

Gender balance in decision-making and leadership

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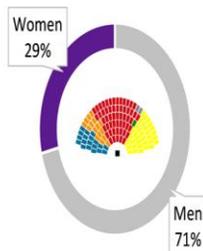
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EIGE's Gender Statistics Database on women and men in decision-making (2018)

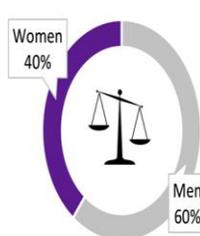
1. Politics

National Parliaments



2. Judiciary

Supreme Court judges



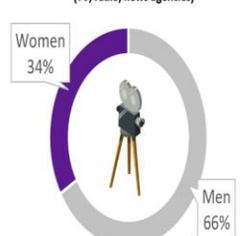
3. Public administration

Senior public servants



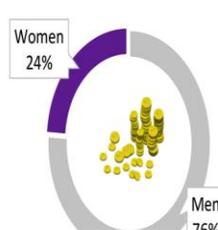
4. Media

Decision-making bodies of public broadcasters (TV, radio, news agencies)



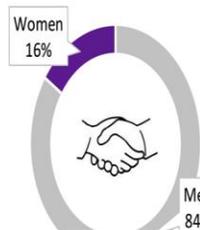
5. Business and finance

Boards of the largest listed companies in the EU



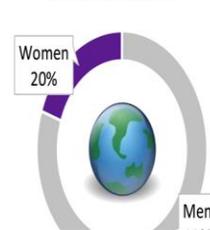
6. Social partners

National organisations representing employers and employees



7. Environment and climate change

Ministers/ State secretaries



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Outline

1. The limited power of definition of women in the Covid-pandemic

2. The struggle for power of definition; tackling underrepresentation of women on company boards

- **What** problem and what causes?
- **Why** equal representation?
- **How** to achieve?
 - National approaches (a)
 - European approach (b)

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1. How does the pandemic impact on women in leadership and decision-making?

General problem: lack of women in formulation of policy responses

<https://www.equalitylaw.eu/downloads/5300-european-equality-law-review-2-2020-pdf-1-446-kb>



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Female political leaders in Europe

Heads of government

- Denmark
- Finland
- Germany
- Slovakia

Share of women in Parliament

- >45 %: Only Sweden and Finland
- 40-45 %: Belgium, Spain, France, Portugal
- EU average: 32.7 %

EIGE (2019), Gender Statistics Database, Women and men in decision-making, see infographic available at: <https://eige.europa.eu/gender-statistics/des/browse/wmidm>.

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Gender balance in COVID-19 task forces and committees

Most national-level committees have less than 1/3 women

Women made up 24 % of committees on average

Good practice: Finland's high-profile group for strengthening of wellbeing and equality in aftermath of crisis = 50/50 women and men

CARE (2020), **Where are the women? The Conspicuous Absence of Women in COVID-19 Response**, available at: https://insights.careinternational.org.uk/media/k2/attachments/CARE_COVID-19-womens-leadership-report_June-2020.pdf, p. 3.

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Under- representation of women in other domains

Lack of inclusion of women's organisations,
cutting of their resources

Under-representation of female scientists in
COVID-19 research papers

Under-representation of women reporting on
COVID-19 in media

**-> Hinders participation and women's voices
being heard...**

-> Lack of gender-sensitive response to crisis...

-> Loss of gender equality gains...

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Gender-balance of measures taken during COVID-19

340 social protection and
labour market measures in
total, but only 21% gender-
sensitive

233 fiscal and economic
measures to help businesses –
less than 5 % geared towards
feminised sectors

Source: The Global Gender Response
Tracker, UNDP September 2020

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Looking forward: what is key for promoting gender-sensitive policy responses?

Include women of all backgrounds in conversations about crisis responses

Enhance women's role in leadership positions, e.g. in politics and company boards

Effective implementation of gender mainstreaming

Trio Presidency Declaration on Gender Equality of July 2020: crisis is exacerbating existing inequalities; calls for gender mainstreaming.



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2. The struggle for power of definition

Tackling underrepresentation of women on company boards



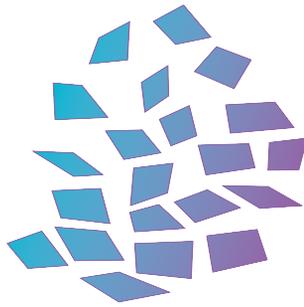
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European network of legal experts in gender equality and non-discrimination

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<https://www.equalitylaw.eu/downloads/4537-gender-balanced-company-boards-in-europe-pdf-1-68-mb>



Gender-balanced company boards in Europe

A comparative analysis of the regulatory, policy and enforcement approaches in the EU and EEA Member States

Including summaries in English, French and German

Justice and Consumers

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Equal representation: what problem and causes (i)

The % of women in middle, higher and top management positions is generally low, but for middle and higher management the cross-country differences are less significant (27% v. 38%) than for top management (11% v. 42%);

the 'speed of change' in middle and higher management positions is generally low in all researched countries and all age categories;

the 'speed of change' in top management, at board level is rather high in some countries – as a result of recent regulation – but the EU average is still low (18%)

(see https://www.cec-managers.org/fileadmin/user_upload/PDF/Press_Room/Publications/English/2010-2015/CEC-PWL_120115_ENGL.pdf)

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Causes/explanations for low representation

Employee

- **Human Capital Theory**
 - *Educational credits*
 - Training choices and opportunities
 - *Working experience*
 - Unpaid labour/work-family preferences
 - Competencies and skills

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Firm

- **Human capital theory**
 - *Working experience*
 - Same entry level but diverging career paths
 - *Educational credits*
 - Senior male gatekeepers controlling training opportunities
- **Status characteristics theory**
 - *Gender bias*
 - Higher burden of proof and overqualification
- **Discrimination theory**
 - *Gender stereotyping*
 - Working mothers not competent, serious, reliable enough...
- **Male defined benchmarks**
 - *Male gatekeepers set the standards* for successful career
 - Women who act like women, considered incompetent...
 - Women who act like men, not taken seriously..

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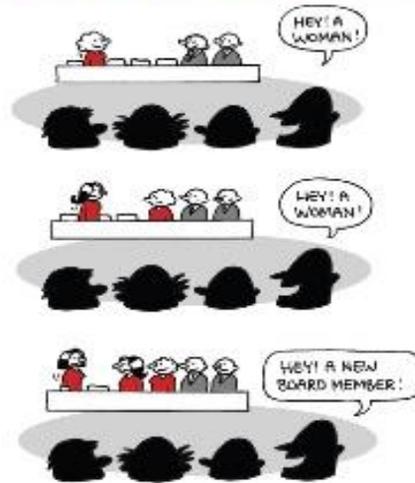
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Top management

- The 'glass ceiling' effect
 - 'Objective' corporate barriers
 - Training policies
 - Promotion policies
 - 'Subjective' cultural and behavioural barriers
 - Gender stereotyping
 - Old boys network maintaining status quo

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The ideal target for board gender diversity is three women or more



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State

- **Different welfare systems**
 - Liberal (UK)
 - Conservative (Italy, France, Germany)
 - Social-democrat (Norway, Sweden)
 - plus: post-communist (Poland)
- **Cultural differences**
 - Individualism/collectivism
 - Masculinity/femininity
- **Different legal systems, cultures and traditions**

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Equal representation: why (ii)

Societal rationales

- equality
- democracy
- social justice
- fairness

Company rationales

- enhanced performance, quality of decision-making and of corporate governance/ethics
- better use of the talent pool
- better reflection of market needs
- driver for innovation

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Equal representation: how? (iii) - national approaches (a)

CEE-countries -> hardly any action at all

Poland -> pure self-regulation, but incentive for this in public regulation

UK -> self-regulation for the private sector, but soft quota for public service

Sweden -> self-regulation and soft public policy, but no quota rule or target

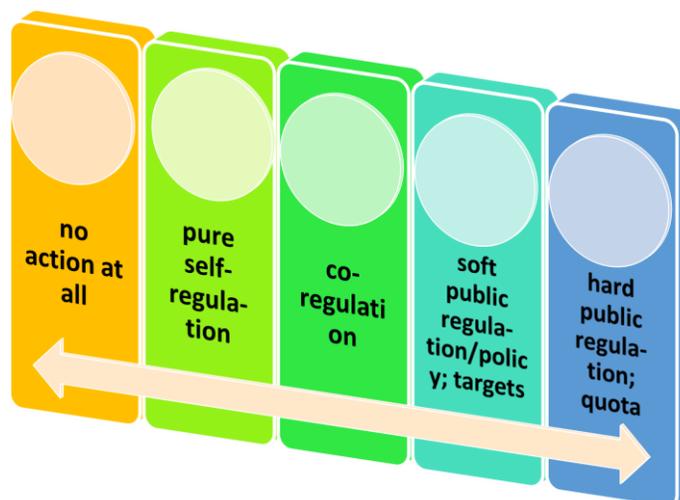
Netherlands -> conditioned self-regulation and temporary legislation; legal target but no sanctions

Germany -> recent introduction of 30% quota legislation

Italy, France, Belgium and Norway -> varying hard quota regimes, including sanctions

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Regulatory approaches



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Monitoring and enforcement mechanisms



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Looking inside these regimes

Variety as to:

- Voluntary or binding nature;
- Temporary or unlimited duration;
- Non-executive and/or executive board members;
- Private, listed and/or public companies;
- Size of the companies covered;
- Level of ambition and target set;
- Time-limits for their realization;
- Implementing and monitoring mechanisms;
- Provision of sanctions and their harshness

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Which approach works and under what conditions?

I. Self-regulation works (UK, Finland, Sweden), if there is a:

- tradition of self-regulation
- strong commitment to and anchoring of the equality principle and a facilitating environment/culture
- state which leads by example
- 'shadow of the law'
- strong role of the media
- comply-or-explain obligation
- carrot and stick approach

But: slower 'speed of change' and limits to what can be achieved...

II. Quota rules coupled with enforcement strategies – sanctions – work quicker and better (Norway, France, Italy, Germany, Belgium, Iceland BUT

III. Necessity of an enabling environment....

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Necessity of an enabling environment

- **clear, neutral, unambiguous, non-discriminatory, transparent, selection and nomination criteria and procedures**
 - give **preference to underrepresented sex** when equally qualified
 - give substance to **comply-or-explain obligation**
 - **flanking policies**; training, work-life balance etc.
 - **active and constructive roles** not only of companies, but also public authorities, ngo's, women's organisations, media, social partners, female leaders, etc.;
- => **commitment to and ownership of the problem**

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EU approach (b)

From soft law to hard law =>

Proposal for EU-Directive of the European Parliament and the Council '**on improving the gender balance among *non-executive* directors of companies *listed* on stock exchanges and related measures'** (2012)

(for current state of play, see <https://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-gender-balance-on-boards>)

➤ **What obligations** does it actually entail and what implications for the Member States?

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Subject matter

Art. 1:

This Directive seeks to achieve a more balanced representation of men and women among the **directors of listed companies** by establishing measures aimed at accelerated progress towards gender balance while allowing listed companies sufficient time to make the necessary arrangements.

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Substantive target

Art. 4: Objectives with regard to gender balance on boards

Member States shall ensure that listed companies:

- a) aim to attain, by 31 December 2020, the objective that members of the under-represented sex hold **at least 40 % of non-executive director positions** or
- (b) aim to attain, by 31 December 2020, the objective that members of the under-represented sex hold **at least 33 % of all director positions, including both executive and non-executive directors**

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Procedural obligation 1

Article 4a Means to attain the objectives

1. Member States shall ensure that, with the aim of attaining the objective laid down in Article 4(1), in listed companies which do not meet those objectives **the selection of candidates for appointment or election** to the positions referred to in Article 4(1) is carried out **on the basis of a comparative analysis of the qualifications of each candidate, by applying clear, neutrally formulated and unambiguous criteria** established in advance of the selection process.

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Procedural obligation 2

Art. 4a(2): In the selection of candidates for appointment or election to the positions referred to in Article 4(1), Member States shall ensure that, **when choosing between candidates who are equally qualified in terms of suitability, competence and professional performance, priority shall be given to the candidate of the under-represented sex, unless an objective assessment taking account of all criteria specific to the individual candidates tilts the balance in favour of the candidate of the other sex.**

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Positive action; different types of preference rules...

- **Absolute preference:** reserving certain benefits exclusively for members of the underrepresented sex.
- **Strong preference:** granting advantage to members of the underrepresented sex who satisfies some minimum eligibility criteria for a particular position.
- **Tie-break preference:** granting an advantage to members of the underrepresented sex who are equally qualified for a particular position or equally deserving of particular benefit.
- **Flexible preference:** allows granted sex-based advantages to be overridden by some other socially valuable reason (e.g. long-term unemployment, single parenthood, etc.). Both strong and tie-break preferences can be flexible preferences.
- **Weak preference:** merely allows for sex to be one of various criteria of selection, each of which is of more or less equal weight.

- Case C-450/93 Kalanke v Freie Hansestadt Bremen
- Case C-409/95 Marschall v Land Nordrhein-Westfalen
- Ch. McCrudden, Gender-based positive action in employment in Europe, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3524238

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Procedural obligation 3

Art. 4a(3): While respecting the provisions of Directive 95/46/EC, Member States shall ensure that, *in response to a request from a candidate* who has been considered in the selection for appointment or election, listed companies are obliged **to inform** that candidate of the following:

(a) the *qualification criteria* upon which the selection was based,

(b) the *objective comparative assessment* of the candidates under those criteria, and,

(c) where relevant, the *considerations* tilting the balance in favour of a candidate of the other sex.

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Procedural obligation 4

Art. 4a(4): Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that **where a candidate of the under-represented sex establishes facts** from which it may be presumed that he or she was **equally qualified** as compares with the candidate of the other sex selected for appointment or election, ***it shall be for the listed company to prove that there has been no breach of Article 4a(2).***

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Discretion for Member States

Art. 4b

1. A Member State in which, before [OJ to insert the deadline for implementation pursuant to Article 8(1)], **equally effective measures** have already been taken with the aim of attaining a more balanced representation of women and men among the directors of listed companies in line with the objectives set out in Article 4(1), **or progress coming close to these objectives** has been attained, **may decide to suspend the application of Article 4a**. In this case, the objectives set out in Article 4(1) shall be deemed to be met.

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The conditions for the suspension shall be deemed fulfilled where, for example:

- national legislation requires that members of the under-represented sex hold at least 30 % of non-executive director positions or at least 25 % of all director positions no later than 31 December 2020 and effective, proportionate and dissuasive enforcement measures apply in the case of non-compliance with these requirements.
- members of the under-represented sex hold at least 30 % of the total number of all non-executive director positions or at least 25 % of the total number of all director positions.
- members of the under-represented sex hold at least 25 % of the total number of all non-executive director positions or 20 % of the total number of all director positions and the level of representation has increased by at least 7.5 percentage points over a recent five-year period ending before the deadline for implementation pursuant to Article 8(1).

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Enforcement measures

Art. 6: Member States shall lay down rules on enforcement

1. measures **applicable to infringements of the national provisions adopted pursuant to Articles 4a, 4b(1a)(a), 4c, and 5** of this Directive as applicable and shall take all necessary measures to ensure that they are applied.

2. The enforcement measures must be **effective, proportionate and dissuasive**.

3. Listed companies may be held liable only for acts or omissions which can be attributed to them in accordance with national law.

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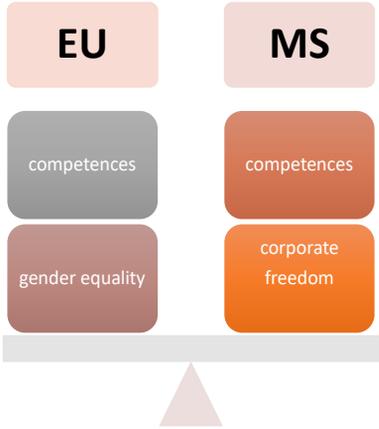
Assessment of the proposal

High compromise nature, reflected in its limits:

- No hard quatum
- Sanctions regard non-fulfilment of the procedural requirements, not the non-achievement of the target
- Only stock-listed companies
- No duty for SME (more than 250 employees; art. 2 and 3)
- Discretion re the use of existing national approaches

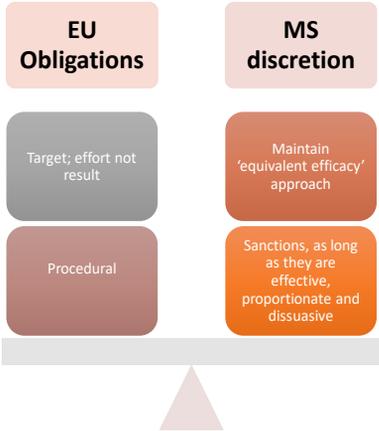
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A balancing act



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EU proposal balancing on a tightrope



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Thank you for your
attention!