Chapter 3

Regulation of the gender composition of company boards in Europe: Experience and prospects

Kevin Campbell and Leszek Bohdanowicz

in *Women on corporate boards: An international perspective*, Aluchna, M and Aras, G (eds), Abingdon, Oxon: Routledge, April, pp 50-66. ISBN: 978-1-138-74018-1.

Introduction

The desire to increase the share of women on corporate boards in Europe has led to the incorporation of voluntary targets into corporate governance codes of best practice in some European countries and the introduction of board gender quota laws in others. Taking affirmative action by imposing a quota can create a critical mass of women on boards that is sufficient to sustain greater numerical equality once the quota is removed (Kogut et al., 2014). A quota law for company boards, set at 40% for each gender, was first proposed in Norway in 2002, to the surprise of many (Bøhren and Staubo, 2016). At the time women held only 9% of board seats (Ahern and Dittmar, 2012). Passed by the Norwegian Parliament one year later, the quota became mandatory in 2008 and sparked public debate in other countries about the possibility of using quotas to increase the representation of women on corporate boards. The European Commission, with the support of the European Parliament and a number of Member States, decided in 2012 that legislative action was necessary to improve gender balance on corporate boards and put forward the proposal for a Directive that sets a 40% target for the presence of the under-represented gender among non-executive directors of companies listed on stock exchanges by 2020.

In this chapter we evaluate the advantages and disadvantages of the enforcement approach proposed by the European Commission. Our review draws on evidence about the mandatory quota system in Norway. We explore the circumstances in which this kind of approach can have either positive or negative outcomes, as well as the unintended consequences that could follow. We explore the different factors that affect the success of quotas, such as the nature of the sanctions against non-compliant companies, and their enforcement. The UK has adopted a voluntary approach to improving board gender diversity, seeking to increase boardroom gender diversity using voluntary targets for listed companies included in the FTSE 100 and 250 indices. We review the success of this approach, and related initiatives in other European countries. These contrasting approaches (hard versus soft law) raise a crucial question for board diversity: which approach, compulsory quotas or a voluntary approach, is the most effective way of improving the representation of women in senior roles?

A catalyst for change: the Norwegian gender quota law

Nordic countries have long been at the forefront of advancing policies to reduce social inequality, with Norway playing a leading role (Borchorst, 2009). Since the early 1970s female participation in the Norwegian labour market has been on the increase, in part stimulated by generous welfare state provision, and is among the highest in the OECD (Johnsen, 2012). Whether a gender balance naturally arises from such a trend is debatable. Karvonen and Selle (1995) suggest that the increased integration of women into leadership positions in Nordic society would eventually result in gender parity as they become increasingly mobilized and active, but with an uncertain time lag. Frustration at the slow pace of change in the private sector eventually led to the enactment of the mandatory gender quota law in 2008 and follows on from a tradition of Norwegian state involvement in advancing the rights of women (Teige, 2012). Gender quotas have been used by Norwegian political parties since the 1970s and they have been applied in the Norwegian public sector since the 1980s, with the result that women hold a relatively equal share of management positions in publicly owned enterprises (Bolsø and Sørensen, 2013). Despite the high rate of working women, and women active in politics and in positions of influence in the Norwegian public sector, women in positions of power in private businesses was paradoxically low (Storvik, 2011).

By the end of the 1990s it became clear that the private sector was lagging behind the public sector and this began to capture political attention. By 2002 less than 10% of the board members of the largest listed Norwegian companies were female directors (Eckbo et al., 2016). A review of the *Gender Equality Act* in 1999 proposed that the gender quota applicable to the public sector also be applied to corporate boards. At this stage the argument for this extension was based on the principle of gender equality: that women should have equal representation in all positions of power and influence, including corporate boards. The proposal was criticized by the corporate sector and did not initially cause too much concern. However, this all changed in 2002 when the conservative politician and Minister of Trade and Industry, Ansgar Gabrielsen, announced that he wanted to impose a 40% quota on the boards of directors of Norway's listed firms. The language used by Gabrielsen was controversial, reflected in the headline in Norway's largest newspaper, *Verdens Gang*: "The Minister of Trade and Industry is Sick and Tired of the Men's Club: Wants to Force Women into Boardrooms". Gabrielsen argued that the low representation of females on corporate boards stemmed from ingrained cultural attitudes and that a quota was the only way to prevent discrimination against women (Nygaard, 2011; Strøm, 2015).

The proposal led to a wide-ranging debate in Norway, with most business executives opposed to the proposed legislation on the grounds that it was punitive and restricted their freedom to conduct business as they saw fit (Fouche and Treanor, 2006). Arguments were also advanced that the new law would lead to stereotyping and produce a negative view of women since their appointments to boards would be seen to be due to their gender rather than their competences (Casey et al., 2011). To counter resistance from the corporate sector and convince skeptics that the quota law should be supported the government shifted its argument away from gender equality towards more strict economic reasoning, emphasizing the "business case": that competitive advantages arise from greater female board participation and lead to better corporate governance and increased profitability. This re-framing turned out to be successful and the Norwegian Parliament passed the law in 2003. It initially required public limited firms to apply the quota on a voluntary basis, but after voluntary compliance failed the law became compulsory on 1 January, 2006, with a two-year transition period backed by a sanction that firms not in compliance by January 2008 faced the penalty of liquidation. Notices to comply were issued to 77 delinquent firms in January 2008, but by April all public limited firms were in compliance with the law (Ahern and Dittmar, 2012). The law increased the average fraction of directorships filled by females from 11% when it was passed to 42% when it became mandatory (Bøhren and Staubo, 2016).

An important part of the story about the imposition of the gender quota in Norway is that the law applied only to limited liability firms that are classed as public limited firms (known or *allmennaksjeselskap* or ASA firms). However, Norwegian firms with limited liability can choose an alternative organizational form known as AS (*aksjeselskap*) which is equivalent to a private limited firm. ASA firms can make public offering of stock and list on the Oslo Stock Exchange whereas AS firms can only raise equity finance from private placements. There are both listed and non-listed ASAs, and the quota applies equally to both groups. Prior to the implementation of the quota rule in 2008 half of the ASA firms altered their organizational form to AS and so the quota law had the unintended consequence of impacting only half of the firms targeted (Bøhren and Staubo, 2014).

Furthermore, as can be observed from Figure 3.1, the female share of board representatives in Norwegian public limited companies has not increased to any great extent beyond the statutory minimum of 40% since the enactment of the quota law in 2008. In contrast the female share of board representatives in private limited companies has hardly changed since 2008 and stood at 18% in January 2017. It would thus appear that the quota law has not strengthened female board representation beyond the catchment area of the law.

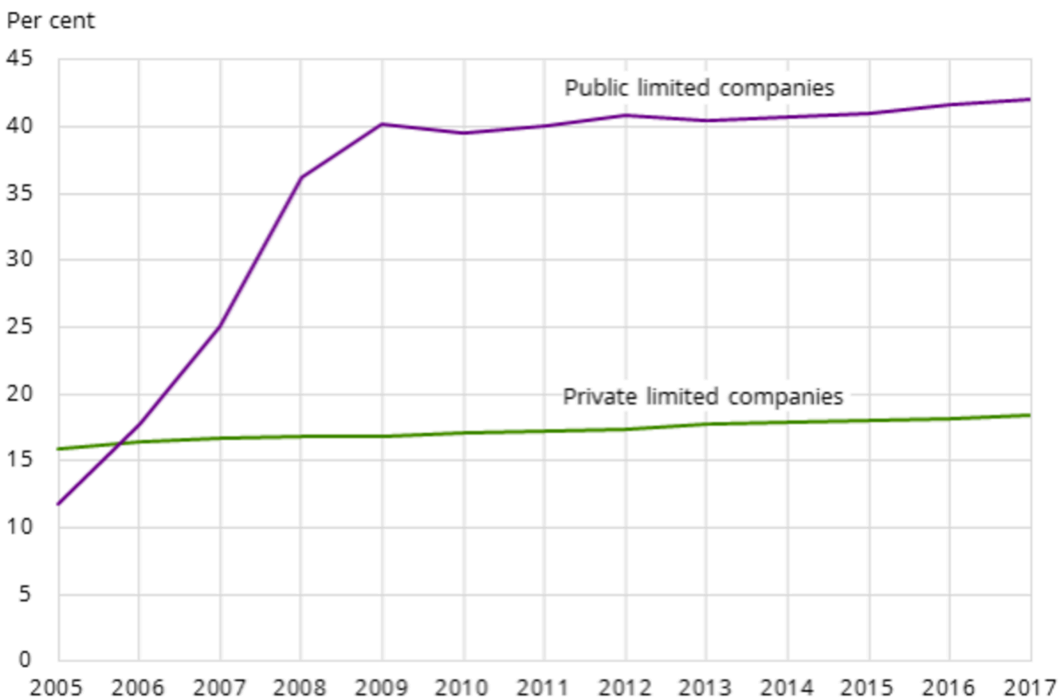

Figure 3.1 Share of Female Board Representatives in Public and Private Limited Companies in Norway (2005–2017)

Source: Statistics Norway.

Furthermore, as Figure 3.2 shows, the share of females holding general manager positions in Norway is actually higher in private limited companies than in public limited companies. While the share of females holding general manager positions in the latter has increased slightly since 2008 it still lies below that of the share in private limited companies and there is no sign of this gap narrowing. Taken together, these statistics raise questions about the ability of the board gender quota law to increase the number of Norwegian women in decision-making positions in economic life in general.

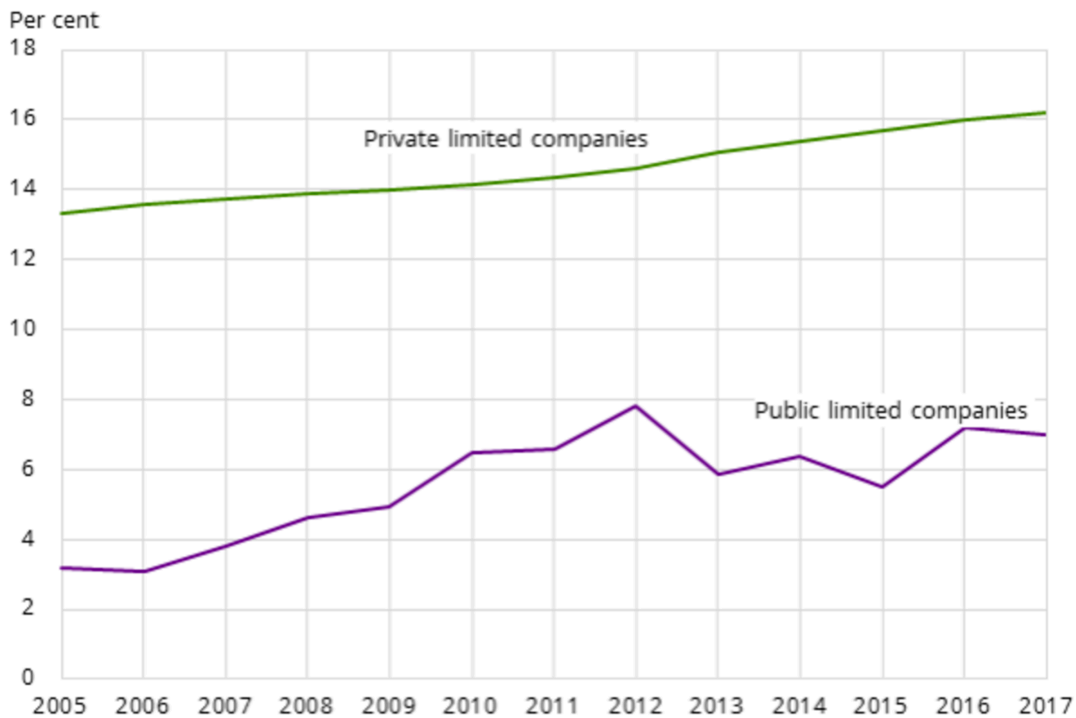

Figure 3.2 Share of Female General Managers in Public and Private Limited Companies in Norway (2005–2017)

Source: Statistics Norway.

Promotion of gender equality by legislation and self-regulation in Europe

Against a backdrop of low female representation on boards in EU countries, the Norwegian experiment energized the debate on gender quotas. In 2003 the average share of female board members was only 9% (Armstrong and Walby, 2012). Several European countries have since introduced hard or soft laws to improve the gender balance on company boards. Following the

Norwegian lead some have adopted similar legislative actions based on mandatory quotas: Spain in 2007; Belgium, France, Italy and the Netherlands in 2011; and Germany in 2016. These laws differ in terms of the rules governing targeted firms, the size of the gender quota, and the severity of sanctions for non-compliers. Other countries, such as the UK and Sweden, have adopted a voluntary approach that has involved the inclusion of targets in corporate governance codes for listed companies.

The available data indicate that mandatory quotas have succeeded in increasing the proportion of women on boards. Apart from Spain, in all countries with mandatory quotas between 2004 and 2014, the proportion of women on boards increased sharply after the date of the introduction of the legislation, and it is well beyond the EU average (Comi et al., 2016). The share of women on company boards in the 28 EU countries, and the national measures in place to encourage board gender diversity, has been investigated by Jourová (2016) and the results are shown in Table 3.1, the data for which are sourced from the European Institute for Gender Equality (EIGE) *Gender Statistics Database*.[1] As of April 2016, the average share of women on boards across the EU-28 average was 23.3%. In column 2 of Table 3.1, those countries with performance above the EU-28 average are shown in bold.

Despite the progress evident from Table 3.1, the European Commission proposed a Directive in 2012 to accelerate progress in improving the gender balance on corporate boards within EU Member States (European Commission, 2012b). The Directive sets a quantitative objective of a 40% presence of the under-represented gender among non-executive directors of companies listed on EU stock exchanges by 2020, and by 2018 in public sector companies. The Directive requires companies to issue annual reports on the composition of their boards and for sanctions to be imposed in the event of negative evaluations. The European Parliament voted with a strong majority to back the proposed Directive in 2013 (European Commission, 2013).

Table 3.1 Share of women on company boards and national measures in place in European Union countries to encourage board gender diversity

Member State	*Share of women on boards(*) EU-28 average: 23.3 %*	*Quotas in place*	*Other national measures in place*
Austria	20.1 %	Yes: only state-owned companies (35 % for supervisory boards by 2018).	Self-regulation: The Corporate Governance Code of 2009 recommends representation of both genders in appointments to supervisory boards.
Belgium	**26.6 %**	Yes: 33% for executives and non- executives in state-owned and listed companies-by 2017 and in listed SMEs-by 2019.	Self-regulation: The Corporate Governance Code of 2009 recommends that the composition of a board is determined on the basis of gender diversity.
Bulgaria	17.9%	No	No
Croatia	22.2 %	No	No
Cyprus	10.9 %	No	No
Czech Republic	8.8 %	No	No
Denmark	**27.0 %**	No	Boards in state-owned companies should 'as far as possible' have an equal gender balance; a man and a woman nominated for every vacancy (executives and non-executives). From 2013 - obligation to all companies (listed and non-listed) to self-regulate and set their own targets. A company can be fined if it hasn't set any target figures or hasn't submitted any reporting.
Estonia	8.2 %	No	No
Finland	**29.9%**	No	State-owned companies are required to have an 'equitable proportion of women and men'. The Corporate Governance Code for listed companies contains recommendation that 'boards shall consist of both sexes'.

(Continued)

Member State	*Share of women on boards(*) EU-28 average: 23.3 %*	*Quotas in place*	*Other national measures in place*
France	**37.1 %**	Yes: from 2011 - 40 % by 2017. Applicable to non-executive directors in large listed and non- listed companies.	The AFEP-MEDEF Corporate Code: recommendation containing same quotas as in the Law of 2011, applicable to all board members.
Germany	**27.2 %**	Yes: from 2016 - 30 % for supervisory boards of the listed companies that are submitted to parity co-determination (the roughly 110 biggest listed companies).	Other companies that are either listed or fall under parity co-determination have to set individual quantitative objectives of women on boards with regard to non-executive and executive board members and senior managers below board level and deadlines to achieve them.
Greece	9.4 %	Yes, 33 % - only companies fully or partially owned by the State. Applicable to all board positions (executives and non-executives).	Soft positive action measures in public sector.
Hungary	11.2 %	No	Soft positive action measures in public sector.
Ireland	16.0 %	No	A policy target of 40 % female participation on all state boards and committees. Soft positive action measures in public sector employment.
Italy	**30.0 %**	Yes: 33 % by 2015 for listed companies and state-owned companies. Applicable to management boards and supervisory boards (i.e. executives and non-executives).	Yes
Latvia	**27.7 %**	No	Soft positive action measures in the public sector.
Lithuania	13.0 %	No	No
Luxembourg	12.9 %	No	Soft positive action measures. The Corporate Code of 2009 recommends the board to have an appropriate representation of both genders. The rule is applicable to all board members.

(Continued)

Member State	*Share of women on boards(*) EU-28 average: 23.3 %*	*Quotas in place*	*Other national measures in place*
Malta	5.0%	No	No
Netherlands	**28.1 %**	Target of 30 % in the executive boards and supervisory boards of large companies - "comply or explain" mechanism, no sanctions. Measure to expire in 2016.	Self-regulation: diversity clauses in the Dutch Corporate Governance Code of 2009, applicable to both executives and non-executives. Voluntary Charter with targets for more women in management.
Poland	19.9%	No	The executive ordinance of Minister of State Treasury obliges state-owned companies to 'choose adequately prepared members of supervisory boards, taking into account the balanced participation of women and men'. The Code of good practices attached to that ordinance establishes a target of 30% for 2015 and a priority rule for equally qualified women. No sanctions are envisaged.
Portugal	14.2 %	No	A government resolution of 2015 encourages listed companies to attain 30 % of the under-represented sex at their administrative bodies by 2018.
Romania	10.1 %	No	Soft positive action measures in public sector employment.
Slovakia	14.3 %	No	No
Slovenia	**23.9 %**	No	Regulation on state-owned companies: A principle of 40% representation of each sex applies to the nomination or appointment of government representatives to management and supervisory boards of state-owned enterprises (executives and non-executives). No sanctions apply if the principle is not respected.
Spain	20.2 %	Yes: 40 % (both executives and non-executives) by 2015 (but no sanctions, thus rather a recommendation by nature) in state-owned companies with 250 or more employees. New possible models under discussion	Soft positive action measures in public sector employment.

(Continued)

Member State	*Share of women on boards(*) EU-28 average: 23.3 %*	*Quotas in place*	*Other national measures in place*
Sweden	**36.1 %**	No	Self-regulation: The Corporate Governance Code of 2004 has a voluntary goal of parity for listed companies – "comply or explain" mechanism.
United Kingdom	**27.1 %**	No	Self-regulation – from 2012 on the basis of principles of UK Corporate Governance Code (following the Lord Davies' recommendation). The recommended target for listed companies in FTSE 100: 25%, by 2015 is applicable to all board members. FTSE 350 companies recommended setting their own aspirational targets to be achieved by 2013 and 2015.

Source: V. Jourová, *Gender balance on corporate boards: Europe is cracking the glass ceiling*, European Commission, Directorate-General for Justice and Consumers, Fact Sheet, July 2016.

Note: * Performances above the EU average are in bold

Despite a broad consensus across the EU in favour of measures to improve the gender balance on company boards, some Member States would prefer either national measures or non-binding measures at EU level. They take the view that the proposal does not comply with the principle of subsidiarity, which holds that the EU may only intervene if it is able to act more effectively than EU countries at their respective national or local levels. At the Employment and Social Policy Council meeting in June 2015, Croatia, Denmark, Estonia, Germany, Hungary, Slovakia, the Netherlands and the UK expressed reservations regarding the Commission's proposal and formed a blocking minority. In March 2017, in a resolution on equality between women and men in the EU in 2014–2015, the European Parliament urged the Council for a swift adoption of the Directive. As of January 2018 no agreement had been reached on its adoption (European Parliament, 2018).

The promotion of gender equality in Europe using quotas

We now turn our attention to research on the promotion of gender equality and the introduction of gender quotas in Europe. We focus on studies of the impact of the mandatory gender quota law in Norway. The introduction of this law provides a "natural experiment" that allows researchers to examine the impact of female directors on firm performance free from the problem of endogeneity (Hermalin and Weisbach, 2003). Despite this, no clear conclusion has emerged from the studies that examine the effect of the law on firm performance (Ferreira, 2015).

Before it was introduced, Norwegian firms affected by the law decided how many women to hire as directors and so the fraction of female directors was endogenous (internally specified by firms). Researchers could not conclude with certainty whether firms that performed well did do *because* of the proportion of women on their boards, or whether firms that performed well were able to then hire more female directors. To determine causality the proportion of female directors needs to be exogenously determined, meaning that it must be specified the same way for all firms. What the Norwegian gender quota law did was to force all publicly listed firms to have 40% of their board seats occupied by women and so the proportion of female directors became an exogenously determined variable (decided by forces external to firms) and thus free from the endogeneity problem.

Ahern and Dittmar (2012) employ an event study method to examine the immediate stock market reaction to the first report of the quota in the *Verdens Gang* newspaper on 22 February 2002. As the announcement affected all public limited liability firms they calculate industry-adjusted abnormal returns by subtracting the average return of US firms in the same industry as firms listed on the Oslo Stock Exchange in the five days surrounding the announcement. Data for US rather than Scandinavian industry returns are used on the grounds that global investors were unlikely to anticipate that the law would directly affect US firms, whereas they may have anticipated that similar laws would be passed in other Scandinavian countries. The authors find significant negative abnormal returns around the announcement date, and these are significantly larger for firms with no women on the board (−3.54%) compared to firms with at least one woman on the board (−0.02%). In contrast to these findings, another event study by Nygaard (2011) finds a significantly positive stock market reaction, but in this case the date chosen is when the quota was mandated by the Norwegian Parliament and liquidation was established as the penalty for noncompliance, on 9 December 2005.

The difference in the results of these two studies is partly due to what Ferreira (2015) calls the “timing problem” as the exact date of the “quota shock” is subject to interpretation. The gender quota was first discussed in 1999, the intention of the government to introduce a law was revealed in 2002, a law proposing the 40% quota was passed in 2003 without a penalty for noncompliance, in 2005 liquidation was established as the penalty for noncompliance, with firms given two years to adjust, and full compliance was only achieved in 2008. There is thus a great deal of freedom to define the shock: is it when the Norwegian government first announced that it planned to legislate (Ahern and Dittmar, 2012) or is it when the Norwegian Parliament made clear that it was serious in its intent by establishing liquidation as the penalty for noncompliance (Nygaard, 2011)? Ultimately, this is a matter of judgement. Another reason for the different event study results is the absence of a natural control group against which to compare firms (Ferreira, 2015). Normally stock returns of firms affected by an event are compared to some measure of the market average, but because the quota law applies to all Norwegian listed firms there is no obvious comparator. While Ahern and Dittmar (2012) use the returns of US firms in the same industry, Nygaard (2011) uses the returns on firms that comprise the Morgan Stanley Capital International (MSCI) World Index.

In addition to examining the stock market reaction to the quota law, researchers have also examined its longer-term financial impact. Ahern and Dittmar (2012) focus on the market-based performance measure Tobin's Q rather than accounting-based measures, such as ROA, because the adoption by Norwegian firms of International Financial Reporting Standards (IFRS) during the transition period of the quota makes accounting performance measures less reliable. They find that the value of Tobin's Q in 2007 through 2009 was substantially lower than in 2003 for those firms most impacted by the quota. They also investigate how the quota impacted the characteristics of boards of directors and find that the new female directors were substantially different from retained male directors: they had significantly less CEO experience, were younger, more highly educated, and more likely to be employed as non-executive managers. They also found that board size did not change as a result of the quota. Thus, rather than meet the quota by simply adding new female directors, firms maintained the size of the board at the cost of replacing male directors.

As noted earlier, a major side-effect of the introduction of the mandatory quota law was that its effect could be avoided by firms altering their form of legal organization from public limited to private limited (Bøhren and Staubo, 2014). Another means of avoiding the law was to incorporate in another country or be acquired by a private or foreign firm. Ahern and Dittmar (2012) provide evidence that both changes occurred following the introduction of the law. Overall the number of public limited firms in Norway in 2009 was less than 70% of the number in 2001 while the number of private limited firms (not affected by the quota) increased by just over 30%. Ahern and Dittmar (2012) also find a strong negative relationship between the probability of delisting after the quota is passed and the number of women on the board before the quota is passed, after controlling for firm size, risky investments and industry effects.

A significant decline in financial performance following the introduction of the quota law is also detected by Matsa and Miller (2013). They find that the ratio of operating profits to assets among affected firms decreased from 2003 to 2009 by about 4% compared with a matched sample of unlisted firms in Norway, and listed and unlisted firms in other Nordic countries. They attribute this deterioration to differences in employment policies: firms affected by the quota laid off fewer employees, causing an increase in relative labour costs and a reduction in short-run profits. The strongest effects were found among firms that were required to add the most women in order to comply with the law. The reduced layoffs are not attributable to changes in board strategy as boards affected and unaffected by the quota were equally willing to initiate mergers, acquisitions and joint ventures. They also find no evidence that the impact of the gender quota was driven by changes in board member characteristics other than gender, such as age or experience. Although the new female directors were younger on average, they replaced younger men and did not decrease the average age of the boards.

Research into the financial performance consequences of the gender quota law is also undertaken by Dale-Olsen et al. (2013). They find that the change in the ROA of non-financial public limited companies affected by the law is negligible compared to that of private limited companies unaffected by the law over the period from 2003 to 2007. They also find that the reform had no significant impact on the operating revenues or on the operating costs of the affected firms, and that although these firms accumulated more capital after the reform, either by raising debt or equity, this is more likely due to a shortage of capital on financial markets as the financial crisis approached rather than a greater appetite for risk by the additional female board members.

Bøhren and Staubo (2016) also examine the impact of the gender quota law on the financial performance of listed and non-listed Norwegian firms. They compare ROA in 2003, when the gender law was passed by the Norwegian Parliament, to the average ROA in the subsequent period from 2004 until 2008, when the law became mandatory. They find that firms that needed to hire more female directors (as they had fewer women on the board prior to the quota) have significantly lower ROA, while no such relationship is found for the unexposed, non-listed firms. They also measure board independence, defined as the fraction of outside directors, and find that this increased significantly, which they attribute to independence being a much more common characteristic among female director candidates than among males. Bøhren and Staubo (2016) argue that there is a trade-off between the value of monitoring provided by independent directors and the value of advice provided by inside directors and that board quality declined when the introduction of the mandatory quota tipped boardroom independence above its optimal level. It is also possible that board independence increased because of the influence of the Norwegian corporate governance code, which was introduced two years before the gender quota law became mandatory in 2008 and which recommends that half of the board members are independent. However, while the gender quota law applies to both listed and non-listed firms, the code applies only to listed firms, and Bøhren and Staubo (2016) find the same upward shift in independence regardless of listing status. Thus, they conclude that increased independence is due to the gender quota law rather than the corporate governance code.

The Norwegian approach to implementing gender quotas has not been repeated in other countries. In Germany a law requiring that women hold 30% of supervisory board seats of the top 100 or so publicly traded companies went into effect in January 2016. A March 2016 study from the Hans Böckler Foundation reports that only about 22% of supervisory board seats at Germany's top companies were occupied by women (Weckes, 2016). Although the share of women in top board positions doubled over a five-year period, the legally mandated quota was not met. This is most probably related to the fact that the quota law in Germany has no teeth, unlike quota laws in other European countries, such as Norway and France, where companies face fines and other sanctions for not complying. It may also be related to negative perceptions of quota-based selection policies in Germany, as revealed in an experimental study by Shaughnessy et al. (2016) based on recruits from German social networking sites. Their findings show that quota-based selection policies negatively influence applicant evaluations of an organization and ultimately their decision to pursue employment. Nevertheless, the identification of non-compliant companies is having some impact as German companies wish to avoid being viewed as a negative example, which suggests that the number of compliant companies is likely to rise over time (Weckes, 2016).

Most studies of the impact of gender diversity initiatives focus on a single country, but there is some evidence from multi-country studies. Casey et al. (2011) compare the hard and soft policies used, respectively, by Norway and New Zealand to achieve board gender equality using qualitative data collected between 2004 and 2005 on women's experiences of governance participation. Their study involved interviews with 35 women: 18 in Norway and 17 in New

Zealand. They find evidence of a perception in Norway that some women were ‘quota-filling’ and lacked competence in a forced compliance situation, while in New Zealand there is evidence of a view that the voluntary approach enabled some boards to insulate themselves entirely from gender equality issues. Labelle et al. (2015) use a multi-country research design to examine how gender diversity is related to firm performance in countries that apply an “enabling approach” based on regulation and those that use a “voluntary approach” where there is no enforcement mechanism. They exclude Norway as the only country using what they term a “coercive approach” based on affirmative action. Their sample comprises 719 firms from 17 countries at the beginning of 2009 and 2011. Nine countries are classified as adopting a voluntary approach in 2009 (Canada, France, Germany, Greece, Italy, Portugal, Switzerland, the UK and the US) while eight countries are classified as adopting an enabling approach (Austria, Belgium, Denmark, Finland, the Netherlands, Ireland, Spain and Sweden). As changes to corporate governance codes promoting gender diversity came into effect by 2011 in France, Germany, the UK and the US, these countries shifted to the group following a regulatory approach. The authors find that gender diversity is positively related to firm performance, measured by ROA, in countries using the voluntary approach, but negatively related in countries adopting the regulatory approach. While their research can be criticized for using an unbalanced panel of data over a limited time period, their result is nevertheless in line with the intuition that an accelerated increase in demand for more female directors in countries following the regulatory approach can result in firms appointing less experienced women to the board.

The voluntary approach to the promotion of gender equality in Europe

Across many EU countries a range of voluntary initiatives have been developed to address under-representation of women at board level. National corporate governance codes encourage, to varying degrees, gender diversity on company boards, and in some countries these are complementary to quotas (see Table 3.1).

The UK has adopted a purely voluntary approach to the promotion of gender equality on company boards following the recommendation of an independent review by Lord Davies of

Abersoch into how obstacles to the participation of women on boards could be removed (Davies, 2011). The Davies Report *Women on Boards* recommended that the UK's comply-or-explain corporate governance code be amended to require listed companies to establish boardroom diversity policies, and this was duly implemented the following year in a revised version of *The UK Corporate Governance Code* (Financial Reporting Council, 2012). It also set a target of 25% female representation on the boards of FTSE 100 listed companies by 2015. Smaller companies comprising the FTSE 250 index were recommended to set their own aspirational targets. In a review of progress four years later, Lord Davies was able to report that the target for FTSE 100 companies had been met, with female representation more than doubling since 2011 to stand at 26.1% (Davies, 2015). The FTSE 250 firms started their journey from a lower base and more than doubled female representation on their boards: in 2011 only 17 companies had 25% or more women on their boards compared to 79 companies by 2015. He also notes there were no all-male boards in the FTSE 100 in 2015, compared with 21 in 2011, and characterizes the UK as "a leader and role model on the international stage for having made such good progress under an entirely voluntary regime" (Davies, 2015: 10). He also notes that the UK was sixth in Europe in terms of female boardroom representation, behind Norway, Sweden, France, Finland and Belgium, all of which had largely introduced legislative quota regimes.

Acknowledging the need to maintain momentum, the UK government set up another independent review on female representation at board level with a remit to continue improving the proportion of women on the boards of FTSE 350 companies, and also to improve their representation below board level in the senior layers of management. Chaired by Sir Philip Hampton, with Dame Helen Alexander as deputy chair, the *Hampton-Alexander Review* set a new target of 33% female representation on boards of FTSE 100 companies by 2020, with the same voluntary target for FTSE 350 companies (Hampton and Alexander, 2016). It also set a target of 33% female representation by 2020 for board executive committees of FTSE 100 companies and for those who directly report to these executive committees. In targeting board executive committees and the layers beneath the Board, the *Hampton-Alexander Review* is setting a more ambitious agenda that will require companies to increase reporting of data about their executive pipeline that has hitherto not been subject to disclosure requirements. Whether the *Hampton-Alexander Review* targets can be met by 2020 and whether momentum for increased female representation can be sustained more generally has arguably been affected by the UK decision to exit the EU following the referendum in 2016. A company chairman quoted anonymously by Davies states that his report encouraged businesses to work together to avoid quotas being imposed by Europe. It is thus possible that UK businesses may feel less inclined to meet targets in a post-Brexit environment. That said, another company chairman was quoted by Davies (2015: 14) saying that

> nobody wants to be left out, so once it becomes a direction of travel then people climb on board because they don't want to appear to be the odd ones out. The more people that did it, the more people saw that actually the boardroom dynamics improved.

It is therefore feasible that the culture of change has become embedded and that achievement of targets will be unaffected by Brexit.

Some EU countries chose to promote greater female board representation using charters to which companies can sign up. In the Netherlands, the charter *Talent to the Top* requires companies to establish quantitative goals for the representation of women in senior management positions, to measure their achievements against these goals and to report annually to a monitoring committee each year on the progress they have made. The 110 largest Dutch companies signed the charter, including many large household names such as Shell, Phillips, Heineken, Reed Elsevier and Unilever (Branson, 2012). By 2010 the share of women in senior positions in companies that signed the charter in 2008 and 2009 had grown by 7.5% and, overall, 72% of companies recorded an increase over this period (European Commission, 2012a).

In Denmark, a similar pledge initiative was developed in 2008 by the Danish Ministry of Gender Equality in the form of a *Charter for More Women in Management*. No sanctions were included in the Charter and it was criticized for a lack of evident results (Agustín and Siim, 2015). It was followed in 2010 by another initiative called *Operation Chain Reaction – Recommendation for more women on supervisory board* which encouraged companies to recruit more female managers to the supervisory boards of Danish limited liability companies. By 2012, only 55 companies had adopted *Operation Chain Reaction* and so the Danish Parliament legislated in 2013 to require companies to set target figures and prepare a policy if either gender represents less than 40%. Although the new rules are flexible in the sense that no specific quotas are set, given that companies are subject to a reporting duty it can be argued that the rules introduce a form of quota through the back door.

Conclusion

Most European countries that have considered gender balance regulation at board level have opted for a voluntary rather than a mandatory approach, while some have adopted a hybrid approach that combines self-regulation alongside quotas. Norway provides the clearest example of the mandatory approach with a quota backed by sanctions while the UK best exemplifies the self-regulation route based on the comply-or-explain principle. The experience of the UK suggests that substantial progress can be made using a voluntary approach. Against the backdrop of the European Commission's proposed Directive that sets a 40% board seat target, the experience of Norway provides the clearest example of what might lie ahead. The ability of some Norwegian companies to evade the quota, alongside evidence that gender diversity did not improve among those Norwegian companies not subject to the quota, suggests that a one-size-fits-all approach is not necessarily the best approach to follow.

Notes

1. The European Institute for Gender Equality, an EU Agency located in Vilnius, Lithuania, is the host of the Gender Statistics Database.

References

Agustín, L.R., Siim, B. 2015. Dilemmas in the Danish approach to gender equality: Gender equality without gender quota, European University Institute Working Paper, Department of Law, 2015/27.

Ahern, K.R., Dittmar, A. 2012. The changing of the boards: The impact on firm valuation of mandated female board representation, *Quarterly Journal of Economics*, 127(1), 137–197.

Armstrong, A., Walby, S. 2012. Gender Quotas in Management Boards: Note to the European Parliament, http://www.europarl.europa.eu/document/activities/cont/201202/20120216ATT38420/20120216ATT38420EN.pdf, accessed 16 February, 2018.

Bøhren, Ø., Staubo, S. 2014. Does mandatory gender balance work? Changing organizational form to avoid board upheaval, *Journal of Corporate Finance*, 28, 152–168.

Bøhren, Ø., Staubo, S. 2016. Mandatory gender balance and board independence, *European Financial Management*, 22(1), 3–30.

Bolsø, A., Sørensen, S.Ø. 2013. How the quota law came about in Tutchell, E., Edmonds, J. (eds.), *Made in Norway: How Norwegians Have Used Quotas to Increase the Number of Women on Company Boards*, London: Labour Finance and Industry Group and the Fabian Women's Network, 1–10.

Borchorst, A. 2009. Women-friendly policy paradoxes? Childcare policies and gender equality visions in Scandinavian in Melby, K., Ravn, A.-B., Wetterberg, Ch.C. (eds.), *Gender Equality and Welfare Politics in Scandinavia: The Limits of Political Ambition?*, Bristol: The Policy Press, 27–42.

Branson, M. 2012. Pathways for women to senior management positions and board seats: An A to Z list, *Michigan State Law Review*, 5, 1505–1585.

Casey, C., Skibnes, R., Pringle, J.K. 2011. Gender equality and corporate governance: Policy strategies in Norway and New Zealand, *Gender, Work, and Organization*, 18(6), 613–630.

Comi, S., Grasseni, M., Origo, F., and Pagan, L. 2016. Quotas have led to More Women on Corporate Boards in Europe, http://www.globalpolicyjournal.com/blog/06/10/2016/quotas-have-led-more-women-corporate-boards-europe, accessed 16 February, 2018.

Dale-Olsen, H., Schøne, P., Verner, M. 2013. Diversity among directors – the impact on performance of a quota for women on company boards, *Feminist Economics*, 19(4), 110–135.

Davies, M. 2011. *Women on Boards*, London: Department for Business, Innovation and Skills.

Davies, M. 2015. *Improving the Gender Balance on British Boards: Women on Boards Davies Review Five Year Summary*, London: Department for Business, Innovation and Skills.

Eckbo, B.E., Nygaard, K., Thorburn, K.S. 2016. Do board gender quotas reduce firm value?, Working Paper, https://ssrn.com/abstract=2746786, accessed 22 July, 2017.

European Commission 2012a. 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, COM(2012) 614 final, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012PC0614, accessed 16 February 2018.

European Commission 2012b. Women in economic decision-making in the EU: Progress report, https://publications.europa.eu/en/publication-detail/-/publication/8832ea16-e2e6-4095-b1eb-cc72a22e28df, accessed 16 February, 2018.
European Commission 2013. Cracking Europe's Glass Ceiling: European Parliament backs Commission's Women on Boards proposal, Press Release database, 20 November 2013, http://europa.eu/rapid/press-release_IP-13-1118_en.htm, accessed 16 February 2018.
European Parliament 2018. Legislative Train Schedule, Area of Justice and Fundamental Rights: Gender Balance on Boards, 20 January 2018, http://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-gender-balance-on-boards, accessed 16 February, 2018.
European Institute for Gender Equality, http://eige.europa.eu/gender-statistics/dgs, accessed 16 February, 2018.Ferreira, D. 2015. Board diversity: Should we trust research to inform policy?, *Corporate Governance: An International Review*, 23(2), 108–111.
Financial Reporting Council 2012. The UK Corporate Governance Code, Financial Reporting Council, London.
Fouche, G., Treanor, J. 2006. In Norway, a woman's place is in the boardroom, *The Guardian*, January 9, www.guardian.co.uk/money/2006/jan/09/business.workandcareers, accessed 19 July, 2017.
Hampton, P., Alexander, H. 2016. Hampton-Alexander review: FTSE women leaders improving gender balance in FTSE Leadership, https://ftsewomenleaders.com, accessed 20 July, 2017.
Hermalin, B.E., Weisbach, M.S. 2003. Boards of directors as an endogenously determined institution: A survey of the economics literature, *Federal Reserve Bank of New York Economic Policy Review*, 9(1), 1–20.
Johnsen, S. 2012. Women in work: The Norwegian experience, *OECD Observer*, 293(Q4), 6–7.
Jourová, V. 2016. Gender balance on corporate boards: Europe is cracking the glass ceiling, European Commission, Directorate-General for Justice and Consumers, Fact Sheet, July.
Karvonen, L., Selle, P. (eds.) 1995. *Women in Nordic Politics: "Closing the Gap"*, Aldershot: Dartmouth.
Kogut, B., Colomer, J., Belinky, M. 2014. Structural equality at the top of the corporation: Mandated quotas for women directors, *Strategic Management Journal*, 35, 891–902.
Labelle, R., Francoeur, C., Lakhal, F. 2015. To regulate or not to regulate? Early evidence on the means used around the world to promote gender diversity in the boardroom, *Gender, Work and Organization*, 22(4), 349–363.
Matsa, D., Miller, A. 2013. A female style in corporate leadership? Evidence from quotas, *American Economic Journal: Applied Economics*, 5(3), 136–169.
Nygaard, K. 2011. Forced board changes: Evidence from Norway, Norwegian School of Economics, Department of Economics Research Paper Series No. 5/2011.
Shaughnessy, B., Braun, S., Hentschel, T., Peus, C.V. 2016. Diverse and just? The role of quota-based selection policies on organizational outcomes, *European Journal of Social Psychology*, 46, 880–890.
Storvik, A. 2011. Women on boards – experience from the Norwegian quota reform, *Cesifo DICE*, 9(1), 34–41.
Strøm, R.Ø. 2015. Gender discrimination before mandated quotas? Evidence from Norway: 1989–2002, *Scandinavian Journal of Management*, 31, 303–315.

Teigen, M. 2012. Gender quotas on corporate boards: On the diffusion of a distinct national policy reform in Engelstad, F., Teigen, M. (eds.), *Firms, Boards and Gender Quotas: Comparative Perspectives*, Bingley: Emerald Group Publishing Limited, 115–146.

Weckes, M. 2016. Beginning cultural change or foreseeable stagnation at 30%? The gender distribution in the supervisory board of the four leading indices, MBF Report No. 21, Hans-Böckler-Stiftung, March.