Research Paper

Voluntary Targets and Mandatory Quotas for Gender Balance on Private Sector Boards of Directors

Balance *for* Better Business

Contents

Executive Summary

This research paper looks at the available evidence base on different approaches taken in other countries to improve gender diversity in senior leadership in businesses, in order to inform the Irish approach.

Main Findings

- Among advanced economies, there is no policy consensus on improving gender diversity in business leadership. Mandatory quotas and voluntary targets are both widely employed.
- A review of 30 countries (EU27 plus UK, Iceland, and Norway) shows 11 have mandatory quotas, 9 have voluntary targets and 10 have neither.
- Mandatory quotas are a relatively quick and effective means of improving the gender balance on boards in businesses, particularly where they are backed by strong penalties for non-compliance. Quotas are normally implemented through national legislation and focus on boards of listed companies.
- **Mandatory quotas are very effective** - a 2019 study found that in countries that introduced a gender quota in 2003 or later, the proportion of women board members is 15 percentage points higher on average than in countries without a quota. The difference between countries with quotas and countries with recommendations is nine percentage points.
- However, evidence to support a premise that more balance at board level will have a trickledown effect through an organisation is mixed. A study on the impact of quotas in Norway concluded that adhering to quotas was treated as a compliance exercise with companies doing the bare minimum to meet their requirements.
- In the longer-term, voluntary targets have been an effective way of promoting gender balance on boards. Countries at the forefront of gender balance on boards such as Sweden, Finland, Denmark, and the UK all use voluntary targets, and have all shown steady and significant increases in women's representation on boards since the introduction of targets.
- There is evidence to support a premise that ambitious **voluntary targets can be more conducive to cultural changes because they involve more active corporate strategic choice**, more actors, and more self-chosen actions.
- As with most legislative solutions, regardless of their efficacy, primary legislation should be seen as a last resort where other policy options have failed. Scope, proportionality, administration, enforcement, and sanctions all need to be considered before proceeding with legislation for mandatory quotas.
- **<u>An interim option is the introduction of mandatory reporting on gender balance on boards and at senior leadership levels in companies</u>**. The introduction of reporting requirements has a track record of leading to improvements where it has been implemented for the gender pay gap in other jurisdictions.
- Mandatory quotas are a valid response to gender imbalances but should be seen as a final option where other, less onerous interventions have failed.

1. Introduction

This research paper, which was completed across 2021 and 2022, is intended to serve as an evidence base and starting point for a policy discussion regarding different options available to policy makers to improve gender diversity in senior leadership in Irish business.

Section 2 offers background to this research paper and the policy context in which it has been written. Section 3 discusses some of the different policy options that other advanced economies have implemented, specifically the choice between mandatory quotas for businesses or voluntary targets for improving gender balance on boards. Section 4 will seek to evaluate the effectiveness of the policy options implemented internationally to date. It will examine the available literature that has studied these policies and evaluate the evidence in relation to how effective quotas and targets have been in terms of promoting gender equality in business leadership.

Finally, section 5 considers possible policy options available to Irish policy makers to further promote gender balance. On the basis of its findings, section 6 considers and puts forward some potential recommendations for measures that could be introduced in Ireland.

2. Balance for Better Business Background and Overview

Balance for Better Business, launched in 2018 by the then Taoiseach, Leo Varadkar T.D., is an independent business-led Review Group established by the Government to improve gender balance in senior leadership in Ireland. It was created to make recommendations on how more women can be involved in decision-making at the top level of businesses in Ireland. The Review Group examines the gender mix within the governance and senior management of companies in Ireland and the issues which arise in connection with the appointment of company directors and senior management.

The Review Group, which comprises senior figures in Irish business and the public service, has called for a reform of the current system to ensure more women play a role at board level and in senior leadership teams. They have set progressive targets to 2023 for the achievement of improved gender balance on the boards and senior management of these companies.

The Review Group, which meets 3 to 4 times a year, was previously supported by the Department of Justice and Equality. It has now transferred to the Department of Enterprise, Trade and Employment. In addition, there is an Advisory Group, which is representative of a wider cross section of business organisations and other interested parties, that meets twice a year.

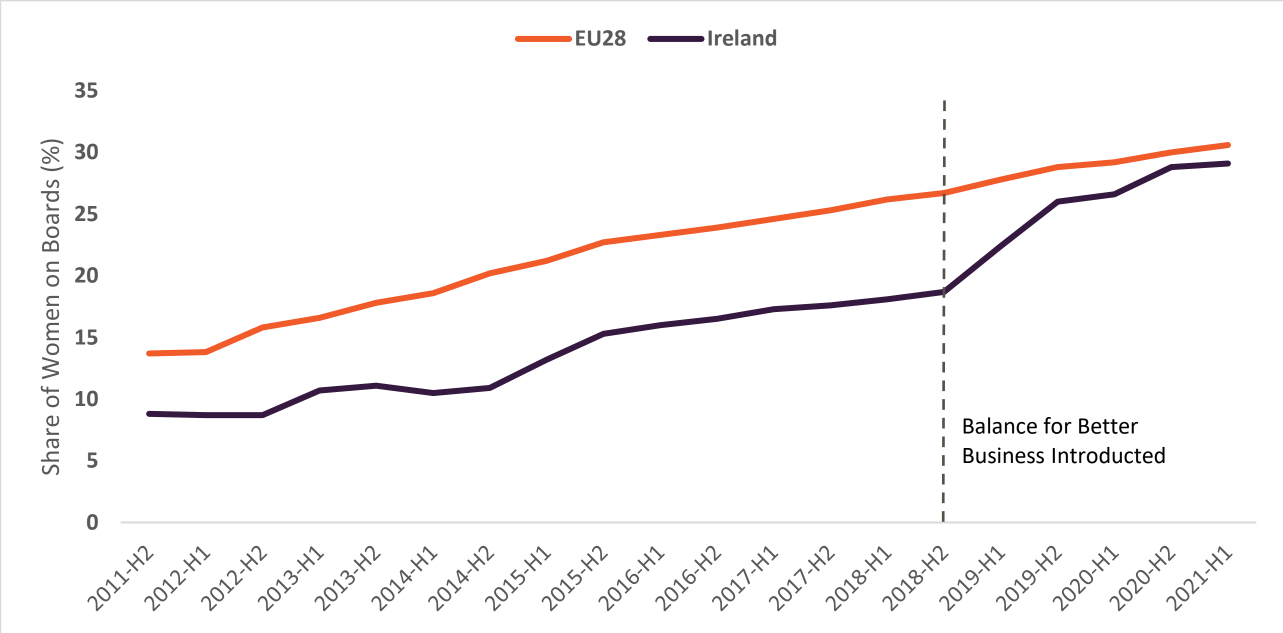
Policy Context

As noted above, the Balance for Better Business Review Group has set progressive targets for women's representation on boards and leadership teams in private companies in Ireland. These targets are voluntary and non-binding. Following a recommendation by the Citizen's Assembly on Gender Equality to enact gender quota legislation that requires private companies to have at least 40% gender balance on their boards, calls have been made for such legislation to be introduced in Ireland.[1] Mandatory gender quotas for company boards are in place across some other advanced economies. The impact of these mandatory gender quotas is discussed in the sections below.

On a broad basis, Ireland performs in line with the EU average on gender equality generally. The European Institute for Gender Equality's (EIGE) Gender Equality Index gives Ireland a score of 72.2 out of 100, while the EU average is 67.9.[2] This Index is a broad measure across several societal issues, not limited to business issues. The Economist's Glass Ceiling Index, a composite measure that evaluates working conditions for women across developed countries and considers the share of women on company boards, ranks Ireland slightly below the OECD average.[3] Specifically related to the Balance for Better Business agenda, the share of women on boards of directors in Ireland is below the EU average, as shown on Figure 1 below.

[1] https://www.nwci.ie/learn/article/national_womens_council_calls_for_40_per_cent_legislative_quota_for_female
[2] https://eige.europa.eu/gender-equality-index/2020
[3] https://www.economist.com/graphic-detail/2021/03/04/is-the-lot-of-female-executives-improving

Figure 1: Share of Women on Listed Companies' Boards of Directors



Source: EIGE Gender Statistics Database

However, Ireland has made significant progress in particular since the establishment of Balance for Better Business in 2018. Ireland has rapidly caught up to the EU average in just a few short years and is now only very slightly below its European peers. As Figure 1 shows, the acceleration of what was an upward trend in the share of women on boards is striking. The introduction of voluntary targets coincided with a notable increase in representation of women on boards of directors in Ireland.

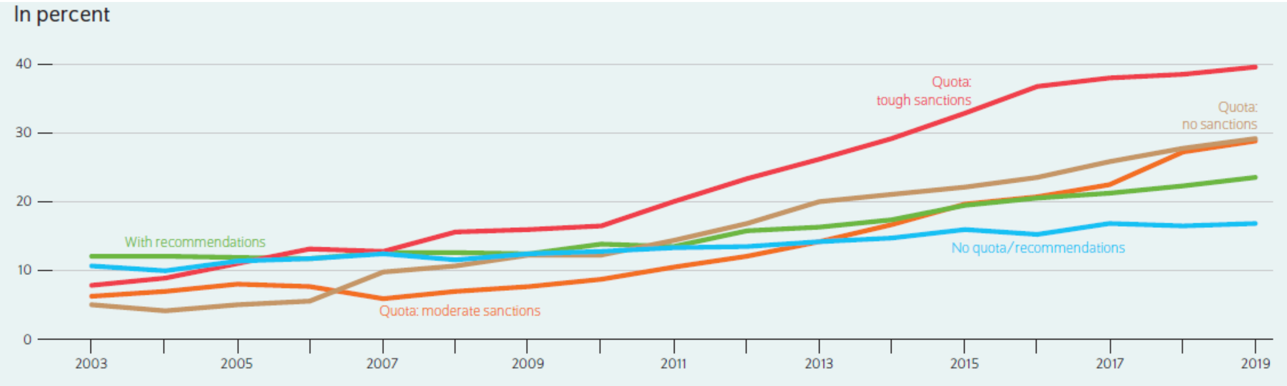
3. Quotas versus Targets

Among advanced economies, there is no policy consensus on improving gender diversity in business leadership. More and more countries have moved to implement gender quotas. These quotas are normally implemented through national legislation and focus on boards of listed companies. Countries that have introduced mandatory quotas normally allow an implementation period for companies to reach the required minimum to account for board tenure and allow seat vacancies to appear. Other jurisdictions allow for seats to be added to boards to meet gender balance requirements. California, for example, introduced Senate Bill 826 in 2018, which requires all publicly held corporations with a principal executive office in California to have a minimum number of female board members based on the total number of members on their Board of Directors by December 31st, 2021. This requirement could be met either by filling an open seat or by adding a seat to their boards to allow for cases where vacancies do not arise.

Norway is widely recognised as the first country to implement binding gender quotas for boards in 2003. Since then, the number of countries opting for mandatory quotas has increased. However, other countries have opted for a different approach of adopting voluntary targets for gender balance. Sweden, Finland, Denmark, the UK, Greece, Poland, and Ireland have introduced voluntary, non-binding recommendations for gender balance. Appendix A details a selection of national policies across Europe.

It is apparent that quotas are a relatively quick and effective means of improving the gender balance on boards in businesses, particularly where mandatory quotas are backed by strong penalties for non-compliance.[4] When compared to countries with non-binding quotas or voluntary targets for gender balance, mandatory quotas lead to sharp increases in women's representation on corporate boards. However, there are other issues and considerations associated with quotas that are discussed further in section 4.

Figure 2: Comparing the effectiveness of different sanctions regimes for gender quotas across Europe[5]



Source: Arndt & Wrohlich (2019)

It is important to remind ourselves what the objective is with regard to gender balance on boards. If it is a narrow objective – solely improving gender diversity on company boards – then legislative quotas will

[4] Arndt & Wrohlich (2019) *Gender quotas in a European comparison: Tough sanctions most effective, DIW Weekly Report*, ISSN 2568-7697, Deutsches Institut für Wirtschaftsforschung (DIW), Berlin, Vol. 9, Iss. 38, pp. 337-344, http://dx.doi.org/10.18723/diw_dwr:2019-38-1

[5] Excluding Iceland

undoubtedly be successful. The available evidence strongly suggests that companies will quickly comply where effective procedures for non-compliance are in place. There is a wealth of evidence to suggest that this will improve the long-term company performance of any companies subject to the legislation. However, if the objective is broader than simply adding balance to boards, if it is more holistic – spurring behavioural and cultural change within Irish businesses so that there are improved pipelines to executive and board level for women, and better working conditions for women – then the evidence is far less clear that quotas are an effective means of achieving this goal. It is fair to ask if improvements in gender balance only deliver real change when they are embedded in corporate culture. In short, is the goal more women on boards or is it to encourage cultural change across all business sectors at all levels?

Other countries have pursued a different path to improving gender balance in business leadership, relying instead on voluntary gender diversity recommendations or targets. At times these include non-binding Government targets, corporate codes of governance or, as in Ireland, establishing independent review groups that set and monitor targets. The UK, our closest common law neighbour, uses the latter approach; the Hampton-Alexander Review, an independent review body to encourage the number of women on boards of the FTSE350.[6] As with most countries reviewed, the Review is aimed at listed companies due to more onerous reporting requirements and greater availability of data.

The Review was a business led initiative supported by the UK Government to increase the representation of women in senior roles in FTSE350 firms, from 2016 to 2020. This targeted the Board and the leadership levels immediately below, bringing initiatives to improve female representation to the top of the table. The five-year Hampton Alexander review came to an end in February. It's fifth and final report showed its target of a third of women in board positions had been achieved (on average) across the FTSE350. The UK Government is now developing proposals with the review's management team to move towards ensuring that UK companies have at least 40% female board directors. The UK is also considering extending the Review's remit to large unlisted companies, and to more decision-making executive positions.[7]

Voluntary targets for gender balance in business have been offered as an alternative policy option to mandatory gender quotas to improve gender balance on the boards of companies. The next section will explore the available international evidence on the use of quotas and targets to tackle gender inequalities.

[6] https://ftsewomenleaders.com/
[7] https://www.ft.com/content/696e1adc-3913-4630-967f-cf5d32307aa2

4. Policy effectiveness

As mentioned previously, the policy debate focuses on mandatory, legislative quotas, and non-binding targets for improving gender balance on company boards. This section will examine the efficacy of each method. Not only will it examine the impact of the two policies on the share of women on boards, but it will also consider the broader impact of these different policies on gender issues within the private sector beyond representation on boards.

Mandatory Quotas

Data from the EIGE shows that, over time, the share of women on boards has increased on average across Europe. This can be seen in Figure 1, which shows a steady increase over the last two decades across the EU28. As demonstrated in Figure 2, mandatory quotas are a highly effective means of quickly increasing the share of women on boards. Other policies and enforcement mechanisms work to varying degrees in this respect. A study of the EIGE data found that, *"In countries that introduced a gender quota in 2003 or later, the proportion of female board members is 15 percentage points higher on average than in countries without a quota. The difference between countries with quotas and countries with recommendations is nine percentage points."*[8]

The authors go on to state that quotas are even more effective if companies are threatened with harsh sanctions such as fines or liquidation in case of non-compliance, as is the case with the Norwegian legislation. Not only do quotas improve the share of women on boards, but there is evidence that the newly appointed women are more highly qualified than previous board members. A study of the effect of the Norwegian quota legislation found that, after the law's introduction, newly appointed female board members were observably more qualified than their predecessors, and that the gender gap in earnings within boards fell substantially.[9]

This would seem to negate a common argument against quotas, which is that appointments should be based on a meritocracy. If it were the case that the best candidate was already being appointed to vacant board positions prior to the introduction of quotas, then the introduction of quotas would logically lower the quality of appointees. However, this is not the case. The logic also follows that, if appointments were based on merit alone, then one would have to believe that men are disproportionately more qualified to sit on boards of directors. Again, the evidence does not uphold this assumption.

Nevertheless, mandatory quotas are not without problematic effects. After the introduction of the Norwegian quota, a phenomenon referred to as 'golden skirts' emerged. This was noted in a particular study that cautioned *"Creating an external shock through legislative mandate creates a […] shortage of skilled and qualified women available to take up [board] positions."*[10] In order to quickly comply, companies

---

[8] Arndt & Wrohlich (2019): Gender quotas in a European comparison: Tough sanctions most effective, DIW Weekly Report, ISSN 2568-7697, Deutsches Institut für Wirtschaftsforschung (DIW), Berlin, Vol. 9, Iss. 38, pp. 337-344, http://dx.doi.org/10.18723/diw_dwr:2019-38-1

[9] Bertrand et al. (2019) *Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labour Market Outcomes in Norway*, The Review of Economic Studies, Volume 86, Issue 1, January 2019, Pages 191–239, https://doi.org/10.1093/restud/rdy032

[10] Seierstad & Opsahl (2010) *For the Few Not the Many? The Effect of Affirmative Action on Presence, Prominence, and Social Capital of Women Directors in* Norway, Scandinavian Journal of Management, Vol. 27, No. 1

select from available women executives with the necessary board experience, and *"The repeated use of a select few women creates this 'Golden Skirts' phenomenon."* It might be anticipated that more women directors would increase over time and this effect would be mitigated against. However, at the time of the study, as the benefit of the quota was only enjoyed by a few directors, the intention of the Norwegian Government to create a more equal setting could be questioned. What is more, while the reform may have improved the representation of women at the very top of the earnings within firms that were mandated to increase female participation on their board, there is no evidence that these gains at the very top trickled-down.

This is a common perception about gender quotas; that gender equality will trickle down through an organisation if more women are appointed to the board of that company. However, it is not yet clear that this is the case. In the US it was found that, *"The average female share of executives depended on the previous year's female share of the company's board of directors. Firms with more women on the board also tend to have more female top executives."*[11] The authors infer that *"public policies aimed at increasing female representation on boards of directors, such as the quota recently adopted in Norway, may lead to general spillovers in management."* Yet, the increases in the share of female executives (both CEO and non-CEO) demonstrated in this study were extremely small. The study finds that a 10 percentage-point increase in female board membership is associated with a 0.2 to 0.4 percentage-point increase the probability of having a female CEO, and a 0.23 percentage-point increase for non-CEO executives. Another influential study on this issue found there was little evidence of spillovers outside of small gains for women at the very top positions of firms that were targeted by a quota mandate.[12]

However, the quota has had little impact on the number of female CEOs in Norway and was found to have *"very little discernible impact on women in business beyond its direct effect on the women who made it into boardrooms"*. There was no evidence of further spillovers in lower managerial positions, nor was there evidence of changed behaviour in firms not targeted by the law.[13] Similarly, a study of the effects of the Italian gender quota law provided *"no evidence that the female board quota mandated by the Italian law led to an increase in female representation at the top executive level or among top earners, at least not in the short run."*[14] The authors of the Italian study conclude, *"Our evidence for Italy thus fully confirms the findings for Norway by Bertrand et al. (2019). Even though both countries differ strongly in terms of gender attitudes and female labor market outcomes, the strict enforcement of gender ratios on boards of directors are equally ineffective in improving female career progression towards the top."*

France's experience of gender quotas validates these findings. After introducing a quota at board level in 2011, which quickly increased the share of women on boards, France is now moving to introduce gender quotas for senior managers and members of management bodies due to a lack of spillover effects gender quotas at board level are supposed to induce.[15] France has also broadened its policy approach to gender

[11] Matsa & Miller (2011); *Chipping away at the Glass Ceiling: Gender Spillovers in Corporate Leadership*, The American Economic Review Vol. 101, No. 3, pp. 635-639

[12] Bertrand et al. (2019) Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labour Market Outcomes in Norway, The Review of Economic Studies, Volume 86, Issue 1, January 2019, Pages 191–239, https://doi.org/10.1093/restud/rdy032

[13] Ibid

[14] Maida & Weber (2020) *Female Leadership and Gender Gap within Firms: Evidence from an Italian Board Reform*. ILR Review. https://doi.org/10.1177/0019793920961995

[15] https://www.rfi.fr/en/france/20210513-french-mps-approve-quotas-for-more-women-in-corporate-management

inequality in business by introducing gender pay gap laws in 2018, indicating that quotas alone will not solve gender inequalities in pay and opportunities for women.

A separate issue highlighted by studies of the Norwegian quota law is the question of why women's representation on boards rarely goes beyond slightly exceeding the required quota if quotas can successfully implement gender equality in companies. At the time of writing, one study showed the share of women plateaued quite suddenly upon reaching the required minimum.[16] In addition, the same study noted that women's access to the most senior positions within boards remained restricted as the share of companies with a woman chair has stayed remarkably low and stable after the quota came into effect. It would seem that adhering to quotas is treated as a compliance exercise and companies are doing the bare minimum to meet their requirements. This may indicate that compliance with quotas cannot be taken to mean cultural changes are taking effect within companies, but rather quotas become a box to be ticked.

Voluntary Targets

Other countries have been less enthusiastic to follow the path taken by Norway and others in implementing mandatory gender quotas, instead opting for various forms of non-binding targets such as Government targets, corporate codes of governance, or, like Ireland, independent review groups that set and monitor targets. An evident issue is their inability to match quotas for effectiveness in improving the share of women on boards in the short term. In the longer term, targets are an effective way of increasing the share of women on boards. Almost all countries that have targets for gender balance on boards in Europe, such as Sweden, Finland, Denmark, the UK, Ireland, Greece, and Poland have all shown steady and significant increases in women's representation on boards since the introduction of targets. Ireland has made substantial progress in this regard since the establishment of Balance for Better Business in 2018, rapidly increasing the share of women on boards from 19% to 29% (very slightly below the EU average) in just three years.

In spite of the inability of voluntary targets to match the effectiveness of quotas at rapidly raising the share of women on boards, several studies have described other virtues of targets as a means of promoting gender equality.

A study of Australia's corporate structures, another common law country which uses voluntary targets on a 'comply or explain' basis for listed companies, came to the conclusion that *"voluntary self-regulation at the corporate level may be as effective in the long run as the emerging trend in Europe to apply legislated quotas".*[17] The authors of this study note that change in behaviour to improve gender balance is being driven by industry itself and through the CEOs of Australia's largest companies, who have established ambitious targets, and implemented interconnecting actions to aid women executives' progress, and an insistence that suppliers also achieve gender balance, among other interventions. Their findings align with evidence from elsewhere; while mandatory quotas may achieve short term results, voluntary targets for women's participation on through soft regulation such as corporate governance codes and set as part of corporate strategy may promote more effective cultural and practical change.

[16] Seierstad & Opsahl (2010) *For the Few Not the Many? The Effect of Affirmative Action on Presence, Prominence, and Social Capital of Women Directors in* Norway, Scandinavian Journal of Management, Vol. 27, No. 1
[17] Klettner et al. (2016) *Strategic and Regulatory Approaches to Increasing Women in Leadership: Multilevel Targets and Mandatory Quotas as Levers for Cultural Change*, Journal of Business Ethics, 133 (3), 395-419. http://www.jstor.org/stable/24703712

The authors of the Australian study find evidence that suggests that "*the primary reasons for the lack of women in leadership are not simply lack of opportunity at the apex of the corporation, but issues at mid-management level that are unlikely to be resolved by mandatory board quotas. In some circumstances carefully monitored voluntary targets may be more effective at promoting cultural and strategic change at the heart of the corporation."*

Other studies have come to similar conclusions, one suggests that softer regulations along with ambitious targets and favourable institutional contexts are more conducive to cultural changes because they involve more active corporate strategic choice, more actors, and more self-chosen actions.[18] These factors are not a given with the imposition of quotas. Another study concurs with this finding; stating that self-regulation is more likely to foster a cultural shift towards gender equality as well as to transform prevailing gender roles.[19] It also highlights the risks of perceptions of 'token women' and the use of 'golden skirts' to follow the letter of the law but not the spirit of it. The study suggests that two options for boosting the impact of self-regulation; externally set targets and the threat of mandatory quotas should self-regulation not lead to sufficient progress in gender equality.

Finally, it should be noted that, regardless of whether targets or quotas are chosen as the preferred means to improve gender balance in the corporate sector, there is a consensus that it will be difficult to truly alleviate gender imbalances in business without public policies that aim to improve gender balance more broadly in society and business. Targets or quotas need to be combined with, and complemented by, more gender-neutral family laws and policies promoting women at all levels of their career advancement, not just at board level.[20] Others suggest public policies that foster higher paternity leaves and greater co-responsibilities in domestic tasks and care for dependents, and more visible and coordinated efforts from the different advocates for gender equality and the involvement of male politicians, businesses, and leaders that can show the benefits of creating gender equal workplaces.[21]

[18] Mensi-Klarbach & Seierstad (2020) *Gender quotas on corporate boards: Similarities and differences in quota scenarios.* European Management Review 17 (3), 615-631. https://doi.org/10.1111/emre.12374
[19] Mensi-Klarbach et al. (2021) *The Carrot or the Stick: Self-Regulation for Gender-Diverse Boards via Codes of Good Governance*. J Bus Ethics 170, 577–593. https://doi.org/10.1007/s10551-019-04336-z
[20] Iannotta et al. (2016) *Institutional Complementarities and Gender Diversity on Boards: A Configurational Approach*. Corporate Governance: An International Review, Vol. 24, Issue 4, pp. 406-427. http://dx.doi.org/10.1111/corg.12140
[21] Mateos de Cabo et al. (2019) *Do 'soft law' board gender quotas work? Evidence from a natural experiment.* European Management Journal. Volume 37, Issue 5, October 2019, Pages 611-624

5. Other Considerations

Achieving lasting cultural change?

It is important to remember the objective of policies aimed at improving gender balance on boards when considering gender targets and quotas. Is the intention simply to improve the share of women on boards, or is it to change corporate culture and behaviour? The available evidence strongly suggests that companies will quickly comply with quotas, where effective sanctions for non-compliance are in place. Research also shows that there is no drop in the capabilities of board members appointed as a result of quotas; new appointments are, in fact, more highly qualified than existing members. There is a wealth of evidence to suggest that more diversity on boards will improve the long-term company performance of any companies that have seen diversity increase as a result of quotas. However, it is not evident that quotas can bring about more holistic changes – spurring the behavioural and cultural change that improves pipelines to executive and board level for women, or better working conditions for women. It is fair to ask if improvements in gender balance only deliver real change when they are embedded in corporate culture, and what tools are available to help achieve this.

Despite their inability to match quotas for rapid improvements gender balance on corporate boards, research suggests that voluntary targets have the capability to bring about long-term, lasting changes in business culture. The introduction of voluntary targets through the establishment of Balance for Better Business quickly accelerated the trend of improving gender balance on the boards of listed Irish companies. Voluntary targets give businesses flexibility about their timelines and goals and can be applied throughout the organisation, rather than just at board level, as part of a wider diversity strategy. This offers businesses ownership of initiatives to improve gender balance through actions and policies while promoting a more holistic approach to achieving gender balance. They encourage positive commitment to goals rather than compliance imposed from outside. However, voluntary commitments lack incentives to provoke improvements where none are being made. Gender quotas will force organisations to look harder for qualified women, but it is not accurate to assume that they will overcome the barriers that lead to gender imbalances in the first place.

There are other considerations that should be made when examining quotas. It is worth noting that the total population of listed Irish companies is currently forty-five.[22] While these are some of the largest and arguably most influential domestic companies, it is an extremely small sample of the roughly quarter million businesses in Ireland. It is worth reflecting on whether the legislative approach is the right one, when there is little guarantee that the effects of a quota on these companies will lead to behavioural spillovers to Irish businesses more broadly. As with other legislative solutions, regardless of their efficacy, implementing quotas through primary legislation should rightly be seen as a last resort where other policy options have failed. It follows that companies demonstrating through voluntary initiatives, acceptable progress in reasonable timeframes are not in need of mandatory quotas. However, companies that do not show acceptable progress in reasonable timeframes might be encouraged by the threat of mandatory quotas backed by sanctions in future.

[22] https://live.euronext.com/en/markets/dublin/equities/list

Administrative Burden of Quotas

The implementation and administrative burden of ensuring compliance should also be considered. Issues such as the population of companies and the principle of proportionality of regulation for the companies subject to legislation, the body companies would report to, what sanctions – if any – would be put in place for non-compliance, how any sanctions would be administered, for example, would all need to be considered when designing quota legislation. In addition to considering the scope, the administration, the enforcement and the sanctions in the legislation, there would need to be wide consultation with stakeholders such as business groups, public sector bodies under the aegis of this Department such as the Office of the Director of Corporate Enforcement, the Companies Registration Office (CRO), Company Law Review Group, and the enterprise agencies, as well as other bodies such the Courts Service, and NGOs with an interest in gender and diversity issues, among others.

Other Options – Reporting Requirements

As such, there are other policy options that could come before legislation, which could be combined with and complement the work of Balance for Better Business. For instance, rather than mandating that companies to have a certain share of men and women on boards, companies could be required to publicly report the gender make-up on their board. Research suggests that the act of being observed or measured can induce organisational change independent of any external incentives.[23] Empirical studies of gender pay gap reporting obligations in the UK, Denmark and Canada all show that the gender pay gap declines where there is an obligation to report on it.[24] If one were to assume the same causal mechanism holds for reporting of gender balance as for gender pay reporting, then mandatory gender balance reporting could be pursued in Ireland as a less onerous obligation than quotas and complement the effect voluntary targets for gender balance. It would also have the benefits of being applied to a broader population of companies and would not require drafting new legislation, rather amending existing legislation.

Other Options – Comply or Explain

Other options, such as one already in place in the UK, is a 'comply or explain' principle. The UK's Corporate Governance Code applies on a 'comply or explain' basis to firms with a premium listing in the UK, regardless of where they are incorporated. The Code sets out some principles that are relevant to diversity and inclusion. These principles include that board appointments and succession plans should promote diversity of gender, social and ethnic backgrounds; that annual evaluation of the Board should consider its composition; and that the annual report should include a policy on diversity and inclusion.

It should be noted that Ireland already has in company law an obligation on large companies to report in their corporate governance statements in the annual reports on their diversity policy in relation to age,

[23] Espeland & Sauder (2007) *Rankings and Reactivity: How Public Measures Recreate Social Worlds*. American Journal of Sociology, 113(1), 1-40. doi:10.1086/517897
[24] See: Blundell (2020) *Wage Responses to Gender Pay Gap Reporting Requirements*. Available at: http://dx.doi.org/10.2139/ssrn.3584259;
Baker et al. (2019) *Pay Transparency and the Gender Gap*. Technical Report w25834, National Bureau of Economic Research, Cambridge, MA. Available at: http://www.nber.org/papers/w25834.pdf ;
Bennedsen et al. (2019) *Do Firms Respond to Gender Pay Gap Transparency?* Technical Report w25435, National Bureau of Economic Research, Cambridge, MA. Available at: http://www.nber.org/papers/w25435.pdf.

gender, or educational and professional backgrounds and to report on how the diversity policy has been implemented. If there is no diversity policy, this must be explained in the corporate governance statement. Crucially, any changes to company law would need consultation with the Company Law Review Group. Other potential options include reporting through the CRO, but it is worth noting that the CRO only collect and store company filings, they do not analyse or process them and, therefore, responsibility for analysis of filings would have to be agreed.

6. Conclusion

While mandatory gender quotas for company boards are an appealing quick win for overcoming gender imbalances in Irish board rooms, they do not come without significant issues that should be considered before attempting to implement them. There is no guarantee that they will have any impact on gender inequalities beyond the boardrooms of an extremely small sample of Irish companies. There would also be administrative concerns that would need to be considered, as well as legal concerns about the implementation and enforcement of sanctions for non-compliance.

As Irish companies' performance in this space continues to improve since the establishment of voluntary targets under the Balance for Better Business initiative, and without exploring the potential of other, less onerous policy options prior to the use of mandatory quotas, the introduction of mandatory quotas for gender balance on company boards is not recommended at this time. Voluntary targets for gender balance, which have the potential for long-term, sustainable improvements based on the evidence provided in this paper and continue to be utilised in other common law jurisdictions, should continue to be encouraged as long as the share of women on boards continues to improve. This should be complemented by more visible and coordinated efforts from the different advocates for gender equality and the involvement of male politicians, businesses, and leaders that can show the benefits of creating gender equal workplaces, in order to promote lasting cultural change.

If it is decided that additional action is needed, in addition to the voluntary targets currently in place, rather than opting to legislate for mandatory gender quotas, **a more achievable option is the introduction of mandatory reporting on gender balance at senior leadership levels in companies**. As outlined in section 5, mandatory reporting has a track of leading to improvements where it has been implemented for the gender pay gap. It is feasible that mandatory reporting of the share of men and women at top levels of companies could encourage firms to continue to improve their gender balance. As always, it is one of a continuum of policy options available to Government. Mandatory quotas are a valid response to gender imbalances but should be seen as a final option where other, less onerous options have failed.

Appendix A: Gender Balance Policies for Company Boards in other jurisdictions by type

Market	Requirement type	Requirement %	Year Introduced	Most Recent Data (%)
Austria	Mandatory	30%	2018	31.4
Belgium	Mandatory	33%	2012	38.3
Bulgaria	None			12.7
Croatia	None			29.1
Cyprus	None			12.9
Czechia	None			18.3
Denmark	Voluntary	40%	2013	34.3
Estonia	None			9.1
Finland	Voluntary	Not specified	2008	34.3
France	Mandatory	40%	2011	45
Germany	Mandatory	30%	2015	35.7
Greece	Mandatory	25%	Law published but date not clarified	15.4
Hungary	None			10.9
Iceland	Mandatory	40%	2010	48.9
Ireland	Voluntary	40%	2018	29.1
Italy	Mandatory	33%	2011	39
Latvia	None			22.9
Lithuania	None			19.4
Luxembourg	Voluntary	40%	2014	19.8
Malta	None			10.3
Netherlands	Mandatory	30%	2020	36.4
Norway	Mandatory	40%	2003	40.8
Poland	Voluntary	Not specified	2015	23.2
Portugal	Mandatory	20%/33.3%	2018/2020	28.1
Romania	Voluntary	Not specified	2015	16
Slovakia	None			25
Slovenia	Voluntary	Not specified	2009	23.7
Spain	Mandatory	40%	2007	30.8
Sweden	Voluntary	40%	2016	37.5
UK	Voluntary	33% (increased from 25% in 2015)	2011	36.5

Appendix B: EU level policy on gender balance in the private sector

In 2010 the European Commission announced the development of an EU-wide regulation of gender diversity on boards. The Commission's Vice-President, Viviane Reding, said that the Commission was prepared to introduce mandatory quotas. In 2011 the European Parliament endorsed this approach in a resolution on the issue; and in 2012 the Commission submitted a proposal for a directive on gender balance among non-executive directors of companies listed on stock exchanges in November 2012.[25]

The proposal aimed for a mandated quota of at least 40% representation of each gender for non-executive members of listed company boards in the private sector, to be achieved by 2020. Despite broad consensus across the EU in favour of taking measures to improve the gender balance on company boards, not all Member States supported EU-wide legislation and some Member States consider that binding measures at the EU level are not the best way to pursue the objective. Although this initiative did not lead to any further legislative steps, these developments at the European level contributed to the lively public debate on how to achieve gender diversity on boards. Media coverage placed prompted companies as well as national regulators to decide whether to stick to voluntary self-regulation or turn to mandatory board quotas.

The file on the proposal for a directive on gender quotas was included in the list of unfinished business to be carried over to the current Commission. The Commission President, Ursula von der Leyen, stated in her Political Guidelines that she will seek to build a majority to unblock the Directive. It is one of the priorities in the European Commission's new EU Gender Equality Strategy 2020-2025.[26]

[25] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012PC0614

[26] https://www.theparliamentmagazine.eu/news/article/women-on-boards-directive-must-be-unblocked-in-council-meps-argue