the management board, the code summarizes that "[t]he Supervisory Board defines the target percentage representation of female Management Board members" (Principle 9) and recommends that "[w]hen appointing Management Board members, the Supervisory Board shall take diversity into account" (Recommendation B.1).[26]

3.5.3. The Political Debate Surrounding the Quota in Germany

The struggle for a gender quota began as a wider struggle to increase the representation of women in leadership positions more generally. Numerous attempts were made to introduce legislation from 2001 onwards – sometimes regarding equal opportunities of men and women quite generally, and sometimes focusing more specifically on supervisory boards (Kirsch 2017).

In the period 2010–2012, discussion about a quota for supervisory boards gained traction. Not least, this was due to international developments, as quota laws had been passed in Belgium, France, Iceland, Italy, the Netherlands, Norway and Spain, and the idea of introducing an EU-wide quota was under consideration. First, proponents of non-statutory regulation introduced new measures. In 2010, the Commission of the German Corporate Governance Code amended the Code to include the vague recommendations outlined above. In addition, the Deutsche Telekom AG publicly announced its goal of filling 30 percent of management positions worldwide with women. And in the following year, the 30 companies listed in the DAX large-cap index participated in two summit meetings with the federal government, which resulted in the proclamation of what they called a voluntary self-regulatory commitment to increase the share of women in management (Kirsch 2017).

Meanwhile, several women's associations, the Green Party and the Social Democratic Party pushed for a legislative quota. The Christian Democratic Party CDU was divided on the issue, while the liberal party FDP opposed all quota plans. Within the CDU, disagreement surrounded the issue whether the government should set a fixed quota or whether companies should be required to set their own targets. After the 2013 election, the Christian Democratic / Social Democratic coalition government agreed to introduce the quota legislation that was passed in 2015. It combines a fixed quota for supervisory boards for a small group of companies and a requirement to set self-selected targets for the supervisory boards for a larger group of companies, as well as for management boards.

Concerns were raised during the debate about the quota legislation that it may be unconstitutional. Some legal experts viewed the proposed quota as violating constitutional rights to the freedom of

[25] German Corporate Governance Code, May 2010.

[26] German Corporate Governance Code, December 2019.

property, freedom of association and equality before the law (Waas 2014). The business associations the Confederation of German Employers' Associations (BDA), the Federation of German Industries (BDI), the German Confederation of Skilled Crafts (ZDH) and the Association of German Chambers of Commerce and Industry (DIHK) opposed the quota proposal, arguing that it interfered with the property rights of owners, disregarded industry-specific differences, ignored that professional qualification is the main criterion for a supervisory board appointment and that it had a negative impact on competitiveness.

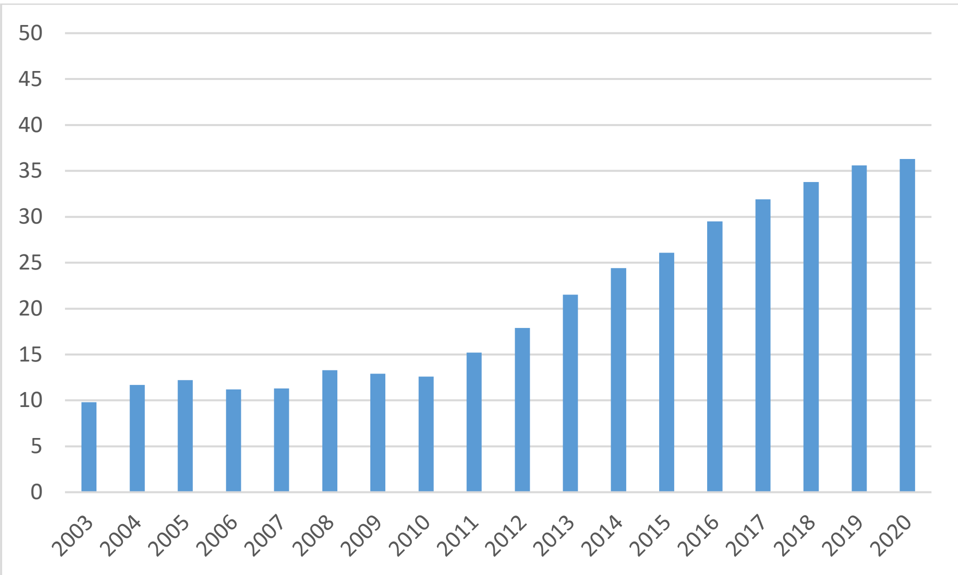
Further concerns were raised about the scope of the law. It proved difficult to establish exactly which companies were subject to the law, and connecting the quota requirement to co-determination raised fears among unions that companies would seek to avoid co-determination more than ever, because this would allow them to avoid the quota.

3.5.4. Developments in Women's Presence on Boards in Germany

When the quota was introduced in 2015, the share of women on supervisory boards in the companies listed in the DAX-30 large cap index was just over 26 percent, according to EIGE data. It had increased significantly in the years preceding the quota's introduction, surpassed the target of 30 percent by 2017, and reached more than 36 percent in 2020.

However, the share of women is larger on the supervisory boards of the largest listed companies compared with smaller listed companies. Nevertheless, gains in smaller companies have been significant, too. Looking at 160 companies, the share of women on supervisory boards was over 32 percent in 2020 (Kirsch & Wrohlich 2021a).

Figure 6: Share of Female Directors on the Boards of Large Listed Companies in Germany, 2003-2020



Source: The Gender Statistics Database (GSD) of the European Institute for Gender Equality (EIGE).

Note: The companies included in this data are listed in the DAX-30 and registered in Germany. The data shows supervisory boards only.

As in other countries examined in this report, the disparities between women in non-executive and executive director positions is great. In 2020, the share of female executive directors on management boards was just over 11 percent in the 160 largest listed companies (Kirsch & Wrohlich 2021a) and 13.5 percent according to EIGE data.

3.6. Comparative Analysis of Five Member States

A comparative analysis of the five Member States shows that in four of them, legislation has been extended and tightened since its original introduction. The trend after several years' experience with quota legislation is clearly to continue down this path in order to increase and/or maintain a more gender-balanced representation of women and men on boards and to ensure that the achievements brought about by the quota legislation do not remain limited to non-executive directorships. Countries that had introduced temporary quotas have extended them, indicating that the need for regulation is still seen as necessary, and that initial hopes that legislation would only be needed for a short time period have been dispelled.

In Germany, the legislation has been extended to include executive directors, and this is also the case for legislation yet to pass the Senate in France. In the Netherlands, legislation is currently under scrutiny that will limit the quota to non-executive directors of listed companies, but that also increases the quota target to 33 percent and introduces sanctions. Regarding executive directors, the pending legislation requires companies to set their own targets. In Italy, the quota target has been increased to 40 percent. However, as executive and non-executive directors serve on the same board (*Consiglio di Amministrazione*), the measure does not specifically target the low representation of women in executive directorships. Meanwhile in Spain, the quota legislation is still in place, but the quota targets have not been reached. In the absence of sanctions, the legislation has little effect.

Comparing the legislative developments in these five Member States, it appears that legislation without sanctions – as in Spain and the Netherlands – is less effective in achieving the quota targets than legislation with sanctions. In both Spain and the Netherlands, the quota targets were not reached in the specified time period, while targets were reached quickly in Germany and France, and with a slight delay in Italy. The Netherlands intend to introduce sanctions, while there have been no further legislative efforts on the issue in Spain.

Further, the comparison makes clear that the legislation has been more effective in increasing the share of women among non-executive directors than among executive directors. France and Germany have sought to increase the pressure on companies to appoint women to executive directorships through legislative amendments.

A comparison of the Corporate Governance Codes reveals that in four countries, the Codes do no more than mirror legislative requirements. In Spain, by contrast, the Code specifies a target of 40 percent within a clear timeframe – until 2022. In every country compared here, existing Codes were amended to include a reference to gender on boards around the time that quota legislation was drafted. They were not the initiators of change regarding board gender composition but rather kept pace with legislative developments.

The recommendations in the Codes rarely provide specific targets for the representation of women. Rather, they use vague wording, suggesting that companies should aim for a "desirable" or "appropriate" representation of women on boards. In addition, these recommendations frequently subsume gender within a broader diversity recommendation – suggesting that companies pay attention to other demographic dimensions of diversity such as age and nationality of their directors, but also to diversity in qualifications, experience and competences.

Not only do Codes rely on the comply-or-explain principle and eschew sanctions, but recommendations of this kind make it possible for companies to comply with diversity recommendations without including women on their boards, for example by appointing directors with varying demographic or professional backgrounds. In addition, reference to appropriateness or desirability regarding diversity leave it open to interpretation when companies are in line with Code recommendations, and when they need to explain their deviation in their annual reports. Therefore, while the recommendations in Corporate Governance Codes are useful for codifying existing cultural norms, they appear unsuitable for overcoming resistance to change toward greater gender equality on boards.

Arguments against quota legislation are similar across countries. Opponents of quotas refer to particularities of sectors and companies that make it inappropriate to subject them to a uniform rule. Second, quota opponents bring forward arguments surrounding merit and competence as the key criteria for director selection and present quotas as undermining these principles. This may be coupled with arguments that quotas stigmatize women by calling their merit and competence into question and suggesting that they are appointed as directors on the basis of their gender even though they are unqualified. According to this argument, quotas actually harm women rather than doing them any good. Another argument put forward by quota opponents is that such regulation is an impermissible interference into the property rights of owners and is thus unconstitutional. Finally, opponents argue that quotas negatively impact company performance.

4. EFFECTS OF WOMEN ON BOARD POLICIES

In order to assess the effects of the women on board policies, it is important to recall the aims and justifications of these policies. These aims can be broadly classified as (1) improving women's access to decision-making positions, and (2) improving corporate governance processes and outcomes.

Women's access to decision-making has been linked to the notions of justice and democracy since the Beijing Declaration and Platform for Action, signed in 1995 at the United Nations Fourth World Conference on Women (Lépinard & Rubio-Marín 2018). The societal goal of enabling women to access decision-making positions is generally pursued using gender quotas or voluntary measures in both the political and the economic spheres. Yet these measures are legitimized using different kinds of arguments. In the political sphere, measures introduced to ensure the equal presence of women and men in legislative assemblies and public bodies are legitimised in the name of improving democratic representation and women's political participation (Lépinard & Rubio-Marín 2018). However, in the economic sphere, such measures are justified using a mix of justice, democracy, and so-called "business case" arguments.

Such "business case" arguments emphasize the economic benefits that companies can derive from a balanced presence of women and men on their corporate boards. In particular, they posit that corporate governance processes and outcomes will improve. These types of arguments are pervasive in the public discourse about women's participation on corporate boards (Seierstad 2016; Tienari, Holgersson, Meriläinen & Höök 2009).

Therefore, this section examines first how legislative quotas and recommendations in corporate governance codes affect the share of women on boards. Second, it summarizes research findings on how an increase in the share of women on corporate boards affects women's access to decision-making positions below board level, i.e. in senior management positions. Third, it summarizes research findings on the effects of a higher share of women on boards on economic outcomes for companies. Fourth, it provides a word of caution in interpreting these business case findings. Fifth, it provides an overview of research findings on how corporate governance processes are affected by a higher share of women on boards.

4.1. Effects on Women's Representation on Boards

The outcomes of several studies clearly show that gender quotas are an effective policy for increasing the share of women on corporate boards. Researchers have compared countries with and without board gender quotas. They find that countries with quotas have a higher share of women on their boards than countries without quotas.

Two studies have analysed the data compiled by the EIGE on the representation of women on the boards of the largest stock-listed companies in the Member States (Arndt & Wrohlich 2019; Humbert et al. 2019). The results of both studies show that countries in which board quotas have been introduced have a higher share of women on boards than countries without quotas. In addition, they show that quotas with sanctions are more effective in increasing the representation of women on boards than quotas without sanctions. Moreover, quotas with tough sanctions are more effective than those with moderate or weak sanctions.

Another study compared the effect of three types of regulation: (1) the quotas with sanctions of France, Germany, Norway, Portugal, Austria and Italy, (2) the quotas without sanctions of the Netherlands and

Spain, and (3) the regulation via corporate governance code of the United Kingdom. The findings of this study confirm that the share of women on boards is greater in countries with quotas in place compared to those with only corporate governance codes or no regulation. Furthermore, they confirm that the share of women on boards is the greatest when there are quotas with sanctions in place (Clark, Arora & Gabaldon 2021).

A further study (Mensi-Klarbach, Leixnering & Schiffinger 2021) argues that recommendations regarding board gender diversity in corporate governance codes do not increase women's representation on boards if they are the sole policy used. However, the authors argue that if such recommendations are complemented with specific targets for the share of female directors, and possibly also complemented by the threat of a legislative gender quota, they do increase women's representation on boards. The authors provide evidence from Austrian companies that supports this argument.

4.2. Effects on Women's Access to Decision-Making Positions below Board Level

A growing stream of research examines whether an increase in the share of women among board directors is associated with an improvement in women's access to decision-making positions below board level.

Specifically, researchers have examined whether an increase in the share of female directors is associated with an increase in the share of women among CEOs and senior managers. This presumed association rests on the fact that boards of directors appoint CEOs, and may be involved in leadership succession planning. Possibly, gender-balanced boards are more likely to appoint female CEOs and to monitor a company's leadership development in such a way that more women are promoted to senior management positions, compared to companies with male-dominated boards. There are several reasons for this. First, it could be due to female directors' commitment to increasing gender equality in the companies on whose boards they serve. Second, it could also be that increased contact with female directors reduces intergroup prejudice among male directors, and lessens their doubts about women's leadership abilities (Guldiken, Mallon, Fainshmidt, Judge, & Clark 2019, Oliver, Krause, Busenbark, & Kalm 2018).

Several studies of companies in the United States (Bilimoria 2006, Cook & Glass 2015, Matsa & Miller 2011, Skaggs, Stainback & Duncan 2012) and in Australia (Biswas, Roberts & Stainback 2021, Gould, Kulik & Sardeshmukh 2018) have detected such a "trickle-down effect" and shown that companies with women on their boards have more women among their CEOs, top executives, and managers.

A study set in Germany (Kirsch & Wrohlich 2020) also found a positive correlation between the presence of women on the supervisory board and the later presence of women on the management board of a company. In addition, it found that the gender quota for supervisory boards not only increased the proportion of women on the supervisory boards of the companies subject to the quota. These quota companies also had more women on their management boards (to which the quota does not apply) than non-quota companies.

However, other studies have not found clear evidence for such a trickle-down effect. In particular, two studies have examined whether a trickle-down effect is set in motion by the introduction of a gender quota for corporate boards. A study set in Norway has found that while the quota led to an increase in female directors, there was little discernible impact on women employed in the companies subject to the quota (Bertrand, Black, Jensen & Lleras-Muney 2019). A similar outcome was found in a study set in

Italy. There also, the quota led to a substantial increase in the number of women on boards, but increases in the representation of women in CEO, top executive or top earnings positions were only small (Maida & Weber 2020). However, the authors of both studies note that it might take a long time for the impact of board gender quotas on women's careers in management to become evident, and that their studies could not capture such a long-term effect.

Female directors may play an active role in this trickle-down effect through taking action in formal board processes as well as informally. For example, they may join nominating committees and influence the selection of executive directors and CEOs by searching for female candidates. Informally, they may generate awareness for gender equality issues among male directors and act as role models for women in their companies. However, not all female directors take such action. Besides a sense of belonging to women as a social group, a board culture supportive of gender equality and expectations by organizational members that female directors would contribute to advancing gender equality are important factors in female directors' propensity to take equality-related action on boards (Kirsch 2021).

4.3. Effects on Economic Outcomes for Companies

The "business case" arguments for increasing the presence of women on boards emphasize economic benefits for companies. In particular, they state that including women on boards will lead to better corporate governance. This raises the question of how "good corporate governance" is defined and why it might possibly be affected by the inclusion of women on boards of directors (De Wulf 2014).

Essentially, the inclusion of women on boards may affect the way the board monitors the company's executives, and how it advises them, and how it reaches decisions about whether or not to approve proposals put forward by them. Assessing whether any such effects are taking place would require insight into such board processes, which is difficult for researchers to obtain.

Therefore, many studies of the effect of board gender diversity measure firm outcomes rather than board processes. They assume that better board decisions and better monitoring of management will become evident in better financial performance, better corporate social performance, and many other indicators (Kirsch 2018).

Regarding companies' financial performance, myriads of studies have examined the effects of board gender diversity on various financial metrics such as Tobin's Q, Return on Assets (ROA), Return on Equity (ROE), Return on Investment (ROI), and more. Some studies find a positive link, some find a negative link and some find no link at all between a board's gender composition and the company's financial performance. A meta-analysis has concluded that female board representation is positively related to accounting returns and that the relationship to market performance is near zero, and that these effects vary across countries (Post & Byron 2015).

There are also many studies that examine the effect of board gender diversity on corporate social performance, which is often measured using corporate social responsibility (CSR) ratings. Similar to the studies of financial performance, these studies differ in the exact metrics they use. Nevertheless, they generally uncover a positive effect of female directors on corporate social performance. This generally positive effect is also confirmed in a meta-analysis, and it is highlighted that the magnitude of the effect differs across countries (Byron & Post 2016).

A further group of studies have examined the effect of board gender diversity on ethical aspects of a company's behaviour. They have examined whether companies with female directors are associated with less corporate fraud, less financial misconduct, less earnings management, less tax avoidance, and fewer environmental violations than companies with fewer or no female directors (for example: Cumming, Leung & Rui 2015, Lanis, Richardson & Taylor 2017, Lenard, Yu, York & Wu 2017, Liu 2018, Wahid 2019). Relatedly, other studies have examined whether firms with gender diverse boards provide greater transparency about their activities through more comprehensive disclosure and reporting (for example: Cabeza-García, Fernández-Gago & Nieto 2018, Pucheta-Martínez, Bel-Oms & Olcina-Sempere 2016). Many studies uncover such links between the presence of women on a company's board and the measured outcomes.

Taken together, many studies indicate that appointing more women to corporate boards will not only improve the financial performance of companies, but will also lead them to behave in ways that are beneficial for stakeholders and for society as a whole. Hundreds, if not thousands of studies are being published that highlight some kind of beneficial result emanating from women's representation on corporate boards.

4.4. Interpreting Business Case Arguments

Despite many studies uncovering various desirable economic effects of increasing women's representation on boards, a word of caution is necessary and important. Several researchers have argued that justifying women on board policies on the basis of business case arguments is not a good idea, and they provide convincing reasons for this (Adams 2016, Eagly 2016, Ferreira 2015).

First of all, they point out that even if studies find an association between board gender diversity and desirable economic outcomes for companies and stakeholders, the relationship may not be causal. It is particularly difficult to identify causal relationships because board composition and company outcomes are jointly endogenous. As Adams, Hermalin and Weisbach (2010, p. 97) explain: "the makeup of boards … affects what the board does; and, consequently, their makeup is influenced by a desire to affect what they do". This makes it very difficult to untangle causes and effects.

Methodological issues encountered in the kinds of studies discussed above include omitted variable bias and reverse causality. For example, a difficult to measure factor like company culture may influence the relationship between the presence of female directors and financial, social or ethical outcomes for companies. Such factors are necessarily omitted in econometric models, and this leads to biased results. Furthermore, rather than female directors driving greater corporate social responsibility or better financial performance, it may be that particularly socially responsible and profitable firms are more likely to appoint female directors. Many of the published studies do not control for such reverse causality. A way to avoid these kinds of problems is to examine board processes rather than company outcomes. Studies of board processes are discussed in the next section.

Second, business case arguments for increasing women's representation on boards frequently draw on gender essentialism. Studies that detect improved financial outcomes, social responsibility and ethical behaviour in companies with female directors tend to ascribe these outcomes to female directors' characteristics, arguing that the observed beneficial results emanate from women's lower propensity to take risks, engage in excessive competition, or behave in unethical ways. In doing so, such business case arguments may reproduce gender stereotypes, even though there is little evidence that female directors display such gender stereotypical characteristics in their board work (Hoobler et al. 2018, Mavin & Yusupova 2021, Nelson 2016).

4.5. Effects on Board Processes

A stream of research seeks to uncover how board work changes when women are included. These studies show how board discussions, decisions and interactions among board directors change when boards become more gender-balanced.

A study set in Germany provides evidence of beneficial effects of gender diversity for the work of supervisory boards (Kirsch & Wrohlich 2021b). Drawing on interviews with directors, the study finds that many male and female directors notice changes to discussions and interactions due to women's presence and contributions. Many observe improvements in the work atmosphere and an increase in politeness and mutual respect among directors. Some male and female directors state that discussions become more intense and more fact-oriented as boards become gender-balanced. Others notice that female directors are particularly investigative in their inquiries, and that they question the proposals and decisions of the executive board more than men tend to do. In this way, female directors contribute to more effectively monitoring executive boards.

In a study set in Norway, the inclusion of female directors is associated with more board development activities (such as a thorough induction of new directors and regular board evaluation processes) and decreased levels of conflict on the board (Nielsen & Huse 2010). An Icelandic study (Jonsdottir, Singh, Terjesen & Vinnicombe 2015) shows that in male-dominated boards, women identified strongly with the monitoring role, while men focused more on the resource provision role of directors. As boards became more gender-balanced, the gender differences in the director roles of monitoring and resource provision decreased.

5. WOMEN ON BOARD POLICY AT THE EU-LEVEL

This section summarizes the proposed EU-level gender quota for non-executive directors. It describes the political debate surrounding the introduction of the quota and provides a policy recommendation.

5.1. Summary of the Proposed EU Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures.

The Commission submitted a proposal for a directive on gender balance among non-executive directors in November 2012.[27] It applies to companies listed on stock exchanges, with the exception of SMEs.

The proposal sets a gender quota target of 40 percent of non-executive members of the under-represented sex on company boards. This includes employee representatives on boards. For Member States that choose to apply the gender quota to both executive and non-executive directors, a lower target of 33 percent applies. Because it is not possible to allocate a share of exactly 40 percent of board seats to each sex for most board sizes, the proposal specifies that the number of board seats necessary to meet the quota target is the number closest to 40 percent, but below 50 percent. In practical terms, this means that at least one position is allocated to the under-represented sex on boards with three or four non-executive directors (corresponding to 33.3 and 25 percent, respectively), at least two positions on boards with five or six non-executive directors (corresponding to 40 and 33.3 percent), and at least three positions on boards with seven or eight non-executive directors (corresponding to 42.9 and 37.5 percent). The gender quota target was to be achieved by 2020 in the private sector and by 2018 in public-sector companies.

Furthermore, the proposal specifies that Member States must ensure that listed companies (a) appoint non-executive directors on the basis of pre-established, clear and neutral criteria, (b) give advantage to the under-represented sex if candidates are equally qualified, and (c) disclose, on the request of an unsuccessful candidate, the selection criteria and the comparative assessment of the candidates.

Regarding executive directors, the proposal requires Member States to ensure that companies make their own commitments regarding gender-balanced representation.

The proposal includes disclosure requirements. It requires Member States to ensure that companies report annually to the competent national authorities about the gender composition of their boards, distinguishing between non-executive and executive directors, and about the measures taken to reach the quota target. Companies that have not reached the quota target must not only report on measures taken but also on future measures aimed at reaching the target. In addition, companies must publish that information in an appropriate and accessible manner on their website.

Member States must impose sanctions in the event that the national provisions pursuant to the directive are not reached. The proposal suggests administrative fines and nullity or annulment of director appointments and elections as possible sanctions.

[27] Proposal for a Directive of the European Parliament and of the Council (COM(2012) 614).

The proposed directive contains an exception clause. It defines a legitimate circumstance in which companies may deviate from the quota rule. It allows Member States to provide that companies where the members of the under-represented sex make up less than 10 per cent of the workforce are not be required to meet the quota target.

The proposed directive contains a sunset clause and is intended only to stay in force until sustainable progress has been achieved. It was intended to expire on December 31, 2028, with the possibility of extension.

Member States that already have national legislation regarding board gender composition may continue to apply their own measures in place of the procedural requirements put forward in the proposed directive. However, they may only do this if they can demonstrate that the national measures are of equivalent efficacy in order to reach the gender quota target of at least 40 percent among non-executive directors of listed companies.

5.2. The Political Debate Surrounding the Proposed Directive

Parliament adopted its position on 20 November 2013. The Parliament strongly supported legislative action and backed the key objective of the proposed directive that listed companies in the EU reach a target of at least 40 percent of non-executive directors of the under-represented sex.

Parliament went beyond the Commission’s proposal by calling for additional measures. These included calls for (a) stronger penalties, such as the exclusion from public tenders for companies that fail to introduce transparent appointment procedures; (b) the removal of exemptions for companies employing less than 10 percent of the under-represented sex; (c) the extension of reporting to the EU’s own institutions and agencies; and (d) an examination of whether the scope of the directive should be extended to cover non-listed public companies.

Parliament pointed out that Member States should support SMEs, to which the directive does not apply, and give them incentives to improve gender balance at all levels of management and on their boards.

Despite broad consensus across the EU in favour of taking measures to improve the gender balance on company boards, not all Member States support EU-wide legislation and some Member States consider that binding measures at the EU level are not the best way to pursue the objective. The national parliaments of Denmark, the Netherlands, Poland, Sweden, and one of the two chambers of the Parliament of the Czech Republic (Chamber of Deputies) submitted reasoned opinions within eight weeks from the submission of the Commission’s proposal, alleging that it did not comply with the principle of subsidiarity. Some Member States continue to prefer either national measures or non-binding measures at EU level.

As well as revising the proposed target dates and reporting deadlines, recent Presidencies of the Council of the European Union have drafted compromise texts with a view to breaking the deadlock on the directive, but agreement has not yet emerged. Discussions were to be held with relevant partners during Germany's Presidency of the EU. Some Member States (Denmark, Greece, Croatia, Hungary, the Netherlands, Poland, Sweden and Slovakia) continue to oppose the proposal, some because they already have legislation in place. Those opposed to the proposed directive argue that it does not comply with the principles of subsidiarity and proportionality. In the next section, the study argues that the proposed directive indeed complies with these principles and recommends its adoption.

5.3. Policy Recommendation and Conclusions

This study has described three types of policy used in Member States aimed at increasing the representation of women on boards. It has scrutinized the policies and practices in five Member States in detail. It has discussed the findings of academic research on the effects of gender quotas on the representation of women on boards, and of the representation of women on boards for women's access to management positions, for the functioning of boards and for economic outcomes of companies. Further, this study has summarized the proposed Directive and the debate surrounding the proposal to date.

In this final section, the study ends by recommending the adoption of the proposed Directive and the introduction of the EU-level gender quota with sanctions. It provides the following reasons for this recommendation:

- Gender quota laws have been shown to effectively increase the representation of women on boards;
- The experience of Member States with gender quota laws for boards is generally positive;
- The proposed Directive provides two options for regulating the representation of women among executive directorships;
- The proposed Directive fulfils the principles of subsidiarity and proportionality.

The study has shown that gender quotas are *the most effective instrument* for increasing women's presence on boards. Corporate governance codes and disclosure requirements are indirect measures, and they are not as effective in comparison with direct regulation of the target issue through gender quotas. Voluntary regulation without sanctions has been shown to be less effective than mandatory regulation with sanctions. Policies aimed at diversity in a general sense rather than focusing specifically on gender are also limited in their effectiveness. The proposed directive, with its direct approach to increasing the share of women on boards through gender quotas and its inclusion of sanctions in case of non-compliance, will be an effective instrument for achieving the goal of increasing women's representation in economic decision-making.

The generally *positive experience of nine Member States* with national-level quota laws underscores the effectiveness of this policy approach. The experience in these countries can generally be described as positive, as evidenced not only by the increases in women's board representation achieved since the introduction of such quota laws, but also by the decision of several countries to tighten and extend their legislation on the issue. Temporary quotas have not been abandoned, but rather extended. Even though opponents of quota legislation have questioned the constitutionality of such regulation, the research conducted in the course of this study did not uncover discussions of case law in which quotas were actually challenged.

The *representation of women among executive directorships* is an important aspect of inclusion in economic decision-making. Opponents of gender quotas for non-executive directors may argue that such quotas achieve only false progress towards gender equality, rather than true change. This is because men continue to hold great power over the day-to-day running of companies if women remain underrepresented among executive directors. Regulating the representation of women in executive directorships requires companies to adapt their internal leadership development in such a way that more women are promoted to senior management positions and are available for executive director positions. The proposed Directive goes some way in ensuring women's representation among executive directors by providing two options. First, it provides Member States with the option of applying a 33 percent quota to both executive and non-executive directors, rather than a 40 percent quota to non-executive directors only. Alternatively, it requires companies to formulate and publish their own targets regarding the share of female executive directors. A quota would be the more effective instrument for increasing the share of women among executive directors, compared with self-selected targets.

The principles of subsidiarity and proportionality must be met to justify EU-wide regulation. Regarding the *principle of subsidiarity*, it is argued that Member States can achieve the policy objective at national level without EU regulation. However, many Member States have not adopted such legislation eleven years after the EU-level directive was proposed and appear unlikely to do so in the foreseeable future. This strongly indicates that not all Member States will regulate the issue at national level. This point was made by proponents of the directive in 2012-2013 and is still valid today. As outlined earlier in this study, to date, nine Member States have introduced gender quota laws for company boards. Nine more Member States have prepared recommendations for the representation of women on boards in their corporate governance codes, without gender quota law reference. A final group of nine Member States, mostly located in Eastern Europe, do not have gender quota or recommendations for board gender diversity in their corporate governance codes. They are Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Lithuania, Malta, and Slovakia (Arndt & Wrohlich 2019).

As outlined in the proposed directive, Member States may hesitate to introduce their own quotas, as they could perceive a risk of putting their own companies at a disadvantage with companies from other Member States. They may also face resistance from the national business community. EU-wide regulation would overcome such unwillingness by national governments or resistance by national businesses. In addition, it would provide for minimum harmonisation of corporate governance requirements, and this would help companies that operate internationally by avoiding the creation of practical complications due to differing national regulations. In the absence of an EU directive, national level regulations will vary widely (or continue to be non-existent), and this will lead to increasing discrepancies in the share of women on boards across Member States. The proposed directive will provide a minimum level of harmonisation, while allowing Member States to regulate pursuant to the directive in a way that fits their national particularities.

Regarding the *principle of proportionality*, opponents argue that the proposed directive is disproportionate and goes beyond what is required to achieve progress regarding gender equality on corporate boards. The proposed directive sets limitations on the exercise of the freedom to conduct business and of the right to property. However, proponents of the directive see these limitations as necessary and proportionate. They argue that the proposed directive meets the EU's objective to promote equality between men and women and the need to protect the rights and freedoms of others. In addition, the proposed directive does not apply to SMEs and exceptions are made for companies operating in areas of the economy extremely dominated by one gender. Furthermore, the proposed quota target applies to non-executive directors, who may be more readily recruited externally and from many areas of economic life, compared with executive directors. Applying a quota to executive directors is not mandatory – companies may formulate self-selected targets instead. In addition, the proposed directive includes a sunset clause and stays in force only until sustainable progress has been achieved.

In the proposed directive, the quota target would only concern the overall gender diversity among the non-executive directors and would not nterfere with the concrete choice of individual directors from a wide pool of male and female candidates in each individual case. In particular, it does not exclude any particular candidates for director positions, nor does it impose any individual directors on companies or shareholders. The decision on who to appoint to a board thus remains with the companies and shareholders.

In the years since the directive was proposed, developments in women's representation on boards have shown that progress is best achieved in countries where mandatory quota legislation is in place. The effectiveness of gender quotas underlines the proportionality of the proposed directive. The proposed directive would allow Member States to maintain their own regulation if it has proven effective, rather than implementing the EU directive. Also this underlines the directive's proportionality.

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This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, provides an overview of women on board policies in the EU Member States. analyses, in more detail, policies and practices as well as their impact on women's board presentation in Spain, France, Italy, the Netherlands and Germany. The study concludes by recommending a timely adoption of the proposed Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM(2012) 614).

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