

WOMEN IN CORPORATE BOARDS

PROF. DR. JELENA
LEPETIĆ

UNIVERSITY OF
BELGRADE, FACULTY
OF LAW

CORPORATE GOVERNANCE – GENDER PERSPECTIVE

- Nomination and appointment of directors – company law and corporate governance (“system by which companies are directed and controlled” – 1992 Cadbury report)
- Board diversity in relation to the board composition is a part of corporate governance as well the remuneration of directors and disclosure of remuneration policy

THE REASONS FOR FOSTERING GENDER DIVERSITY IN CORPORATE BOARDS

- Is there an economic rationale for fostering gender diversity?
- Economic rationale for fostering gender diversity was mentioned in 2011 “Green Paper – EU Corporate Governance Framework”
- Increase of transparency of board diversity policy was mentioned in 2012 “Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies”
- No clear link between board diversity and corporate performance (but the same was true for the independent directors)
- Fundamental right of equality between men and women and ethical reasons are proper justifications

STATISTICS

- Average share of women in boards of listed companies registered in EU: 8.5% in 2003, 11.9% in 2010, 23.9% in 2016, 30% in 2020, 31.3% in 2021 and 32.3% in 2022 (source: European Institute for Gender Equality, <https://eige.europa.eu/>)
- Currently, the best results in the EU are achieved in France where 46.3% of presidents, board members and employee representatives are women while the lowest percentage of 8.3 is achieved in Estonia
- With regard to the percentage of women who are CEOs, executives and non-executives, the best results are achieved in Sweden where the percentage is 27.5 while the lowest is in Luxemburg where it is 4.3%
- Besides general reasons for women under-representation (e.g. traditional gender roles, “double burden”, educational choices), under-representation in corporate boards may be a result of specificity of director position which requires mobility and continuity for leadership position
- Serbia: 17.3% women in boards of the listed companies in 2014, 19.3% in 2016 and 19% in 2018 (source: “Index of Gender Equality in Serbia 2021” – data from 2018, Statistical Office of the Republic of Serbia)
- In December 2020, 22.6% representatives and/or directors were women, 69.9% men and 7.5% foreigners (source: Serbian Business Registers Agency, <https://www.apr.gov.rs/>)

ACTIONS

- Recommendation 84/635/EEC on the positive action for women
- Recommendation 96/694/EC on the balanced participation of women and men in the decision-making process
- “Women on board pledge for Europe” was launched in 2011
- 2011 Resolution on women in business leadership of the European Parliament urged companies to reach 30% of women in boards by 2015 and 40% by 2020
- The 2012 proposal for a Directive on improving the gender balance among non-executive directors of companies listed in stock exchanges and related measures (in February 2022 German and Dutch governments supported the Directive Proposal and in January 2022 President von der Leyen announced the determination to move forward with it)
- Rules on structure of bodies and management of companies are not harmonized in the EU law

POSSIBLE SOLUTIONS

- Creating the pool of candidates of under-represented gender is the least intrusive measure to the company law – it increases the probability of the selection of women, it may not prevent “gender matching heuristic” but it may prevent “golden skirts” phenomenon
- Promoting gender equality, programmes of training and rewarding of companies with best results are additional measures
- Establishing the policy on diversity in boardrooms and disclosure of statistics, transparency of process of selection
- Quotas: voluntary (not followed by sanctions, may be imposed by soft law instruments) and mandatory (8 EU Member States have national quotas from 25 to 40%, 10 have taken softer approach, and 9 have not taken any substantial measure according to the 2022 Report on gender equality in EU)

THE 2012 DIRECTIVE PROPOSAL AS AN EXAMPLE

- Number of non-executive positions in boards of large listed companies of under-represented sex should not be less than 40%
- Two exceptions: if under-represented sex holds less than 10% of the workforce or 1/3 of all directors positions is held by under-represented sex
- In the selection process the priority should be given to the under-represented sex (positive measures or positive action)
- The Proposal sets the rules on recruiting and not the obligation to meet quotas followed by sanctions in case of non-compliance
- The issue of justification of the measures which restrict freedom to conduct business, right to property, freedom to contract of the company

THE WAY FORWARD

Quotas should be at least recommended by national legislators

If quotas are mandatory only large listed companies and state-owned enterprises should be obliged by these rules

Type of implemented board system should not be relevant but non-executives board positions are more suitable for interference



Thank you!