

GENDER QUOTAS FOR COMPANY BOARDS

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Marc DE Vos
Philippe CULLIFORD
(eds.)



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SETTING THE SCENE

Since the creation of what would eventually become the European Union, gender equality has been an important principle of EU law, both as a market principle and as a social right. Numerous directives and an important body of cases have implemented these principles across all EU Member States. EU equality law is mostly formal in its approach of non-discrimination, while exceptionally embracing a more substantive approach that favours overall outcomes over individual merit and equality of opportunity. The position of women in company boards has increasingly received attention from that substantive angle.

Gender quotas for company boards indeed address the highest rungs of the economic ladder from the perspective of guaranteeing a minimal target of gender diversity *per se*. While this move has gained traction in various European countries and at the EU level as such, its interaction with general non-discrimination law is far from straightforward, as *M. De Vos* demonstrates in this book. Moreover, the basic premises of improved corporate governance and company performance that underpin many of the quota initiatives are themselves not beyond doubt, as *H. De Wulf* points out in his introductory chapter.

Notwithstanding these caveats, the opinion that it is positive for companies to have more women in their board of directors has grown in all the countries that have participated in this project.¹ However, it is also clear that the evolution in public opinion varies significantly from country to country. Public opinion in Iceland, for instance, is more critical of company boards that do not meet gender equality standards than public opinion in Spain, as we learn from the articles of *A. Kovalainen* for Finland and *R. Pala Laguna* for Spain.

Not all European countries have (as yet) embarked upon formal law making to boost gender diversity in the board room. There is a wide and sometimes also complementary experience with soft law under the guise of corporate governance codes and various recommendations, the scope of which often extends beyond that of any formal quotas. Several contributions to this book describe the nature and impact of soft law approaches in their respective countries, while others trace the emergence of hard law rules with a similar purpose.

¹ Belgium, Finland, France, Germany, Iceland, the Netherlands, Norway and Spain.

There is, indeed, a growing tide of imposed and formal quotas to boost gender diversity in board rooms in several European countries. This book describes many of the recent initiatives in that regard, both inside the European Union and beyond. The European Commission, with Commissioner Reding at the political forefront, has claimed its stake in the quotas debate by offering a template for an EU Directive that would generalize and coordinate efforts to impose gender diversity at company boards across the European Union. *A. Stein* presents both the preparation and the contours of an initiative that seeks to balance a clear-cut political agenda for more female representation with the overall gender neutrality archetype of the EU law of which the Commission itself is the institutional guardian.

Gender quotas for company boards are a controversial subject. The contributions to this book do not avoid the debate and provide the reader with clear insights, whether they are societal, legal, or economic. As *B. Waas* mentions in his article, the human right to property and the freedom of association are at first sight obstacles against imposing gender quotas on the boards of directors of private companies. Quotas are difficult to square with an anti-discrimination vision rooted in individual fairness and merit, rather than in group membership. This tension exists and persists well beyond the level of EU discrimination law, as *B. Gressy* illustrates for France.

Wherever the reader stands on the topic, the topicality of gender quotas for company boards is beyond doubt. This book seeks to offer timely information and analysis, both on the broader and cross-country dimensions of corporate governance, economic performance, and EU law, and on the domestic agenda in eight relevant European countries. The contributors to this book not only come from different countries but also partially from different fields. We have indeed strived to integrate the various cross-disciplinary perspectives that are required to fully appreciate the topic but that often remain partially out of view in the single-dimension approaches that dominate academic research. In order to respect the specifics and authenticity of each discipline, we have deliberately chosen to respect the diversity in research and reference styles.

Ours is certainly not the last word on a topic that remains in full swing in a period where many policy and law makers are reconsidering some basic rules of the capitalist economy. Nor does it pretend to offer a fully comprehensive analysis of all the potentially relevant issues. But it will offer the interested reader a broad and honest perspective that integrates various angles and allows for cross-country comparisons. May it contribute to an informed and pragmatic societal debate.

Marc DE VOS and Philippe CULLIFORD

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