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Pre-print version of the following publication: | Versione pre-print della seguente pubblicazione:

Original Citation/Citazione:

Ventura, Livia. (2024). Corporate Governance and Diversity: Gender Quotas in The Boardroom and The Role of Law From A Comparative Law Perspective. THE JOURNAL OF COMPARATIVE LAW, (ISSN: 1477-0814), 19:2, 579-602.

Availability/Disponibilità:

This version is available at: [11385/244858](#) since: 2025-04-10T14:57:46Z - Questa versione è disponibile alla pagina: [11385/244858](#) dal: 2025-04-10T14:57:46Z

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**CORPORATE GOVERNANCE AND DIVERSITY: GENDER QUOTAS IN THE
BOARDROOM AND THE ROLE OF LAW FROM A COMPARATIVE LAW
PERSPECTIVE**

Livia Ventura*

Abstract

In recent years, board diversity has become a relevant topic in the corporate governance debate. Diversity can take numerous forms but most of the attention has been focused on gender diversity. Observing the evolution of the multilevel soft law and hard law sources system from a comparative law perspective, is possible to identify a general convergence among policies adopted in different legal systems to increase female representation in roles traditionally held by men. In particular, a convergence in the shift from the predominance of voluntary targets and soft law initiatives to the surge of mandatory gender quotas on board has taken place in the last decades. Even though there are still a limited number of countries that make use of hard quotas, the trend is growing, and this productive symbiosis between the public and private spheres could be extended to protect other facets of diversity.

Keywords

boardroom diversity, gender diversity, gender quota, gender equality, women on boards

1. Diversity in the boardroom

In recent years, board diversity has become a relevant topic in the corporate governance debate¹ and attracted academic, political, and public attention.² Diversity is regarded as a strength in a globalized world, in which demographic developments and the mounting social pressure for equity considerations make it crucial to integrate it into corporate strategic plans.³

Although the trend to broaden diversity in the boardroom has begun to emerge more than two decades ago, in recent years it accelerated its spread and intensity, particularly at the legislative and regulatory level, albeit with differences across jurisdictions and with less than hoped-for effects.⁴

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¹ Among many, see e.g., Y. Wang, B. Clift, “Is there a “business case” for board diversity?”, *21(2) Pacific Accounting Review* (2009), pp. 88-103; J.A. Fanto, L.M. Solan, J.M. Darley, “Justifying board diversity”, *89(3) North Carolina Law Review* (2010), pp. 901-935; W. Ben-Amar, C. Francoeur, T. Hafsi, R. Labelle, “What makes better boards? A closer look at diversity and ownership”, *24(1) British Journal of Management* (2013), pp. 85–101; R.B. Adams, J. de Haan, S. Terjesen, H. van Ees, “Board Diversity: Moving the Field Forward”, *23(2) Corporate Governance - An International Review* (2015), pp. 77-82; A.J. Hillman, “Board Diversity: Beginning to Unpeel the Onion”, *23(2) Corporate Governance - An International Review* (2015), pp. 104–107.

² M. Giannetti, T. Yue Wang, “Public Attention to Gender Equality and Board Gender Diversity”, *58(2) Journal of Financial and Quantitative Analysis* (2023), pp. 485 – 511.

³ See J.P. Fernandez, M. Barr, *The Diversity Advantage: How American Business can out-perform Japanese and European Companies in the Global Marketplace* (1993), pp. 14-15, according to which “Without total acceptance of diversity and a business plan that completely integrates it into corporate strategic plans, a corporation cannot succeed in the global market.”

⁴ On the issue see D. Mocanu, L. Ventura, “Future of Boards. Legal and Regulatory Frameworks for Sustainability (Phase 1, Part 2)”, University of Cambridge Institute for Sustainability Leadership (CISL), April 2023, available from <https://www.cisl.cam.ac.uk/resources/publications/future-of-boards> [hereinafter D. Mocanu, L. Ventura, “Future of Boards. Legal and Regulatory Frameworks for Sustainability”], pp. 72-79.

Factors that encouraged the diffusion of diversity considerations include the spread in different geographies of a greater cultural push for female representation in society, politic and corporate world; ESG-related pressures to widen board representation to avoid groupthink and help mitigate sustainability-related risks; and greater scrutiny of board composition from regulators, civil society and financial market actors.⁵

Board diversity can have some potential costs, like the creation of conflict, the lack of cooperation, and insufficient communication⁶, or the possibility of choosing directors for their demographic characteristics setting aside the criterion of meritocracy.⁷ Nonetheless, potential benefits are also highlighted by academic literature.⁸ The emphasis on diversity is supported indeed by the indication that it could enhance board capabilities and skills, as well as creativity providing different perspectives.⁹ It improves connections,

⁵ See D. Mocanu, L. Ventura, “Future of Boards. Legal and Regulatory Frameworks for Sustainability”, p. 28.

⁶ A. Zander, “The psychology of group processes”, *30(1) Annual Review of Psychology* (1979), pp. 417–451; D.C. Lau, J.K. Murnighan, “Demographic diversity and faultlines: The compositional dynamics of organizational groups”, *23(2) Academy of Management Review* (1998), pp. 325–40; K.B. Dahlin, L.R. Weingart, P.J. Hinds, “Team Diversity and Information Use”, *48(6) The Academy of Management Journal* (2005), pp. 1107-1123; K. Williams, C. O’Reilly, “Demography and diversity in organizations: A review of 40 years of research”, *20 Research in Organizational Behavior* (1998), pp. 77-140.

⁷ W. Dubbink, “Democracy and private discretion in business”, *15(1) Business Ethics Quarterly*. (2005), pp. 37–66; S. Gopalan, K. Watson, “An agency theoretical approach to corporate board diversity”, *52(1) San Diego Law Review* (2015), pp. 1–72. On the contrary, it is worth questioning the meaning of “merit”, see Dworkin who affirms the possibilities of justifying differentiated policies, which puts some individuals at a disadvantage and can sacrifice the competitive advantages of some individuals to favour others belonging to a disadvantaged group, by the overall improvement of the resulting societies (R. Dworkin, “Affirming Affirmative Action”, *The New York Review of Books*, 22 October 1998, pp. 91-102).

⁸ D. Ferreira, *Board Diversity*, in *Corporate Governance: A Synthesis of Theory, Research, and Practice*, eds. by H. Kent Baker and R. Anderson (2010), pp. 225-241.

⁹ M.S. Granovetter, “The strength of weak ties”, *78(6) American Journal of Sociology* (1973), pp. 1360–1380; M.F. Wiersema, K. Bantel, “Top management demography and corporate strategic change”, *35(1) Academy of Management Journal* (1992), pp. 91–121; W.E. Watson, K. Kumar, L.K. Michaelsen, “Cultural

networking, public relations, and access to resources; it influences and signals firm quality¹⁰ and legitimacy, marking that the company is committed to the promotion of minorities.¹¹

Diversity in the boardroom can help in better representing all shareholders and enabling more inclusive approaches to stakeholder (such as suppliers, customers, policymakers, and various social groups). It disrupts the old boys' club culture and allows to include into the picture the views of underrepresented groups, changing board dynamic¹² and enhancing board independence, decision-making quality, and effectiveness.¹³ This seems to have effects on a wide range of firm financial¹⁴ and non-

diversity's impact on interaction process and performance: Comparing homogeneous and diverse task groups", *36(3) Academy of Management Journal* (1993), pp. 590–602.

¹⁰ B.D. Baysinger, R.D. Kosnik, T.A. Turk, "Effects of Board and Ownership Structure on Corporate R&D Strategy", *34(1) The Academy of Management Journal* (1991), pp. 205-214; T.S. Certo, "Influencing Initial Public Offering Investors with Prestige: Signaling with Board Structures", *28(3) Academy of Management Review* (2003), pp. 432-446.

¹¹ For a general overview on the issue see S.F.A. Khatib, D.F. Abdullah, A.A. Elaamer, "Nudging toward diversity in the boardroom: A systematic Literature review of board diversity of financial institutions", *30(2) Business Strategy and the Environment* (2021), pp. 985-1002.

¹² N. Van der Walt, C. Ingley, "Board dynamics and the influence of professional background, gender and ethnic diversity of directors", *11(3) Corporate Governance* (2003), pp. 218-234; M. Huse, A.G. Solberg, "Gender-Related Boardroom Dynamics: How Scandinavian Women make and can make Contributions on Corporate Boards", *21(2) Women in Management Review* (2006), pp. 113-130.

¹³ R.K. Mishra, S. Jhunjhunwala, *Diversity and the Effective Corporate Board* (2013); S. Nielsen, M. Huse, "The Contribution of Women on Boards of Directors: Going beyond the Surface", *18(2) Corporate Governance: An International Review* (2010), pp. 136-148.

¹⁴ J.I. Siciliano, "The Relationship of Board Member Diversity to Organizational Performance", *15(12) Journal of Business Ethics* (1996), pp. 1313–1320; R. Adler, "Women in the Executive Suite Correlate to High Profits", *79(3) Harvard Business Review* (2001), p. 30; N.L. Erhardt, J.D. Werbel, C. Shrader, "Board Director Diversity and Firm Financial Performance", *11(2) Corporate Governance an International Review* (2003), pp. 102-111; D.A. Carter, B.J. Simkins, G.W. Simpson, "Corporate governance, board diversity, and firm value", *38(1) The Financial Review* (2003), pp. 33-53; D.A. Carter, F. D'Souza, B.J. Simkins, G.W. Simpson, "The gender and ethnic diversity of US boards and board committees and firm financial performance", *18(5) Corporate Governance: An International Review* (2010), pp. 396-414; A.F. Jurkus, J.C. Park, L.S. Woodard, "Women in Top Management and Agency Costs", *64(2) Journal of Business*

financial performance¹⁵, even though not all the analyses conducted have found a clear favorable association.¹⁶

The representation of diversity is not unique. Diversity can take numerous forms, such as gender, ethnic, geographic, nationality, age, tenure, experience, education, or religion. However, most of the attention, especially at the legislative and regulatory level, has been focused on gender¹⁷ diversity, followed by ethnicity and race¹⁸, while less attention and little effort has been paid to the other aspects of the board diversity, in

Research (2011), pp. 180-186; J.D. Mahadeo, T. Soobaroyen, V.Oogarah-Hanuman, “Board composition and financial performance: uncovering the effects of diversity in an emerging economy”, *105(3) Journal of Business Ethics* (2012), pp. 375-388; E. García-Meca, I.M. García-Sánchez, J.Martínez-Ferrero, “Board diversity and its effects on bank performance: An international analysis”, *53(C) Journal of Banking & Finance* (2015), pp. 202-214.

¹⁵ S. Bear, N. Rahman, C. Post, “The impact of board diversity and gender composition on corporate social responsibility and firm reputation”, *97(2) Journal of Business Ethics* (2010), pp. 207–221; I. Ferrero-Ferrero, M.Á. Fernández-Izquierdo, M.J. Muñoz-Torres, “Integrating Sustainability into Corporate Governance: An Empirical Study on Board Diversity”, *22(4) Corporate Social Responsibility and Environmental Management* (2015), pp. 193-207; N. Cucari, S.E. De Falco, B. Orlando, “Diversity of board of directors and environmental social governance: Evidence from Italian listed companies”, *25(3) Corporate Social Responsibility and Environmental Management* (2018), pp. 250–266.

¹⁶ See e.g., R.B. Adams, D. Ferreira, “Women in the Boardroom and Their Impact on Governance and Performance”, *94(2) Journal of Financial Economics* (2009), pp. 291-309; D.A. Carter, F. D’Souza, B.J. Simkins, W.G. Simpson, “The gender and ethnic diversity of US boards and board committees and firm financial performance”, *18(5) Corporate Governance: An International Review* (2010), pp. 396-414; K.R. Ahern, A.K. Dittmar, “The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation”, *127(1) The Quarterly Journal of Economics* (2012), pp. 137-197; D.A. Matsa, A.R. Miller, “A Female Style in Corporate Leadership? Evidence from Quotas”, *5(3) American Economic Journal: Applied Economics* (2013), pp. 136-69.

¹⁷ It is worth noting that the word “gender” it is often use as a substitute for the word “sex”, but it should be considered in its broader meaning, not only referring to the social identity of a person as female or male, but including femininity and masculinity as personal traits of a person. On the issue see, among others, D. Rosenblum, “‘Trapped’ in Sing-Sing: Transgendered Prisoners Caught in the Gender Binarism”, *6(2) Michigan Journal of Gender & Law* (2000), pp. 499-571.

¹⁸ R. O’Kelley, A. Goodman, “2020 Global and Regional Corporate Governance Trends”, Harvard Law School Forum on Corporate Governance, January 18, 2020, <https://corpgov.law.harvard.edu/2020/01/18/2020-global-and-regional-corporate-governance-trends/>.

particular to cognitive, mental and physical disability, age, experience and, more in general, diversity of thoughts.¹⁹

2. Gender diversity: a few data

Even though women account for almost half of the world's global population and a higher percentage of women have tertiary education compared with men²⁰, they are underrepresented in senior leadership positions.

From the 1960s to today²¹ there has been a cultural change and, according to recent data, an increase in the number of women represented on boards of directors. As highlighted by a Cambridge Institute for Sustainability Leadership Report on Trends in Board Practice, the analysis of the Refinitiv Eikon Global Database in relation to large publicly listed companies shows an increase from 15.9 percent of women directors in

¹⁹ P. Buchan, S. Day, L. Drake, S. Gajadhar, V. Hurth, D. Mocanu, A. Noonan, A. Westall, "Trends in board practice: Insights from our Initial Exploratory Research (Phase 1, Part 3)", University of Cambridge Institute for Sustainability Leadership, (CISL), September 2023, available from <https://www.cisl.cam.ac.uk/resources/publications/future-of-boards> [hereinafter P. Buchan et al., "Trends in board practice"], p. 43.

²⁰ Eurostat (2018), A decomposition of the unadjusted gender pay gap using Structure of Earnings Survey data, statistical working paper, available from https://ec.europa.eu/eurostat/web/products-statistical-working-papers/product/-/asset_publisher/DuuxBAj0uSCB/content/KS-TC-18-003; CO3.1: Educational attainment by gender, OECD Family database, OECD - Social Policy Division - Directorate of Employment, Labour and Social Affairs, 2019, available from https://www.oecd.org/els/family/CO3_1_Educational_attainment_by_gender.pdf; Educational attainment worldwide 2020, by gender and level, Statista Research Department, Sep 13, 2023, available from <https://www.statista.com/statistics/1212278/education-gender-gap-worldwide-by-level/>.

²¹ In Sixties and Seventies, boards were mostly homogeneously composed by white male, see J.W. Lorsch, E. MacIver, *Pawns or Potentates: Reality of America's Corporate Boards* (1989).

2017, to 22.8 percent in 2021, and to 24.9 percent in 2022, without stand-out differences across industrial sectors.²²

Other data show that in 2022, the percentage of women on the boards of Fortune 500 companies rose to more than 30 percent, up from 26.5 percent in 2020²³, and that generally, in a global perspective, the percentage of director seats held by women continued to increase, reaching in 2022 the 24.5 percent (up from 22.6 percent in the previous year).²⁴

The percentage of firms with at least 30 percent female directors increased in 2022 to 38 percent compared with 33 percent a year ago. However, as of October 2022, less than one-third of companies domiciled in the developed markets of Europe and the Americas met the 40 percent women on boards threshold.²⁵ Europe is the region with the highest percentage of companies that have reached at least 30 percent women directors, France, Italy and Austria had the highest proportion of companies reaching this threshold, and it is worth noting that they all have mandatory gender quotas in place.²⁶

²² P. Buchan et al., “Trends in board practice”, p. 45.

²³ Deloitte and Alliance for Board Diversity (ABD), Missing Pieces Report: A board diversity census of women and underrepresented racial and ethnic groups on Fortune 500 boards, 7th edition, 2023, available from <https://www2.deloitte.com/us/en/pages/center-for-board-effectiveness/articles/missing-pieces-report-board-diversity.html>.

²⁴ The results are related to the constituents of the MSCI ACWI Index. The MSCI ACWI Index captures large and mid-cap representation across 23 Developed Markets and 24 Emerging Markets countries. See MSCI, Women on Boards Progress Report 2022, available from <https://www.msci.com/research-and-insights/women-on-boards-progress-report-2022> [hereinafter MSCI, Women on Boards Progress Report 2022].

²⁵ MSCI, Women on Boards Progress Report 2022.

²⁶ MSCI, Women on Boards Progress Report 2022.

Notwithstanding the fact that in the last decades women's presence in the boardroom increased, especially among larger corporations, the pace of change remains slow²⁷, with wide geographical variation, ranging from the lowest in Latin America and the Caribbean (12.6 per cent in 2021), to the highest in Africa (27.5 per cent) and in Europe (27.5 per cent).²⁸ According to Deloitte's Women in the Boardroom report 2022, the global average of women on boards is 19.7 percent, an increase of 2.8 percentage points since the 2019 report, but at this pace, the parity will not be reached until at least 2045.²⁹ More generally, from the global perspective, progress on increasing women's representation in management has been so slow that at the current rate, it would take more than 140 years to achieve gender parity in leadership and managerial positions.³⁰

Despite improvements, thus, women are still underrepresented in boardrooms across all industries and a glass ceiling continues to exist regarding the boardroom hierarchy.³¹ Moreover, studies showed that to have a more significant impact on

²⁷ UNGC, How to Increase Gender Balance in Boardrooms, available from <https://unglobalcompact.org/academy/how-to-increase-gender-balance-in-boardrooms>. See A.J. Hillman, C. Shropshire, A.A. Cannella Jr., "Organizational Predictors of Women on Corporate Boards", 50(4) *The Academy of Management Journal* (2007), pp. 941-952.

²⁸ P.Buchan et al., "Trends in board practice", p. 45.

²⁹ Deloitte, Women in the boardroom: A global perspective, 7th ed. (Deloitte, 2022), available from <https://www2.deloitte.com/ua/en/pages/risk/articles/women-in-the-boardroom-a-global-perspective-seventh-edition.html> [hereinafter Deloitte, 2022 Women in the boardroom].

³⁰ United Nations, The Sustainable Development Goals Report 2023: Special Edition, available from <https://unstats.un.org/sdgs/report/2023/>, p. 22.

³¹ The OECD Analytical Database on Individual Multinationals and their Affiliates (ADIMA), March 2020, available from <https://www.oecd.org/gender/data/what-big-data-can-tell-us-about-women-on-boards.htm>. On the barriers to women achieving these positions see also L.M. Fairfax, "Women and the 'New' Corporate Governance: Clogs in the Pipeline: The Mixed Data on Women Directors and Continued Barriers to Their Advancement", 65(2) *Maryland Law Review* (2006), pp. 579-624.

corporate boards activities, boardroom dynamics (with increased teamwork and inclusiveness) and firm performance, women directors need to exceed a “critical mass”³², which is reached when there are three or more females on the board³³, and especially when independent female directors achieve such a critical mass.³⁴

Finally, considering the essential role of sustainability in the current debate on corporate governance of business companies and the financial market, it is worth highlighting, on the one hand that gender diversity represents an end in itself in the broad sustainability spectrum. On the other, that several studies stressed a positive relationship between gender diversity in the boardroom and firm’s environmental, social and governance performance.³⁵ Gender diversity seems to positively change board dynamics

³² R.M. Kanter, “Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women”, *82(5) American Journal of Sociology* (1977), pp. 965-990; M. Granovetter, “Threshold Models of Collective Behavior”, *83(6) American Journal of Sociology* (1978), pp. 1420-1443.

³³ A.M. Konrad, V. Kramer, S. Erkut, “The Impact of Three or More Women on Corporate Boards”, *37(2) Organizational Dynamics* (2008), pp. 145–164; M. Torchia, A. Calabrò, M. Huse, “Women Directors on Corporate Boards: From Tokenism to Critical Mass”, *102(2) Journal of Business Ethics* (2011), pp. 299-317.

³⁴ F. Lefley, V. Janeček, “Board gender diversity, quotas and critical mass theory”, *29(2) Corporate Communications: An International Journal* (2024), pp. 139-151.

³⁵ I. Boulouta, “Hidden connections: The link between board gender diversity and corporate social performance”, *113(2) Journal of Business Ethics* (2013), pp. 185–197; K. Byron, C. Post, “Women on boards of directors and corporate social performance: A meta-analysis”, *24(4) Corporate Governance - An International Review* (2016), pp. 428–442; C. Glass, A. Cook, A.R. Ingersoll, “Do Women Leaders Promote Sustainability? Analyzing the Effect of Corporate Governance Composition on Environmental Performance”, *25(7) Business Strategy and the Environment* (2016), pp. 495-511; W. Ben-Amar, M. Chang, P. McIlkenny, “Board gender diversity and corporate response to sustainability initiatives: Evidence from the carbon disclosure project”, *142(2) Journal of Business Ethics* (2017), pp. 369–382; Ji Li, F. Zhao, S. Chen, W. Jiang, T. Liu, S. Shi, “Gender diversity on boards and firms’ environmental policy”, *26(3) Business Strategy and the Environment* (2017), pp. 306–315; G. Birindelli, S. Dell’Atti, A.P. Iannuzzi, M. Savioli, “Composition and Activity of the Board of Directors: Impact on ESG Performance in the Banking System”, *10(12) Sustainability* (2018), p. 4699; C. Cruz, R. Justo, M. Larraza-Kintana, L. Garcés-Galdeano, “When do women make a better table? Examining the influence of women directors on family firm’s corporate social performance”, *43(2) Entrepreneurship Theory and Practice* (2019), pp. 282–301; J. Lu,

and the decision-making process, rendering boards more suited to meet the sustainability challenges and face the rise of inequality and the increased awareness on climate change risks.

3. Gender diversity and the role of law: a comparative overview

One of the major drivers in the implementation of gender diversity in boardroom is linked to the evolution and interaction of international and national soft law and hard law initiatives, which produced a multilevel sources system.

Traditionally, the regulation of corporate private affair has been left to private ordering, especially in one of the most private aspects of corporate life, that of the choice of management. Within this context, gender quotas are seen as an intrusion of public

I.M. Herremans, “Board gender diversity and environmental performance: An industries perspective”, 28(7) *Business Strategy and the Environment* (2019), pp. 1449–1464; M.H. Elmagrhi, C.G. Ntim, A.A. Elamer, Q. Zhang, “A study of environmental policies and regulations, governance structures, and environmental performance: The role of female directors”, 28(1) *Business strategy and Environment* (2019), pp. 206-220; E. Ginglinger, C. Raskopf, “Women Directors and E&S Performance: Evidence from Board Gender Quotas”, (January 10, 2020), European Corporate Governance Institute – Finance Working Paper No. 760/2021, available at <https://ssrn.com/abstract=3832100>; M. Nadeem, E. Gyapong, A. Ahmed, “Board gender diversity and environmental, social, and economic value creation: Does family ownership matter?”, 29(3) *Business Strategy and the Environment* (2020), pp. 1268–1284; T. Tapver, L. Laidroo, N.A. Gurvitš-Suits, “Banks’ CSR reporting–do women have a say?”, 20(4) *Corporate Governance: The International Journal of Business in Society* (2020), pp. 639-651; I. Tingbani, L. Chithambo, V. Tauringana, N. Papanikolaou, “Board gender diversity, environmental committee and greenhouse gas voluntary disclosures”, 29(6) *Business strategy and Environment* (2020), pp. 2194-2210; M. Atif, M. Hossain, M. Samsul Alam, M. Goergen, “Does Board Gender Diversity Affect Renewable Energy Consumption?”, 66(C) *Journal of Corporate Finance* (2021), pp. 1-29; A. Di Giuli, A. Garel, A. Petit-Romec, “The Voting Behavior of Women-Led Mutual Funds” (September 9, 2022), European Corporate Governance Institute – Finance Working Paper No. 875/2023, available at SSRN: <https://ssrn.com/abstract=4214762>; P.H. Hsu, K. Li, Y. Pan, “The Eco Gender Gap in Boardrooms” (October 3, 2023), European Corporate Governance Institute – Finance Working Paper No. 861/2022, available at SSRN: <https://ssrn.com/abstract=4281479>.

power into the private sphere, and the achievement of public goal of equality between men and women is left to companies' voluntary efforts. This approach was backed in the 1980s and early 1990s by anti-essentialist feminism theories³⁶ according to which there is not a unified notion of "womanhood", leading, on the regulatory perspective, to the prevalence of antidiscrimination law and overreliance on the capacity of voluntary efforts to foster equality.³⁷

Observing the evolution of the multilevel sources system from a comparative law perspective is possible to identify a general convergence among policies adopted in different legal systems to increase female representation in roles traditionally held by men. And more recently, a convergence can be found in the shift from the predominance of voluntary targets and soft law initiatives to the surge of mandatory legal rules. Such a path from soft to hard law has been opened by legislative innovation brought by some countries, like Norway, that have led by example in the introduction of mandatory gender quotas, at first in politics and then in the corporate world. The trajectory towards greater use of hard law was also favoured by the responses to the economic crises of recent years that have paved the way for a renewed state intervention in the private sector.

³⁶ On essentialism and antiessentialism feminist theories see A. Stone, "Essentialism and Anti-Essentialism in Feminist Philosophy", *1.2 Journal of Moral Philosophy* (2004), pp. 135-153.

³⁷ D. Rosenblum, "Feminizing Capital: A Corporate Imperative", *6(1) Berkeley Business Law Journal* (2009), p. 58. See also D. Rosenblum, "Loving Gender Balance: Refraining Identity-Based Equality Remedies", *76 Fordham L. Rev.* (2008), pp. 2873-2893.

3.1. Voluntary corporate actions

At the first level of this sources system, we can find company (or industry³⁸) self-regulation and voluntary corporate actions. These may be express in companies' codes of ethics and corporate governance statements. They may take the form of chosen gender diversity targets, with aligned recruitment, hiring, and promotions policies; or the form of voluntary disclosure and reporting of gender diversity in company's boardroom and workforce; or mentoring programs and diversity trainings.

Voluntary corporate action can be supported on one side, by the board and the management, who, besides the main purpose of ensuring the fundamental right to equal opportunities, see diversity as a profitable management strategy, with the "business case for diversity", *i.e.*, the idea that female leadership will increase firm's profits and value³⁹ by adding women's perspectives and a feminine style of management to corporate leadership.

On the other side, corporate actions can be sustained by shareholders' activism, *e.g.*, through shareholder derivative lawsuits for lack of diversity⁴⁰, and shareholders'

³⁸ See, *e.g.*, the UK Code of Conduct for the executive search industry which encouraged to increase diversity at the board level among the FTSE 350 (see UK Government, The standard voluntary code of conduct for executive search firms, March 2021).

³⁹ L.M. Fairfax, "The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards", 2005(3) *Wisconsin Law Review* (2005), pp. 795-854.

⁴⁰ See derivative lawsuits began in the US for breach of directors' fiduciary duties in relation to the lack of diversity in the boardroom despite the public commitment to diversity, *e.g.*, *Klein v. Ellison*, No. 20-cv-04439 (N.D. Cal. July 2, 2020); *Ocegueda v. Zuckerberg*, No. 20-cv-04444 (N.D. Cal. July 2, 2020); *Falat v. Sacks*, No. 8:20-cv-01782 (C.D. Cal. Sept. 18, 2020); *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728-JMF, 2018 WL 2191300 (S.D.N.Y. Nov. 26 2018); *In re Alphabet S'holder Derivative Litig.*, No. 19CV341522, 2020 Cal. Super. LEXIS 1493 (Cal. Super. Ct. Oct. 22, 2020).

resolution in favour of the implementation of gender equality, especially since sustainability and ESG issues have become central in the governance debate and are gaining increasing attention by civil society and investors⁴¹, in particular in institutional investors stewardship actions.

For example, major institutional investors (*i.e.*, BlackRock⁴², State Street Global Advisors⁴³, and Vanguard⁴⁴) launched campaigns to increase gender diversity on corporate boards leading to a surge of female directors in the US companies.⁴⁵

Similarly, the Norwegian Government Pension Fund Global, Norges Bank Investment Management, requires since 2021 that at least 30 percent of the directors of the companies in its portfolio are female.⁴⁶

In the UK, several investment groups continue to focus their attention on gender diversity and the Investment Association published in November 2020 a report, *Investing with purpose: Placing stewardship at the heart of sustainable growth*, which highlighted

⁴¹ M. Brooke Bilings, A.Klein, Y.C. Shi, “Investors’ response to the #MeToo movement: does corporate culture matter?”, *27(3) Review of Accounting Studies* (2022), pp. 897–937.

⁴² See, *e.g.*, Blackrock, *Our Approach to Engagement on Board Diversity*, 2021.

⁴³ State Street Global Advisors, *Guidance on Diversity Disclosures and Practices*, 2022.

⁴⁴ Vanguard Investment Stewardship Perspectives – Board Diversity, 2019; Vanguard Investment Stewardship Insights – Shareholder proposals: Diversity, equity, and inclusion, 2021.

⁴⁵ T. Gormley, V. K. Gupta, D.A. Matsa, S.C. Mortal, L. Yang, “The Big Three and Board Gender Diversity: The Effectiveness of Shareholder Voice”, *149(2) Journal of Financial Economics* (2023), pp. 323-348; S. Kishan, *Investors Pressure Corporate America with Record Diversity Push*, BLOOMBERG (Apr. 22, 2021). On the issue of institutional investors’ fiduciary duties see A. Alon-Beck, M. Agmon-Gonnen, D. Rosenblum, “No More Old Boys’ Club: Institutional Investors’ Fiduciary Duty to Advance Board Gender Diversity”, *55 UC Davis Law Review* (2021), p. 445.

⁴⁶ H. Liang, C. Vansteenkiste, “Delegated Gender Diversity” (January 25, 2022), European Corporate Governance Institute – Finance Working Paper No. 814/2022, available at <https://ssrn.com/abstract=4023775>.

the improvement in gender diversity on UK boards by virtue of collective and concerted investor action focused on engagement and voting at the general meeting.⁴⁷

In Canada, in 2017, the Canadian 30 percent Club Investor Group (a group of asset owners and asset managers) committed to exercising ownership rights to encourage representation of women on boards of companies included in the S&P/TSX Composite Index to a minimum 30 percent threshold. While since 2022, the Institutional Shareholder Services Proxy Voting Guidelines recommend voting against the nominating committee chair if companies do not have at least 30 percent women directors, or do not have a board diversity policy that includes a 30 percent target to be achieved in a reasonable time frame.⁴⁸

Voluntary actions are a powerful way of raising awareness among market players and society, but they have limits⁴⁹ and for such initiatives to become entrenched in the system, the legislative and regulatory authority play a key role.

3.2. Soft law instruments

⁴⁷ Investing with Purpose: placing stewardship at the heart of sustainable growth, November 2020. The report has been produced by the Asset Management Taskforce, which is a group of the UK's leading investment managers, stakeholders and regulators, led by HM Treasury and supported by the Investment Association (IA). The report is available at <https://www.theia.org/news/press-releases/investment-managers-place-stewardship-heart-sustainable-growth>.

⁴⁸ Institutional Shareholder Services, Canada, Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations, December 2022, at 15.

⁴⁹ R. Moss Kanter, *Men and Women of the Corporation* (1993), p. 291.

At the second level of this multilevel sources system, there are corporate actions induced by international and national soft law instruments.

At the international level, for example, the achievement of gender equality and the empowerment of all women and girls is the aim of Goal 5 of the UN 2030 Agenda's Sustainable Development Goals⁵⁰, and is inherently protected by UN Guiding Principles on Business and Human Rights (UNGPs)⁵¹, as highlighted by the Gender dimension of the Guiding Principles on Business and Human Rights 2019 Report.⁵² According to the illustrative actions contained in the latter, the Guiding Principle 2, 4, 11 and 19, all require states and businesses to take action to ensure equal representation and appoint a certain percentage of women to boards.⁵³

⁵⁰ UN (2015), Transforming Our World: The 2030 Agenda for Sustainable Development, Resolution Adopted by the General Assembly on 25 September 2015.

⁵¹ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie – Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, Human Rights Council, 21 March 2011 (A/HRC/17/31).

⁵² Gender dimensions of the Guiding Principles on Business and Human Rights - Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Human Rights Council, 23 May 2019 (A/HRC/41/43) [hereinafter, Gender dimensions of the Guiding Principles on Business and Human Rights].

⁵³ See Gender dimensions of the Guiding Principles on Business and Human Rights, Guiding Principle 2, Illustrative action b. (“States should encourage business enterprises to appoint a certain percentage of women to their boards and report on the gender pay gap throughout their operations; ...”); Guiding Principle 4, Illustrative action d. (“States should require all State-owned or State-controlled business enterprises to appoint a certain percentage of women to their boards and annually disclose data on progress made in achieving gender parity in employment;...”); Guiding Principle 11, Illustrative action g. (“Business enterprises should take a range of measures (for example, affirmative action and professional development support) to ensure equal representation of women in the workforce at all levels, including on boards. They should also engage and incentivize their business partners to do the same; ...”); Guiding Principle 19, Illustrative action v. (“Adopting affirmative action policies to overcome underrepresentation of women in managerial positions and on boards; ...”).

At the national level, corporate governance codes, stewardship codes, listing rules, or other “best practice” guidelines issued by investor bodies, which encourage high governance standards and best practices in the companies’ corporate governance system, contributed to the boardroom diversity cause and continue to do so. In recent years, these instruments have been updated to reinforce board independence and the importance of diversity policies, *e.g.*, encouraging the adoption of diversity targets, providing guidelines on board selection, and asking for disclosure of diversity in the boardroom.

One of the main examples for the use of soft law can be found in the UK, where there are no mandatory quotas for women on boards, but several initiatives have been taken since the 2011 Lord Davies Report⁵⁴, which introduced voluntary targets. The 2018 UK Corporate Governance Code requires companies, on a “comply or explain” basis, to consider diversity in all its forms, incorporate it into succession, appointment, and board evaluations processes, and provide a clear disclosure on diversity, including gender, the objectives for implementing the policy and the progress on achieving such objectives.⁵⁵ Moreover, in 2022, the Financial Conduct Authority (FCA) introduced new Listing Rules⁵⁶ requiring listed companies to divulge their diversity policies and provide a statement in their annual financial report disclosing, on a “comply or explain” basis, their

⁵⁴ Women on boards, February 2011.

⁵⁵ UK Financial Reporting Council, The UK Corporate Governance Code, available from [https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/#:~:text=UK%20Corporate%20Governance%20Code%202018%20\(Current%20edition\),-Current%20edition&text=The%20Code%20is%20separated%20into,'comply%20or%20explain'%20basis.](https://www.frc.org.uk/library/standards-codes-policy/corporate-governance/uk-corporate-governance-code/#:~:text=UK%20Corporate%20Governance%20Code%202018%20(Current%20edition),-Current%20edition&text=The%20Code%20is%20separated%20into,'comply%20or%20explain'%20basis.)

⁵⁶ Listing Rules LR 9.8.6R(9) and LR 14.3.33R(1).

progress in meeting specific board diversity targets (*e.g.*, at least 40 percent of women on boards, at least one woman in a senior board position, and at least one member of the board with an ethnic minority background).⁵⁷

In countries belonging to the European Union, it is possible to observe the use of different policies.⁵⁸ On one side, there are countries in which there are no laws mandating quotas for women on boards and soft law instruments have been used as the main tool to achieve gender balance. An example are some Nordic countries, which are considered as forerunners on gender equality, like Sweden⁵⁹ or Finland.⁶⁰ On the other side, there are countries in which, together with legislative initiatives promoting equality between women and men in the boardroom, soft law still plays a role in reaffirming the necessity to support gender and other diversity requirements, complementing statutory provisions.

⁵⁷ See Financial Conduct Authority, Diversity and inclusion on company boards and executive management, Policy Statement S22/3, April 2022, available from <https://www.fca.org.uk/publications/policy-statements/ps22-3-diversity-inclusion-company-boards-executive-managment>; and Financial Conduct Authority, Listing Rules and Disclosure Guidance and Transparency Rules (Diversity and Inclusion) Instrument 2022, available from https://www.handbook.fca.org.uk/instrument/2022/FCA_2022_6.pdf.

⁵⁸ For a complete analysis see Deloitte, 2022 Women in the boardroom. Europe regional Overview, p. 93.

⁵⁹ In Sweden, the Corporate Governance Code requires listed companies to have an appropriate board composition and to pursue, among other diversity targets, gender balance on their boards of directors (see Governance Board, The Swedish Corporate Governance Code).

⁶⁰ In Finland, the revised Finnish Corporate Governance Code requires listed companies to outline the diversity principles guiding the company and report about the objective chosen to represent both genders on the board of directors, the means to achieve it, and the progress made (Securities Market Association, Finnish Corporate Governance Code).

Examples are Norway⁶¹, Spain⁶², Portugal⁶³, Italy⁶⁴, France⁶⁵, Germany⁶⁶, and The Netherlands.⁶⁷

The implementation of board gender diversity requirements through soft law instruments is most widespread in Europe but also other countries are embracing the same approach, albeit at different speeds.

Looking at the North America⁶⁸, in Canada and the United States, there are no general quotas for women on boards (except for a few state laws) but gender diversity in the boardroom is supported through other policies, such as the disclosure of corporate governance practices and the number of women on the board and executive positions in

⁶¹ The Norwegian Code of Practice for Corporate Governance (principle 8) provides that the composition of the board of directors meets the company's need for expertise, capacity and diversity.

⁶² The Spanish Good Governance Code of Listed Companies established specific objectives (30 per cent by 2020, 40 per cent by 2022) for women on board and recommends the adoption by listed companies of an internal policy to increase the number of women in senior management positions.

⁶³ The 2020 Portuguese Corporate Governance Code for publicly traded companies explicitly recommends boards to consider gender diversity.

⁶⁴ The Italian 2020 Corporate Governance Code recommends the one-third representation of the underrepresented gender in the composition of the board and the internal statutory auditor, as well as the adoption of measures to promote and monitor equal treatment and opportunities for men and women throughout the organization.

⁶⁵ In France, the 2016 revised Afep-MEDEF Corporate Governance code for publicly traded companies advocates for boards and committees to take into account diversity, including gender, and requires companies to disclose board diversity policies and targets in the annual report (§ 6.2). While the 2020 revised French Stewardship Code recommends listed companies to freely define their own quota of women in the executive governing bodies.

⁶⁶ The 2019 German Corporate Governance Code provides for the establishment of a target percentage of women on executive boards and in the two management levels below the board level.

⁶⁷ The revised Dutch Corporate Governance Code requires companies to set up a diversity policy and report on it and encourages companies to compose their boards "in such a way as to ensure a degree of diversity appropriate to the company" (Principle 2.1), in both management and supervisory boards, without providing for specific diversity quotas or targets.

⁶⁸ Deloitte, 2022 Women in the boardroom, North America regional Overview, p. 29.

Canada⁶⁹, and the Nasdaq board diversity listing rule in the US, recently upheld by a federal court.⁷⁰

In Latin and South America⁷¹, the phenomenon is spreading more slowly. There are no general gender quota laws and the issue is generally addressed by voluntary companies' or industries' initiatives. However, a few examples of soft law initiatives can be found, such as in Argentina⁷² and Chile.⁷³

⁶⁹ In Canada, since 2015, the National Instrument 58-101 on Disclosure of Corporate Governance Practices requires companies to be transparent about their gender diversity policies and disclose *i*) the number and percentage of women on the board and in executive positions, *ii*) the policies to identify and nominate women to boards, *iii*) how nominating committees consider women in selecting executive officers, and *iv*) targets for women's representation in executive and nonexecutive roles.

⁷⁰ In the United States, the Securities and Exchange Commission (SEC) approved in 2021 the Nasdaq's board diversity rule establishing a "disclosure-based framework" under Nasdaq listing rules 5605(f) and 5606. It requires companies listed on the exchange to disclose annually board-diversity level and to have at least one or two (depending on the size of the company board, one for small boards with five or fewer members) women or minority (underrepresented racial or ethnic minority, or LGBTQ+) directors on their boards, or explain why they do not. The Nasdaq's board diversity rule has been upheld by the New Orleans 5th U.S. Circuit Court of Appeals on October 2023 (see *Alliance For Fair Board Recruitment v. SEC*, 5th U.S. Circuit Court of Appeals, No. 21-60626).

⁷¹ Deloitte, 2022 Women in the boardroom, Latin and South America regional Overview, p. 55.

⁷² See *e.g.*, the Bolsas y Mercados Argentinos stock exchange, which requires to listed companies that voluntarily decide to report on women's representation in a specific corporate governance dashboard to have at least one woman on their boards (Bolsas y Mercado Argentino, Reglamento de Panel de Gobierno Corporativo); while the 2019 revised Corporate Governance Code emphasizes the relevance of gender diversity on boards and other leadership positions, asking to take into account gender equity in compensation decisions (CNV, Actualization de Còdigo de Gobienro Societario, June 2019).

⁷³ The Chilean Financial Market Commission introduced several rules to address the problem, requiring listed companies to disclose, on a comply or explain basis, *i*) if shareholders have been informed of diversity attributes considered in the appointment of board members, *ii*) the gender, nationality, and age range of board members in the annual financial statements, *iii*) the composition of women and men within the organization (Comisión para el Mercado Financiero, Normativa CMF, General Rules N° 385, 386 and 461).

In Africa⁷⁴, several countries provide soft rules to support gender diversity in the boardroom, like South Africa⁷⁵, Nigeria⁷⁶, Kenya⁷⁷ and Tunisia.⁷⁸ In Asia⁷⁹, is also possible to find several examples of soft laws supporting gender diversity in boardroom in countries that do not provide for mandatory gender quotas, like Hong Kong⁸⁰, Japan⁸¹,

⁷⁴ Deloitte, 2022 Women in the boardroom, Africa regional Overview, p. 81.

⁷⁵ In South Africa, the King IV Corporate Governance Code stress the relevance of diversity in the boardroom, including gender, and recommends that governing bodies set compositional targets for race and gender representation, for the composition of boards, while Johannesburg Stock Exchange requires listed companies to disclose targets for gender and race representation on the board and track progress made (Johannesburg Stock Exchange, JSE Limited Listing Requirements, 2019).

⁷⁶ In Nigeria, the Code of Corporate Governance emphasizes the importance of board diversity and expect companies to have a policy and targets on diversity across the organization (SEC Nigeria, SEC Corporate Governance Guidelines, 2020).

⁷⁷ The Kenya 2015 Capital Markets Act outlines the Code of Corporate Governance Practices for Listed Companies and requires companies to consider gender when appointing board members (Capital Markets Act (Cap. 485a), Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015).

⁷⁸ In Tunisia, The Guide de Bonnes Pratiques de Gouvernance des Entreprises Tunisienne advocates for Tunisian state-owned companies to appoint one or more women to each board of directors, and for the private sector that the threshold of 25 percent of women members in boards should be considered as a floor.

⁷⁹ Deloitte, 2022 Women in the boardroom, Asia regional Overview, p. 221; and Australasia regional Overview, p. 273.

⁸⁰ In Hong Kong there are no quotas, but Corporate Governance Code and the Hong Kong Stock Exchange (SEHK) Listing Rules require listed companies to have a policy on board diversity, disclose it in the annual report together with the progress made in its implementation, including how and when gender diversity will be achieved with reference to numerical targets and timelines (Hong Kong Exchanges and Clearing, Hong Kong Corporate Governance Code). Moreover, in 2021 the SEHK mandated listed companies to have at least one woman on the board.

⁸¹ In Japan there are no quotas for women, but the Japanese Corporate Governance Code and the recent amendments (e.g., 2018 and 2021 amendments) to the Guidelines for Investor and Company Engagement include reference to the relevance of “promoting diversity,” through disclosing policies and adopting voluntary targets for appointing women, non-Japanese people, and mid-career professionals in senior management positions. Moreover, the Financial Services Agency and the Tokyo Stock Exchange (TSE) require listed companies to disclose in their corporate governance reports the number or percentage of women serving on the board, as well as the efforts and obstacles faced in the appointment of women executives.

Vietnam⁸², Singapore⁸³, Australia.⁸⁴ At the same time there are countries using soft law instruments to supplement statutory compulsory measures, like India.⁸⁵

In the Middle East the progress on female board representation is very slow⁸⁶, although some initiatives have been put in place in more recent years, such as the introduction by the United Arab Emirates' Securities and Commodities Authority of targets on female board representation on a 'comply or explain' base.⁸⁷

As highlighted by this brief overview, the use of soft law instruments is a worldwide phenomenon (especially within the financial sector), and a great convergence on the content of these tools can be observed, although their spread has different speed and intensity in the various regions of the world.

⁸² The Corporate Governance Code of Best Practices for Vietnamese public companies recommends that boards have at least two female directors, or a 30 percent representation of women.

⁸³ In Singapore there are no quotas, the revised Corporate Governance Code requires boards to have an appropriate level of diversity of skills and experience, including gender and age diversity, and ask for disclosure in the annual report of diversity policies, including its objectives and progress made on its implementation.

⁸⁴ In Australia there are no gender quotas but several initiatives in support of female directors, such as the Australian Securities Exchange (ASX) Corporate Governance Council recommendation to listed companies to set measurable objectives for achieving no less than a 30 percent representation of each gender on their boards, and to disclose the diversity policy, including the review of the achievement of such objectives (ASX Corporate Governance Council, ASX Corporate Governance Principles and Recommendations, 4th Edition, 2019).

⁸⁵ Since 2018, the Securities and Exchange Board of India (SEBI) listing requirements provide for the boards of the largest 1,000 listed companies to have at least one female independent director, under penalty of economic sanctions.

⁸⁶ Deloitte, 2022 Women in the boardroom, Middle East and North Africa regional Overview, p. 191.

⁸⁷ The United Arab Emirates' Securities and Commodities Authority (SCA) Code requires listed companies to set policies on gender diversity and a set of actions to meet those objectives, disclose the percentage of female representation on boards in the annual corporate governance report, and to ensure that the representation of women is not less than 20 per cent of the board of directors (United Arab Emirates, Securities and Commodities Authority, The Governance Guide for Public Joint-Stock Companies, 2020).

It must be stressed that usually, soft law provisions apply on a “comply and explain” basis, thus do not provide substantial obligations for companies that can choose to depart from the content of these provisions providing an explanation for their non-compliance. The enforcement of soft law provisions is generally left more to market mechanisms and shareholders activism than the application of sanctions, and the main consequences are usually reputational consequences, which can still have major impacts on companies.

There is no doubt that the use of soft law has positive effects on the promotion of gender equality on corporate boards, but as highlighted by studies, its effectiveness is influenced by enforcement and compliance mechanisms, with stronger effects when enforcement includes a moderate level of sanctions and longer compliance period.⁸⁸

These self-regulatory initiatives are usually preferred by policymakers compared to the introduction of mandatory requirement that can led to drawbacks⁸⁹, but the effects on the achievement of gender equality on the board can be smaller and slower, depending on the cultural, social, and legal context, in countries using “soft quotas” compared to countries providing “hard quotas”.⁹⁰ Soft law could be less effective than mandatory

⁸⁸ See *e.g.*, W. Kang, J.K. Ashton, A. Orujov, Y. Wang, “Realizing Gender Diversity on Corporate Boards”, *30(1) International Journal of the Economics of Business* (2023), pp. 1-29.

⁸⁹ See R. Mateos De Cabo, S. Terjesen, L. Escot, R. Gimeno, “Do ‘soft law’ board gender quotas work? Evidence from a natural experiment”, *37(5) European Management Journal* (2019), pp. 611-624.

⁹⁰ See *e.g.*, H. Mensi-Klarbach, S. Leixnering, M. Schiffinger, “The Carrot or the Stick: Self-Regulation for Gender-Diverse Boards via Codes of Good Governance”, *170(3) Journal of Business Ethics* (2021), pp. 577–593.

regulations, for this reason several countries decided to move towards hard law to regulate the issue.

3.3. Hard law

The shift from soft to hard law in gender quotas on the board has taken place particularly in the last decade. Even though there are still a limited number of legal systems that make use of hard obligations, the trend is growing.

At the international level, a suitable legal ground for the introduction of quotas for women on corporate boards can be found in The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 by the UN General Assembly and entered into force in September 1981.⁹¹ It represents the “bill of rights for women” and sets up an agenda for states actions to end discrimination against women. In particular, article 3 of CEDAW requires states to take all appropriate measures to ensure the “full development and advancement of women”⁹², while article 11 affirms the right to “the same employment opportunities” for men and women, the right to “the free choice

⁹¹ UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women”, 18 December 1979, United Nations, Treaty Series, vol. 1249, at 13. As an international treaty, CEDAW is binding on all parties that ratify it, and those who sign but do not ratify it are obligated not to act contrary to the purpose of the convention under Article 18 of the Vienna Convention on the Law of Treaties (United Nations, “Vienna Convention on the Law of Treaties”, Treaty Series, vol. 1155, May 1969, at 331).

⁹² UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women”, 18 December 1979, article 3: “States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”.

of profession and employment” and “promotion”, and the right to “equal remuneration” and “equal treatment in respect of work of equal value”.⁹³

At national level, the content of specific mandatory rules introduced by states in the area of gender quotas can be categorised into three main areas of obligations: *i*) laws requiring the setting of voluntary targets⁹⁴; *ii*) laws requiring the disclosure of the diversity level of the board⁹⁵; and *iii*) mandatory board composition quotas.

⁹³ UN General Assembly, “Convention on the Elimination of All Forms of Discrimination Against Women”, 18 December 1979, article 11: “1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them. 3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.”

⁹⁴ See *e.g.*, South Korea, that since 2018, requires by law that governmental enterprises and quasi-governmental institutions to set their own target quotas for appointing women to executive officer positions and report annually to the minister of economy and finance on whether they have established and met the quota (Act on the Management of Public Institutions, Article 24-2, Quota System for Appointment of Executive Officers for Gender Equality, December 2018).

⁹⁵ See *e.g.*, Canada federal Bill C-25 in 2018, effective in 2020, which amended the Canada Business Corporations Act requiring disclosure of the number and percentage of directors of underrepresented groups (such as women, aboriginal people, people with disabilities) on boards and among senior leaders of public companies, including the reasons why diversity efforts have not been implemented, and the process for

The latter, the introduction of “hard quotas” is the most relevant in terms of its impact on companies’ private ordering. According to some critics they can possibly affect meritocracy, even though according to others, directors’ appointments are not purely based on talent⁹⁶ and for pure merit to emerge, a society with no biases is needed.⁹⁷ Furthermore, other critics highlights that affirmative actions can be considered paradoxical as they prevent discrimination by using it.⁹⁸ For this reason, hard quotas can generate opposition in civil society, triggering litigation and leading to the repeal of some laws, particularly in those countries that for historical, social, cultural and legal reasons have different attitudes towards affirmative action and positive discrimination policies⁹⁹, such as the United States.¹⁰⁰

selecting members from underrepresented groups. See also the state of Maryland that in 2019 enacted a statute (Senate Bill 1116 on Gender Diversity in the Boardroom) that requires business entities (profit or nonprofit) with corporate headquarters in Maryland to disclose in their annual reports the total number of directors and the total number of female directors.

⁹⁶ On the issue see R. Sealy, “Changing perceptions of meritocracy in senior women’s careers”, 25(3) *Gender in Management: An International Journal* (2010), pp. 184-197; S.J. McNamee, R.K. J. Miller, *The meritocracy myth* (2004).

⁹⁷ L.S. Son Hing, D.R. Bobocel, M.P. Zanna, “Meritocracy and opposition to affirmative action: making concessions in the face of discrimination”, 83(3) *Journal of Personality & Social Psychology* (2002), pp. 493-509.

⁹⁸ R.K. Fullinwider, *The Reverse Discrimination Controversy: A Moral and Legal* (1980). For an analysis of quotas as discriminatory tools see S. Gopalan, K. Watson, “An agency theoretical approach to corporate board diversity”, 52(1) *San Diego Law Review* (2015), pp. 1-66.

⁹⁹ In general, on the issue, see L.M. Leslie, D.M. Mayer, D.A. Kravitz, “The stigma of affirmative action: A stereotyping-based theory and meta-analytic test of the consequences for performance”, 57(4) *Academy of Management Journal* (2014), pp. 964–989.

¹⁰⁰ Affirmative action policies were developed in the US since the 1960s, especially after the adoption of the Civil Rights Act of 1964, to reverse historical social segregation of minorities and other disadvantaged and underrepresented groups (due to racial and national origins, gender, disabilities, sexual orientation) from certain areas of academia, institutions, and the private sector workforce. The use of affirmative action has been contested alleging the violation of the equal protection clause of the 14th Amendment, with conflicting decisions by the US Supreme Court, frequently referring to the need for such measures to be temporary, or supported by a “compelling government interest” and narrowly tailored to accomplish such

Statutory requirements are usually diversified in terms of size and ownership structure. Quotas are indeed provided for large companies, often for publicly listed companies and state-owned enterprises. The content of mandatory quotas also changes among states, from the requirement of at least one member of the under-represented gender on company boards, to the one-third threshold chosen by the majority of states, to the threshold of at least the 40 per cent of seats allocated to the under-represented gender.¹⁰¹

The time frame likewise represents a variable element in statutes, in both, the length and nature of the timescale for reaching the targets (there can be or not a target date; a step by step implementation of incremental targets; the provision of an immediate

compelling interest. Education has been one of the areas in which affirmative actions have been widely used, in particular in college admissions, and one of the areas in which they have been mostly debated since the 1978 *University of California v. Bakke* 438 U.S. 912 (1978) (where the Supreme Court upheld affirmative action – i.e. the use of race as one factor in choosing among qualified applicants for admission – but ruled in favor of Bakke affirming that racial quotas were unconstitutional – i.e. the practice of reserving a number of seats in each entering class for disadvantaged minority students), the *Grutter v. Bollinger*, 539 U.S. 306 (2003) decision (in which the Supreme Court upheld the right of college admissions boards to factor in applicant’s race to promote student diversity and minority groups, so long as it considered other factors evaluated on an individual basis for every applicant), and the *Gratz v. Bollinger*, 539 U.S. 244 (2003) decision (in which the court affirmed the unconstitutionality of the university’s use of race in freshman admissions policy because the policy was not narrowly tailored to its goal, i.e. the achievement of diversity). Recently affirmative action in education have been rejected with the two 2023 decisions *Students for Fair Admissions v. Harvard* and *Students for Fair Admissions v. the University of North Carolina (UNC)* 600 U.S. 181 (2023), in which the Supreme Court overruled *Grutter v. Bollinger* and *Regents of the University of California v. Bakke* providing that race-based affirmative action programs in college admissions violate the Equal Protection Clause and colleges and universities could no longer take race into consideration as a specific basis for granting admission.

¹⁰¹ See D. Mocanu, L. Ventura, “Future of Boards. Legal and Regulatory Frameworks for Sustainability”, p. 75.

implementation or several years to implement it), and the lifespan of the law, which in some cases elapses after a certain period of time (like in Italy).

A diversified set of penalties for non-compliance is also provided by laws, such as voidness of the board appointment in breach of statutory quota, or the dissolution of companies in infringing it, the de-listing from a particular country's stock exchange, the suspension of board members' compensation, the loss of public subsidies and state contracts, and other economic penalties.

Israel has been one of the first countries to enact gender protection laws. In 1993 it provided for an equal (50 per cent) representation of both genders in state-owned enterprises¹⁰², and since 1999 it requires publicly listed companies to appoint at least one member of the non-represented gender on the board of directors.¹⁰³

In Europe, Norway was the first state to establish in 2003 a quota of 40 per cent of each gender on company boards for publicly traded firms and state-owned firms.¹⁰⁴ Norwegian quota played a great influence, and it has been followed by other European

¹⁰² Israeli Government Corporation Law, Section 18A, and Israeli Supreme Court HCJ 453/94 and HCJ 454/94, *Israel Women's Network v. Government of Israel*, November 1, 1994.

¹⁰³ Israeli Companies Law 5759–1999, Part VI, Chapter 1, Article E(d).

¹⁰⁴ Norwegian Public Limited Liability Companies Act, Section 6-11a.

countries such as Spain¹⁰⁵, Iceland¹⁰⁶, France¹⁰⁷, Belgium¹⁰⁸, Italy¹⁰⁹, Germany¹¹⁰, Austria¹¹¹, Portugal¹¹², Greece¹¹³, and the Netherlands.¹¹⁴

¹⁰⁵ In 2007, Spain introduced a board representation quota of at least 40 per cent of the under-represented gender applicable to publicly traded companies, but the strength of the law is diminished by the absence of sanctions for non-compliance, it only provides for incentives in the area of public subsidies and government contracts for compliant companies, so it seems to be closer to a soft law approach than a hard law approach (Constitutional Act 3/2007 of 22 March for effective equality between women and men, art. 75). In 2023 a new bill providing a mandatory quota of 40 per cent was presented.

¹⁰⁶ In 2010, Iceland introduced gender quota in company boards requiring at least a 40 percent gender quota for companies with over 50 employees.

¹⁰⁷ In 2011 (Law n. 2011-103 of January 27, 2011, “Copé-Zimmermann” Law), France introduced for the first time a gender quota requiring at least 40 percent gender balance among the nonexecutive directors of the largest companies (companies listed on the stock exchange, private companies with at least 500 employees and a €50 million turnover over the previous three consecutive years, state-owned enterprise). In 2021, a new law on gender quotas for the executive teams was adopted (Law 16 December 2021) requiring at least 30 percent representation of both genders in these positions by 2026, and 40 percent by 2030, in companies with more than 1,000 employees.

¹⁰⁸ In 2011 Belgium imposed gender quotas to listed and state-owned companies requiring at least one third representation of each gender on their boards and asking to include in the annual report an overview of the efforts made to achieve this target (Law of 28 July 2011, amending the Companies Code, art. 96, §2, al. 1, 6° and 518bis).

¹⁰⁹ In 2011 Italy introduced a gender quota (for a predetermined limited period of time of three terms) providing that 1/3 of the board members and members of the statutory auditors of listed companies and state-owned enterprises need to be elected from the less represented gender (Law n. 120, 12 July 2011, “Legge Golfo-Mosca”). As for listed companies, the quota has been modified (Law n. 160, 27 December 2019) requiring an increase of the quota to 2/5.

¹¹⁰ Since 2015, in Germany the law required at least 30 percent gender quota of non-executive on the supervisory boards of listed companies with full employee representation. In 2021 binding regulations for executive boards was introduced, requiring listed companies with full employee representation on their supervisory boards (more than 2,000 employees). Regulations is also applicable to state-owned enterprises. See Law on Equal Participation of Women and Men in Leadership Positions in the Private and Public Sector, May 2015, and Second Law on Equal Participation of Women and Men in Leadership Positions in the Private and Public Sector, June 2021.

¹¹¹ Austria introduced in 2017 a 30 percent gender quota for supervisory boards (except for boards of fewer than six members and “single gender” companies) of all listed companies and those with more than 1,000 employees. In 2020 it raised to 40 percent the gender quota for state majority-owned enterprises (Law on Equality for Women and Men as Non-Executive Directors on Company Boards, 2017).

¹¹² Since 2018, Portugal required at least 1/3 gender quota on the supervisory boards of state-owned enterprises and publicly listed companies (Law No. 62/2017, August 2017).

¹¹³ Law 4706/2020 on Corporate Governance and Capital Markets Modernization, introduced in Greece in 2021 requires at least 25 percent gender quota for the boards of listed companies.

¹¹⁴ In 2021, gender quota law was enacted in the Netherlands. It requires at least one-third gender quota on the supervisory boards of Dutch listed companies, and mandates large public and private limited liability

The differences in the legislation of Member States (*i.e.*, states with national gender quotas, states with non-binding measures, and states without any rules on the issue) made European harmonisation necessary to accelerate gender-balanced representation on the boards and create a level playing field in the Union. The European Commission launched in 2012 a proposal on gender balance in company boards but the political agreement among European Institutions was reached only in 2022, with the final adoption of the Women on Boards Directive in November 2022.¹¹⁵ Member States shall adopt the Directive by December 2024, and ensure that the objectives provided for are achieved by companies by June 2026.

The directive is only applicable to European companies (*i.e.*, with a registered office in a Member State) listed on the European stock exchanges (*i.e.*, with shares admitted to trading on a regulated market in one or more Member States). Companies under the scope of the directive are required to have at least 40 per cent of the underrepresented gender among non-executive directors, or 33 per cent of the underrepresented gender among all directors. Companies which are not subject to the latter target will be required to set individual quantitative objectives with a view to improving the gender balance among executive directors.

companies to set target and report annually on their progress to improve gender diversity on their boards and senior management positions (Dutch Civil Code, section 2:142b, sections 2:166, and 2:276).

¹¹⁵ Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.

Companies that fail to meet the objective shall adjust the selection process providing for a comparative assessment of the qualifications of each candidate, and for clear, neutrally, and unambiguous selection criteria that are established in advance and applied in a non-discriminatory manner throughout the entire selection process (pre-selection, shortlisting, establishment of pools of candidates). The selection process shall ensure that, when choosing between equally qualified candidates, priority is given to the one of the underrepresented sex, with some exceptions, such as in the case of the pursuit of other diversity policies.

Moreover, companies shall report once a year to the competent state authorities about gender representation on boards (distinguishing between executive and non-executive) and the measures taken to achieve the directive's (mandatory and/or voluntary) targets, indicating the eventual reasons for not achieving them and describing the measures to be taken for their accomplishment. This information shall be available on the company's website and Member States will publish a list of compliant companies as a peer-pressure mechanism.

Furthermore, administrative or judicial procedures must be available for the enforcement of directive's obligations coupled with effective, proportionate and dissuasive penalties for non-compliance that must be provided by Member States, and they may include, *e.g.*, fines, or voidness of the contested director's appointment.

The European Union 2022 Women on Boards Directive represents one of the main examples of regional harmonization on this topic and it is a relevant one given the broad scope of application that will lead to an expansion of the use of hard law in the regulation of the subject matter.

Europe is currently the geographical area with the highest number of gender “hard quotas”, while moving to other regions, the use of hard law is actually quite limited, and soft laws and voluntary corporate actions are the preferred tools, as previously shown.

In North America, Canada adopted a “comply or explain” approach at the federal level, while the province of Quebec, was the first to provide a 50 per cent gender quota for boards of state-owned enterprises in 2011.¹¹⁶

In the United States, even though federal government is considering mandating gender and racial diversity on corporate boards, the use of gender quota is contested and there is not a federal statutory quota for women on boards. At the State level, several states enacted, or are working on the enactment of different rules to boost diversity on boards.¹¹⁷ Among them, Washington State that in 2020 adopted a board quota law

¹¹⁶ 2006 Act Respecting Governance of State-Owned Enterprises.

¹¹⁷ See *e.g.*, Maryland that in 2019 (Senate Bill 1116 on Gender Diversity in the Boardroom) mandated business entities headquartered in the state to disclose in their annual reports the number of female directors; or Illinois that in 2019 (H3394) mandates public companies headquartered in the state to annually report to the Illinois Secretary of State’s Office the gender, race, ethnicity demographics of their boards, and plans to promote diversity. For other state legislations see M. Hatcher, W. Latham, “States are Leading the Charge to Corporate Boards: Diversify”, Harvard Law School Forum on Corporate Governance, May 2020, available from <https://corpgov.law.harvard.edu/2020/05/12/states-are-leading-the-charge-to-corporate-boards-diversify/>, and Deloitte, 2022 Women in the boardroom, p. 35.

requiring public companies to appoint at least 25 per cent women on boards or explain why they didn't reach the target.¹¹⁸

On the other side, the trajectory of California gender quota exemplifies the level of controversy around the issue. In 2018, California was the first US state to provide a statutory gender diversity quota for publicly traded corporations with their “principal executive office” in the state¹¹⁹, requiring companies the achievement of a minimum levels of female directors (based on the director’s self-identification of gender) by 2021 (at least one woman on a board with up to four members, two women on boards with five members, and three women on boards with six or more members). The law also required to report about the number of female directors in the company’s annual report. After its enactment, several legal challenges have been brought at federal¹²⁰ and state¹²¹ level to California statutes alleging that gender and other diversity quotas¹²² discriminate on the basis of sex and race, violating the equal protection clause of the Fourteenth Amendment of the US Constitution or the equal protection clause contained in the California

¹¹⁸ United States, Washington State Legislature, Revised Code of Washington (RCW) § 23B.08.120, 2021.

¹¹⁹ See Senate Bill 826, September 2018, amending State Corporations Code, Chapter 954, §§ 301.3 and 2115.5

¹²⁰ *Alliance for Fair Board Recruitment v. Weber*, 2:21-cv-01951-JAM-AC (E.D. Cal. Jun. 15, 2023). In its decision the court followed US Supreme Court’s affirmative action jurisprudence, e.g., such as *Grutter v. Bollinger*, 539 U.S. 306 (2003).

¹²¹ *Crest v. Padilla*, No. 20-STCV-37513 (LA Super. Ct., Apr. 1, 2022); *Crest v. Padilla*, No. 19-STCV-27561 (LA Super. Ct., May 13, 2022).

¹²² California Assembly Bill No. 979 (“AB 979”) of 2020 further amended Section 301.3 of the Corporations Code and added Sections 301.4 and 2115.6 requiring publicly held companies headquartered in California, beyond gender diversity, to have a minimum number of directors from designated underrepresented racial, ethnic, and LGBTQ backgrounds.

Constitution. This led to the declaration of unconstitutionality of the existing quotas between 2022 and 2023, contributing to the lack of clarity and direction on the issue in the country.

In South America, very few quota laws have been approved and they are only related to state-owned enterprises, such as in Colombia¹²³ and Chile.¹²⁴ Similarly, in Africa only a few countries regulated the issue through hard law, examples are Kenya¹²⁵ and Morocco.¹²⁶

In the Middle East, the United Arab Emirates is the only country that complemented soft law provisions¹²⁷ imposing to listed companies to have at least one woman on the board of directors.¹²⁸

¹²³ Colombia introduced Gender quota legislation in 2000 providing that at least 30 percent women in decision-making positions of state-owned enterprises, state majority-owned enterprises, and all government entities (Statutory Law 581 related to the participation of women as decision-making authorities in public entities, May 2000).

¹²⁴ In 2021 Chile approved a Law requiring a 60 percent ceiling for representation of each gender on boards of state-owned enterprises or state majority-owned enterprises (Law N° 21.356).

¹²⁵ The 2010 Constitution of Kenya recognises the equal rights of women and men and affirms that in the elective or appointive bodies no gender should occupy more than two-thirds of boardroom seats in state-owned enterprises and state majority-owned companies. However, the limit it's that there are no expressed penalties for non-compliance.

¹²⁶ Morocco introduced in 2021 a gender quota for boards of listed companies (Royaume du Maroc, Bulletin Officiel n° 7014, 19 August 2021 - Dahir n°1-21-75, 14 July 2021- Law n. 19-20 *modifiant et complétant la loi 17-95 relative aux sociétés anonymes*, August 2021) requiring at least a 30 per cent representation of each gender within the next three years, and at least a 40 per cent representation of each gender within next six years. Moreover, it provides that board committees should include at least one person from each gender. Penalties are provided, the appointments in breach of these rules can be invalidated and director fees withheld.

¹²⁷ See UAE Securities and Commodities Authority (SCA), SCA Code, Art. 40 which set a target of minimum 20 per cent female representation on boards according to a comply or explain approach.

¹²⁸ In 2021, the United Arab Emirates' Securities and Commodities Authority (SCA) mandated companies listed on the country's stocks exchanges to have at least one woman on the board of directors.

Finally, in Asia, India has been the first developing country to implement board gender quota in 2013¹²⁹ and it has been followed by a few states like Pakistan¹³⁰, and South Korea¹³¹, while Taiwan only provides quotas for state-owned enterprises.¹³²

The introduction of hard quotas requires a heavy states intervention into governance and private ordering but has proved effective. Companies located in countries with gender quotas indeed reached the targets provided by the laws.¹³³ Notwithstanding the fact that gender quotas mandatory imposition is still restricted in terms of geographical coverage, the trend is growing due to an increasing demand of equality

¹²⁹ India introduced in 2013 a quota law requiring at least one female director on the board of all publicly listed companies and other large public limited companies (Indian Company Act, Chapter XI, Article 149, 2013). In literature see, *e.g.*, N. Shikha, “Empirical Analysis of Effectiveness of Quota for Woman on Board in Indian Companies” (September 22, 2017), available from <https://ssrn.com/abstract=4309680>.

¹³⁰ The Securities and Exchange Commission of Pakistan issued in 2019 a Code of Corporate Governance for listed corporations which provides a mandatory requirement for all listed companies to have at least one female director on the board (Pakistan Securities and Exchange Commission, Code of Corporate Governance, Chapter 2, art. 7, September 25, 2019).

¹³¹ South Korea, the 2020 amendment to the Financial Investment Service and Capital Markets Act required listed companies with assets exceeding a certain threshold (*i.e.*, 2 trillion Won) to have at least one director representing each gender on boards since 2022, but there are no sanctions for non-compliance (Financial Investment Services and Capitals Markets Act, Article 165-20, Special Cases concerning Gender Composition of Board of Directors, August 2020). Moreover, since 2018, the law requires that governmental enterprises and quasi-governmental institutions to set their own target quotas for appointing women to executive officer positions and to report annually to the minister of economy and finance on whether they have established and met the quota and recommends that women hold at least 20 percent of executive positions at public enterprises and quasi-government institutions (Act on the Management of Public Institutions, Article 24-2, Quota System for Appointment of Executive Officers for Gender Equality, December 2018; Ministry of Economy and Finance, Guideline on the Management of Public Enterprises, Quasi-Government Institutions, Article 43, December 2018). See Deloitte, 2022 Women in the boardroom, at 259.

¹³² In Taiwan there is a one-third quota for women on the boards of state-owned enterprises and legal entities in which the government at a level of more than 50 percent ownership (Executive Yuan General of Personnel Administration, Action plan for CEDAW 2019-2022, December 2018).

¹³³ See *e.g.*, H. Vieira, “Quotas Have Led to More Women on Corporate Boards in Europe”, The London Sch. Of Econ. And Pol. Sci. (Sept. 30, 2016), available from <https://perma.cc/Y7TD-AQ76>.

arising from civil society and institutions, coupled with the international pressure to achieve gender equality provided by Goal 5 of the SDGs.

In the public/private dichotomy¹³⁴, hard quotas represent a “radical” intervention¹³⁵ but produced mutual benefits, fostering a productive symbiosis between the public and private spheres.¹³⁶ Through hard quotas, public norms influence private actions and engage the private sector and private capital in the achievement of a public goal, such as that of gender equality. At the same time, corporations, as private actors, benefit—acquiring moral legitimacy—from promoting and managing gender equality.

4. Final remarks on gender hard quotas

The rationale of gender quotas is that of creating equality of opportunities, resources, and rewards between man and woman. Equality is a fundamental right endorsed by international conventions and constitutions¹³⁷, but it’s not yet pursued and achieved in any region of the world and at any level of the society. On the contrary, according to the Sustainable Development Goals 2023 Report, at today’s rate it will take

¹³⁴ For a feminist perspective on the public/private dichotomy see, among others, R. Gavison, “Feminism and the Public/Private Distinction”, *45(1) Stanford Law Review* (1992), pp. 1-45.

¹³⁵ See F.E. Olsen, *International Law: Feminist Critiques of the Public/Private Distinction*, in *Reconceiving Reality: Women and International Law*, ed. By D.G. Dallmeyer (1993), pp. 157-165.

¹³⁶ On the issue D. Rosenblum, “Feminizing Capital: A Corporate Imperative”, *6(1) Berkeley Business Law Journal* (2009), pp. 55-95.

¹³⁷ At the international level see e.g., the UN Convention on the Elimination of All Forms of Discrimination against Women of 1979.

140 years to achieve equal representation in leadership in the workplace in a global perspective.¹³⁸

Equality principle and the general prohibition of discrimination against women have proved to be not sufficient in achieving gender parity. Equity strategies, like quotas, can be necessary to identify and adjust power imbalances and compensate women for their historical¹³⁹ disadvantaged position in decision-making and access to economic and social resources, which is built on the lack of an adequate welfare systems, systemic biases and gender stereotypes¹⁴⁰ on family roles and corporate leadership¹⁴¹ that prevent both sexes to operate on a level playing field in the society.

The role of law is thus essential in the path towards gender equality. Soft law can have the general advantage of giving companies the flexibility to set their own timescales

¹³⁸ Sustainable Development Goals 2023 Report: Special Edition – UNSTATS.UN.ORG/SDGS/REPORT/2023/.

¹³⁹ There are studies affirming that the origin of ‘patriarchy’ dates back to the ‘archaic state’ of the second millennium BC, see G. Lerner, *The Creation of Patriarchy* (1986); and studies highlighting how the Neolithic period seems to have laid the foundations for its emergence to take place, see M. Cintas-Pena, L. Garcia Sanjudn, “Gender Inequalities in Neolithic Iberia A Multi-Proxy Approach”, *22(4) European Journal of Archeology* (2019), pp. 499–522.

¹⁴⁰ Among the many studies on the perpetuation of gender stereotypes and biases see e.g., M.E. Heilman, “Gender stereotypes and workplace bias”, *32 Research in organizational Behavior* (2012), pp. 113-135; E. Avitzour, A. Choen, D. Joel, V. Lavy, “On the origins of gender-biased behavior: The role of explicit and implicit stereotypes”, National Bureau of Economic Research No. w27818 (2020), available from <https://ssrn.com/abstract=3692175>; T.L. King, A.J. Scovelle, A. Meehl, A.J. Milner, N. Priest, “Gender stereotypes and biases in early childhood: A systematic review”, *46(2) Australasian Journal of Early Childhood* (2021), pp. 112-125; H. Kotek, R. Dockum, S. Babinski, C. Geissler, “Gender bias and stereotypes in linguistic example sentences”, *97(4) Language* (2021), pp. 653-677; M.E. Heilman, S. Caleo, F. Manzi, “Women at work: pathways from gender stereotypes to gender bias and discrimination”, *11(1) Annual Review of Organizational Psychology & Organizational Behavior* (2024), pp. 165-192.

¹⁴¹ K. Nemoto, “When culture resists progress: masculine organizational culture and its impacts on the vertical segregation of women in Japanese companies”, *27(1) Work, Employment and Society* (2013), pp. 155-158.

and goals as part of each organisation's gender diversity strategy. It had positive effects where introduced, but not always at the speed and amplitude needed to effectively address inequalities.¹⁴² Such slow progress in achieving soft targets prompted several legislators and/or market authorities to introduce compulsory gender representation quotas not only in politics¹⁴³ but also on the boards of certain companies, usually publicly listed companies and state-owned enterprises.

In the last decade the issue of gender diversity is therefore undergoing a transition from the domain of the soft law to that of the hard law. A transition in the use of legislative and regulatory tools we recently witnessed also in other area of business law, such as sustainability requirements. An example is the shift from soft to hard law in sustainability reporting and disclosure requirements, or the introduction of mandatory obligations related to the supply chain oversight in terms of adverse social and environmental impacts.¹⁴⁴

¹⁴² On the effect of soft law, see *e.g.*, A. Klettner, T. Clarke, M. Boersma, "The impact of soft law on social change: Measurable objectives for achieving gender diversity on board of directors", *28 Australian Journal of Corporate Law* (2013), pp. 138-165; R. Goyal, N. Kakabadse, A. Kakabadse, "Achieving Gender Balance on British Boards with the Soft-Law Approach: Directors' Perspective", *18(1) Journal of Business Diversity* (2018), pp. 29-39; R. Mateos de Cabo, S. Terjesen, L. Escot, R. Gimeno, "Do 'soft law' board gender quotas work? Evidence from a natural experiment", *37(5) European Management Journal* (2019), pp. 611-624; W. Kang, J.K. Ashton, A. Orujov, Y. Wang, "Realizing Gender Diversity on Corporate Boards", *30(1) International Journal of the Economics of Business* (2023), pp. 1-29.

¹⁴³ Gender quotas in politics spread globally, in more than 130 countries in all regions of the world, see D. Dahlerup, L. Freidevall, "Quotes as a Fast Track to Equal Representation for Women. Why Scandinavia is no Longer the Model", *7(1) International Feminist Journal of Politics* (2005), pp. 1-22; M.L. Krook, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (2009); S. Franceschet, J. Piscopo, "Equality, Democracy and the Broadening and Deepening of Gender Quotas", *9(3) Politics & Gender* (2013), pp. 310-316.

¹⁴⁴ On the issue, see *e.g.*, L. Ventura, "Supply Chain Management and Sustainability: The New Boundaries of the Firm", *26(3) Uniform Law Review* (2021), pp. 599-634; L. Ventura, "Corporate Sustainability Due

The legislator has long avoided entering the private ordering and freedom of corporations to regulate themselves to address these emerging issues such as sustainability and gender diversity, but the slowness in the effects of self-regulation and the current relevance of these matters in civil society and the market has made legislative intervention a necessity, especially in countries where the call for equality is more strongly grounded in civil society and accepted by the legal system, such as in Europe. But this phenomenon, as showed by the comparative analysis of law, is also gaining ground in other countries, such as North and Latin America, Asia, Africa, and the Middle East, although at a different pace of change.

The main aim of quota laws is to rebalance an unbalanced situation in which underlying challenges of discrimination and inequalities have led to severe under-representation of women in the highest decision-making positions. For this reason, in some systems they have been introduced as temporary measures to eradicate inequality built up over time and, once addressed, should be lifted in accordance with the principle of non-discrimination and equal treatment. But looking at how they are formulated, for the protection of the under-represented gender, they should instead retain their value as general measures not subject to expiry, as a tool to guarantee diversity in contexts where this represents an added value, as well as a public goal. And perhaps, probably in a not

Diligence and the New Boundaries of the Firms in the European Union”, *34(2) European Business Law Review* (2023), pp. 239-268; D. Mocanu, L. Ventura, “Future of Boards. Legal and Regulatory Frameworks for Sustainability”, pp. 42-51 and 79-83.

too near future, they may be useful for men themselves, when in an overturned context they may become the underrepresented gender on boards.

As for their consequences, positive effects of quota laws have been demonstrated in political representation¹⁴⁵ and are described in different studies on gender diversity on boards.¹⁴⁶ Quotas can also have indirect effects, such as providing more role models for women, inspiring and motivating girls to pursue education, career, and leadership potential.¹⁴⁷ They can be an instrument for women's empowerment, and, as already highlighted, can improve corporate governance and sustainability performance of companies, positively affecting board dynamics and decision-making process.

At the same time, it must be stressed the peril of these laws, that gender quotas can be reduced to tokenism and purely symbolic compliance if poorly implemented by companies.¹⁴⁸ For example, confining women into numerical minority status that

¹⁴⁵ United Nations, *The Sustainable Development Goals Report 2023: Special Edition*, available from <https://unstats.un.org/sdgs/report/2023/>, at 22, according to which legislated gender quotas have proven effective, with countries applying quotas seeing an average of 30.9 per cent women's representation in the 2022 parliamentary elections.

¹⁴⁶ See, e.g., G. Ferrari, V. Ferraro, P. Profeta, C.D. Pronzato, "Gender Quotas: Challenging the Boards, Performance, and the Stock Market", *IZA Discussion Papers* 10239, 2016, Institute of Labor Economics (IZA); G. Atinc, S. Srivastava, S. Taneja, "The impact of gender quotas on corporate boards: a cross-country comparative study", *26(3) Journal of Management and Governance* (2022), pp. 685–706; E. Hamplová, V. Janeček, F. Lefley, "Board gender diversity and women in leadership positions – are quotas the solution?", *27(4) Corporate Communications: An International Journal* (2022), pp. 742-759; G. Ferrari, V. Ferraro, P. Profeta, C. Pronzato, "Do Board Gender Quotas Matter? Selection, Performance, and Stock Market Effects", *68(8) Management Science* (2022), pp. 5557-6354; C. Fernández-Méndez, S. Pathan, "The valuation impact of gender quotas in the boardroom: Evidence from the European markets", *54 Finance Research Letters* (2023).

¹⁴⁷ P. R. Arvate, Gi. Walczak Galilea, I. Todescat, "The queen bee: A myth? The effect of top-level female leadership on subordinate females", *29(5) Leadership Quarterly* (2018), pp. 533-548.

¹⁴⁸ R. Moss Kanter, *Men and women of the corporation* (1977); D.M. Branson, *No seat at the table: How corporate governance and law keep women out of the boardroom* (2006), pp. 109-119; A. Cook, "Christy

constrain their ability to acquire legitimacy on the board, or relegating female representatives to less relevant committees, or denying them access to higher senior leadership and executive positions or appointing non independent women but women with existing family or ownership ties with the company. The greatest benefits, therefore, will depend on the ways in which companies will implement gender quotas with the required seriousness, considering them a strategic advantage rather than a compliance objective.

Finally, the public/private symbiosis highlighted and tested by gender quota policies can be extended to improve other inequalities.¹⁴⁹ In the case of board composition, as already stressed, diversity cannot be embodied solely in gender, it has multiple expressions and the spread of gender quotas can have a spillover effect, moving from gender to other aspects of diversity in the boardroom, and from the boardroom to other areas of the economy and society (*e.g.*, universities). The use of gender in rethinking public/private relationships indeed already happened in the past. For example, when the acceptance and the spread of laws framed to protect the rights of women workers served as an “opening wedge” leading to the protection of workers’ conditions, regardless of their gender.¹⁵⁰ Gender quotas can thus serve as a proven tool to possibly extend the

Glass, Women and top leadership positions: Toward an institutional analysis”, *21(1) Gender, Work and Organization* (2014), pp. 91-103.

¹⁴⁹ D. Rosenblum, “Feminizing Capital: A Corporate Imperative”, *6(1) Berkeley Business Law Journal* (2009), p. 61.

¹⁵⁰ Reference is made to the process of the recognition of workers’ rights in the United States between the nineteenth and twentieth centuries following the decision of *Muller v. Oregon* [208 U.S. 412 (1908)] in

empowerment and the protection of the law to other minority groups, generating positive effects on the other many facets of diversity, within different contexts.

which the Supreme Court retreated from the *laissez-faire* principle and allowed state intervention, at first to protect women by regulating their working hours, and then to generally protect workers' conditions, regardless of the gender. On the specific issue see *e.g.*, A. Kessler-Harris, *Out to Work. A History of Wage-Earning Women in the United States* (1982), p. 184; and R. Bader Ginsburg, "Muller v. Oregon: One Hundred Years Later", *45(3) Willamette Law Review* (2009), pp. 359-380.