GENDER QUOTA ON BOARDS IN GERMANY

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Abstract

Corporate boards are since years dominated by male members. However, given the rising risks and lesson learned from monopoly corporate boards and also lack of talents due to aging society, how to get more female talents on the board is becoming an important part of corporate strategies of all industry. Among all kinds of methods, legislative gender quotas introduced firstly by Norway has been adopted by several European countries. Despite arguments, Germany has joined this gender quota camp at corporate board level from 2016. This paper intends to unfold the gender quota decision of Germany and illustrate the possible outlook of board gender quota in Germany through Europe-wide comparative analysis in selected countries.

Key words: *gender quota, corporate board, woman board director, gender quota legislation, Germany*

1. INTRODUCTION

According European Commission progress report (2012) that despite the increasing public attention and varied instruments adopted on promoting female talents, women as to date still underrepresented in most of the EU economic decision-making, and in particular on corporate boardrooms. Although considerable researches present from different perspectives that to have a gender-diverse corporate board is beneficial for corporate performance and to ensure better corporate governance than a male dominant board (Carter, Simkins & Simpson 2003; Erhardt, Werbel & Shrader 2003; Catalyst 2007, 2011; Adams & Ferreira 2009; Credit Suisse 2012; Bart & McQueen 2013).[1]

The importance and significance of having more women on corporate board have been widely recognized and efforts on improving that have been done both academically and practically. However, prior to the introduction of a 40 percent mandatory gender quota in Norway in 2003, the progress was largely counted on soft targets or self-regulatory methods, which has brought few promising results worldwide. The full compliance of this Norwegian gender quota law by 2008 has been seen as a pioneering case and a successful model. This has added a strong government intervention on improving gender diversity on corporate boards other than voluntary targets instrument and caused a gender quota diffusion in European countries like France, Italy, Belgium, Spain. Norwegian gender studies expert Mari Teigen has presented this gender quota diffusion in her research paper '*Gender Quotas in Corporate Boards – On the diffusion of a distinct national policy reform*' in 2012. Germany and the UK in this paper was analysed and categorised into the pending camp of introducing mandatory gender quota.

However, on March 2015 Germany has finally passed its gender quota law requiring 30 percent women board seats and became the latest and one of the strongest economies to have mandatory gender quota on corporate board. Enacting from 1 January, 2016, Germany was under the spotlight and its boardroom gender quota has added significant influence to the current European and even worldwide gender diversity profile. Thus this paper intends to unfold Germany's path towards to a gender quota in the second section and then compare Germany's quota law with several other major European countries that have adopted mandatory instruments as well by examining their effectiveness and so far achievement after introducing quotas. Also the UK case with voluntary targets has been analysed before a conclusion

[1] A study conducted by Dale-Olsen, Schone & Verner (2013) analysed the Norwegian board diversity case as a natural experiment and concluded that board quota was of small impact on firm performance. However, critical points of view in this paper that women's board presence does not contribute different resources perspective than men were rather arguable.

is drawn. Data used in this paper were mainly collected from national statistics, European Commission reports, working papers as well as journal research papers.

2. LEGAL STRUGGLES TO BOARD GENDER QUOTA IN GERMANY

With gender equality written in the German Basic Law in early 1994 and currently 33 percent female representation sitting in the German Parliament, Germany has a very sound quota tradition from political perspective. However, in business sphere the path to gender diversity was rather struggling (Teigen 2012; Bosch 2015; Lang 2015; Amann, Deckstein & Mueller 2016). Given the slow progress on promoting women board directors, Germany has heated public debate on this topic since 2000s. However, voluntary targets proposed by corporate self to improve women's underrepresentation in corporate boardrooms were in more favour of both the Social Democratic and Conservative Party as both party Chancellors have been opposed to any strong legislative measures or instruments.[2] The singular active engaged business practice was in 2010 when Deutsche Telekom – German telecommunications giant – announced that they will voluntarily set their own gender quota of 30 percent for boardroom by 2015 which they have met their goal by the deadline. Its engagement, however, did not bring spill-over effects to other public listed companies in Germany but remained unfortunately a singular case.

When at European level, a proposed 40 percent gender quota for advancing women board directors on non-executive board initiated by European Commission (EU Commission 2012), the average proposition of women board directors for non-executive corporate board and executive board were reported 15 percent and 8.9 percent respectively. And the most powerful woman in Germany Chancellor Merkel has ensured the 'rejection of the proposed guidelines'. Another legal endeavour was made later in year 2012. Two conservative state Governors, namely, Saarland and Saxony-Anhalt, have supported a proposed federal law requiring 40 percent women board directors by 2023 with an interim target of reaching 20 percent by 2018. It has passed the first round of votes in the First Chamber however was rejected in the Second Chamber facing strong opposition from Liberal-Conservative Party.

A so-called 'flexi-quota' was adopted then in Germany. It allows companies to voluntarily set up their own board gender quota and its full compliance deadline to change the board composition in term of gender. Until 2013, legal gender quota law was proposed, the voluntary progresses were made few and both supervisory and executive corporate boards still not surprisingly continued to be male dominated (Lang 2015; Holst & Kirsch 2015, 2016).

After nearly 15 years struggling on legal gender quota, a proposed quota law of requiring at least 30 percent women for non-executive boards was adopted in December 2015 and finally came into effect from January 2016. This quota law will affect over 100 large listed companies and furthermore around 3500 small and medium sized companies (Deutsche Mittelstand) need to set up their self-imposed gender quota targets. Sanctions for non-compliance will be discussed in the following section together with other major European countries that have legislative gender quota as well.

3. EUROPE-WIDE COMPARISONS: DO ALL GENDER QUOTAS WORK

As a pioneering country in Europe Norway has introduced a legislative gender quota with promoting 40% seats to women as early as of 2003 and by 2008, Norway has successfully accomplished its quota goal. Although critics rise with addressing some negative effects of implementing a mandatory gender quota[3], Norway's achievement on improving board gender diversity and equality has been widely recognised as the most effective case and model worldwide with continuingly increased women board directors from 6 percent in 2002 up to 41 percent in 2013 (see Fig. 1).

[2] Schroeder was the Social Democratic Chancellor and Merkel the Conservative Party.
[3] Addressed negative effects brought by gender quota law in Norway are mainly formed as '*tokenism*' (women were elected as board directors only because of the existence of gender quota and being as women not because of qualifications) and '*golden skirt'* (few female elites sit on multiple corporate board).

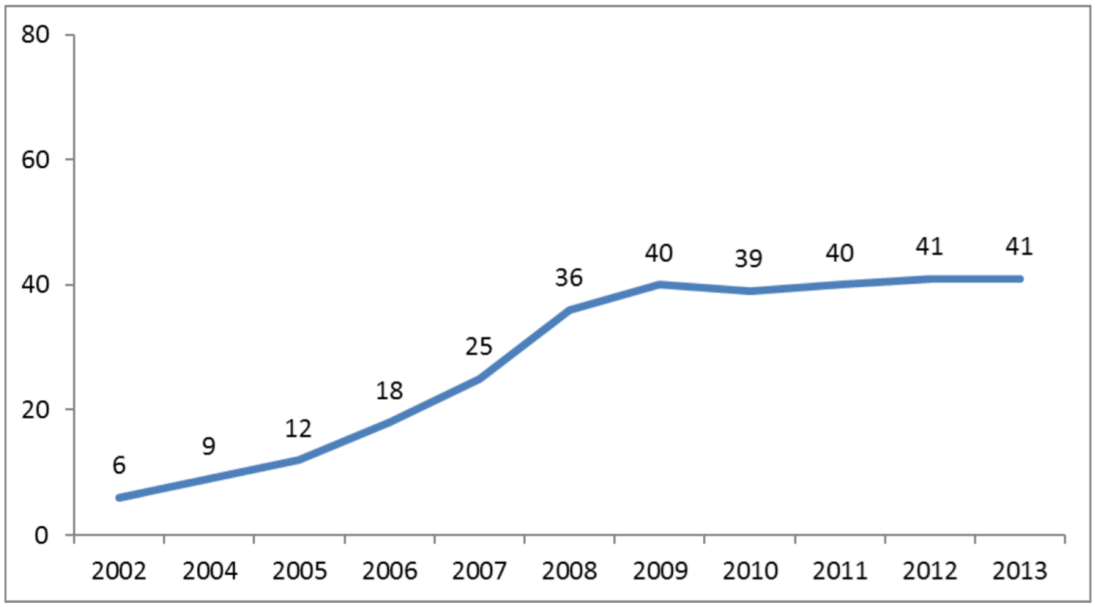


Fig. 1. Proportion of Women Board Directors on Norwegian Public Limited Companies (Year 2002-2012)

Source: Statistics Norway

Witnessing the success of Norwegian gender quota, some European countries have also followed Norway's suit and introduced their own gender quota law with a wide variety of approaches to increase gender diversity on corporate boards. ***Spain*** has introduced in 2007, firstly country after Norway, an 8-year gender quota law of improving the corporate board composition with a minimum 40 proportion of both male and female. This obliged IBEX 35 companies and large companies with more than 250 employees. However, no sanctions included in this gender quota law if companies fail to meet the required proportion in boardrooms. Also no interim targets regulated. According to a European Women's Lobby (EWL) Report (2012) has observed that 5 years after Spain gender quota the proportion of women board directors has only reached 10 percent poorly, 4 percent more than in 2006.

France has followed Norway and Spain and passed a gender quota law in January 2011 to regulate its stock listed companies and companies with either at least 500 employees or revenues over 50 million Euro. The target gender quota is to have 40 percent women board directors by 2017 with a mid-term goal of 20 percent by 2014. Companies that do not meet the gender quota target when appointing board members, the appointment will be invalid. The mid-term target of 20 percent has been met with surprisingly better number of 32.50 percent for the stock listed companies (see Fig. 2).

In May and June 2011, European countries including ***the Netherlands, Italy and Belgium*** have also passed their own legislative gender quota law respectively within two months. Notably that the Netherlands and Italy have mandatory gender quotas requiring not only non-executive corporate boards as most of the gender quota countries did but also including executive board gender quota in the Netherlands and statutory auditor's board in Italy. The Netherlands has a legal target of 30 percent women board directors while Italy and Belgium have regulated as one third (approximately 33 percent).

So far as time examines, some countries have achieved progresses while some haven't met their gender quota goal as expected yet, although all with legislative gender quota law. Figure 2 below presents the countries with women board director proportion on listed companies according to the statistics as of October 2015.

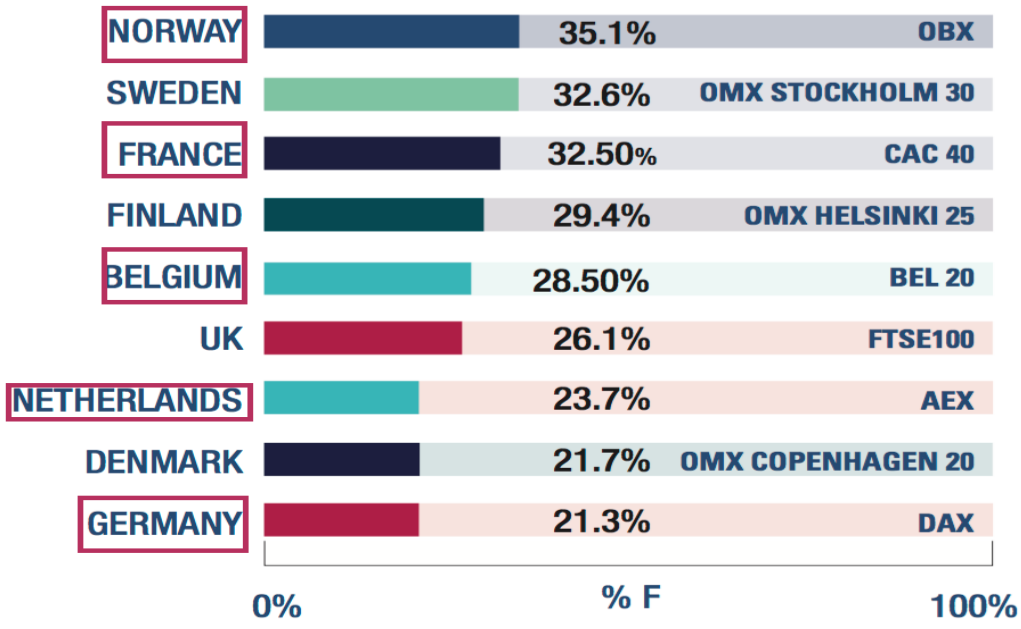


Fig. 2. Women On Board Performance by listed Index (Year 2015)

Source: Data drawn from BoardEx October 2015 and own adaption based on Lord Davies Review Five Year Summary October 2015, p. 11.[4]

From data listed above, it is fair to conclude that Norway still leads with its good practice on introducing mandatory gender quota. Countries that followed Norway's suit like France, Belgium and the Netherlands have also achieved positive progresses. Belgium and the Netherlands are very close to its respective 30 percent and one-third (approximately 33 percent) gender quota targets. And France even outperformed its gender quota mid-term goal of 30 percent and is expecting to meet its 40 percent women board director quota by its full compliance date in 2017. However, countries including Italy and Spain yet do not have met their board gender quota targets with very progressive numbers. Thus gender quotas introduced in different countries do have different pace of performance.

Researches indicate the strong sanctions of failing to meet the mandatory gender quota in Norway was the legislative measure that ensured the full commitment of its quota target. And yet the new adopted gender quota law in Germany has only 'empty board chair' sanction measurement which has been commented as the possible fail cause should the German gender quota does not meet full compliance as it requires. Germany has experienced long-term ineffective voluntary gender targets with such so-called 'flexi-quota' and then turn to advance women board director by introducing legislative measures. If this does not perform well for Germany, then the good practices from the UK with soft self-regulation measures leading by Lord Davis since 2010 with a 25 percent target of women board directors on FTSE 100 companies may be a reference to check on.

[4]Data may vary according to different statistics collection as the data shown in the ranking list include only listed index companies of each country. For instance, the French share of women board directors as of April 2015 has obtained already 32.8 percent according to the European Commission database on women and men in decision-making. Norway's performance is also different from the reported research data from Norwegian scholar Mari Teigen etc.

4. THE UK BOARD DIVERSITY PRACTICES WITHOUT GENDER QUOTA

As of 2010, the UK was lagging behind the European progress on advancing women talents onto corporate board and the number of women board directors on the FTSE 100 companies by then was only 12.5 percent. And this was slowly up with 6 years from 9.4 percent in 2004. With gender quota diffusion wave led by Norwegian quota experience and the adoption of legislative measures in other European countries. The UK government insisted on business-led approaches with soft self-regulations to increase women representation on its FTSE 100 corporate boards. Lord Davis of Abersoch (Lord Davis) was then invited to undertake an annual review on women on board project with aim of having at least 25 percent women board directors by 2015. This voluntary target has been steady and sustained achieved by the second quarter of 2015 (see Fig. 3).

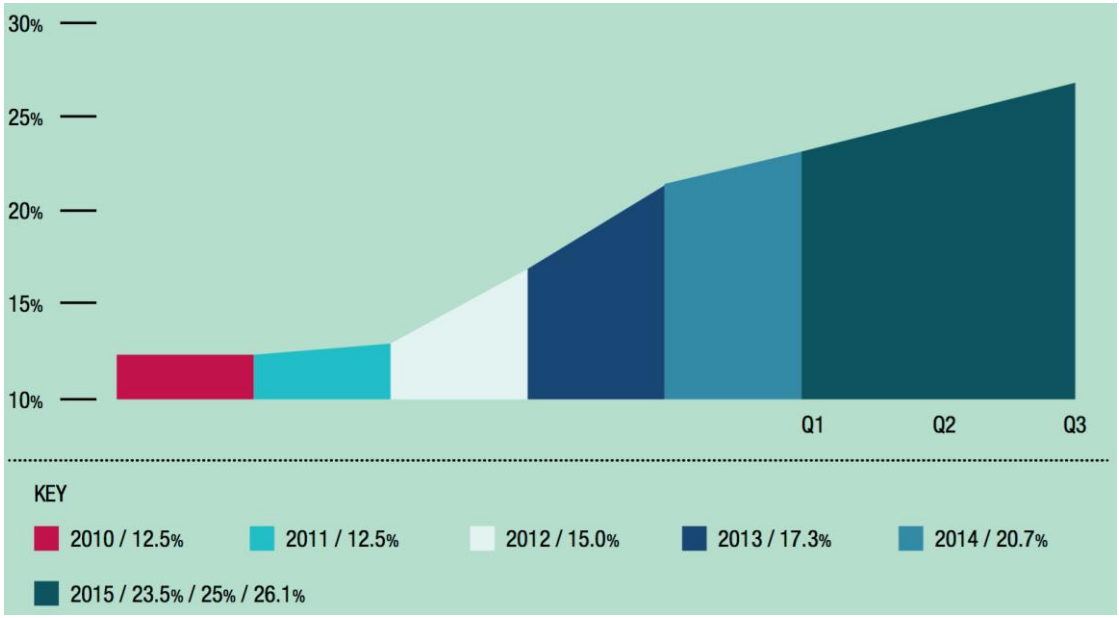


Fig. 3. UK Women on Boards: Progress on FTSE 100 Boards (Year 2010 -2015 Q3)

Source: Lord Davis, 2015, Improving the Gender Balance on British Boards, Women on Boards Davies Review Five Year Summary October 2015, p.6.

After completing the 25 percent women on board target, a new one-third target covering more FTSE companies (previously targeting at only FTSE 100, now at FTSE 350) is setting to meet by 2020. The current progress achieved in the UK is seen as good practices with soft self-regulation and target regimes. Whether continuous progresses can be make possible with new target is, however, under questions and to be proved.

5. CONCLUSION

After nearly 15 years no evident progress with voluntary flexi-quota, Germany is now committing to improve women board representation in a legislative frame. However, as discussed previously in this paper gender quota without appropriate monitoring and strong sanctions to ensure implementation of the regulations is foreseen to be less effective. And under the conservative economic sphere in Germany and the resistance from some big industry leading companies and conservatives there is still a long way full of challenges ahead of German gender equality goal.

Although arguments hold negative predictions on the further outcome of Germany's board gender quota, it still has impact on other undecided countries to a large extend. The adoption of legislative gender quota at corporate board level in Germany has fuelled the debate on choosing mandatory or voluntary

instruments for improving board diversity and its implementation will be seemingly observed by gender diversity researchers, corporates and also policymakers both at national and international level. It is therefore recommending to conduct further monitoring research and analysis on board gender quotas in countries like Germany and France that are to be examined by its quota compliance deadlines. Also the research on continuous performance and possible progress made by countries like the UK with soft regulations and targets will be valuable for gender diversity studies and gender policymakers.

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