LUISS Università Guido Carli

Department of Economics and Finance

Chair of Law and Economics (Corporate and Business Law; Antitrust and Regulation)

GENDER DIVERSITY IN BOARDROOMS

Supervisor:
Professor Pierluigi Matera

Candidate:
Camilla Marzullo 235861

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Abstract

This thesis aims to evaluate the importance of gender equity on corporate boards. This paper will give an insight into the impact of corporate gender quotas on firms' performance. I will also be focusing on countries with different extents of gender inequality on corporate boards, looking at various legal models in which the company is embedded.

The aim of this paper will concern the exploitation of legal resources regarding gender equity and I will apply their changes to the corporate governance structure, to the function of the board and to the profits of companies.

Analyzing the Norwegian Model and conducting a qualitative content examination of corporate quotas, I will consider both the beneficial and controversial effects of gender diversity in corporate structure. By doing so, I will show how the results will achieve heterogeneity among corporate boards to enable the best possible decisions-making processes. Even if the debate continues to be controversial and still open, I will conclude my research by suggesting emerging possible options that will make companies and their boards more effective and that will ensure a more consistent progress in the future of corporate governance.

My thesis focuses on the role of gender diversity in corporate governance. I begin by addressing the issue for gender equity on corporate boards. Part II follows by examining the business case for gender diversity, analyzing empirically the correlation between diversity and firm performance and corporate governance, as a result of differences in skills, experiences, knowledge, ideas and behaviors. In Part III I then conduct a comparative analysis of all the legal strategies for change enacted by governments, going from a hard law approach to soft law and finally comparing their effectiveness. Starting from the Norwegian Model, in Part IV I focus on quotas regimes, continuing with a comparison between the current situation in Europe and the USA, in particular with the California Bill 826, its impact on the stock exchange with its legal challenges and open questions. Finally, Part VI focuses on the future of corporate governance for boards with the role of shareholder activism in enhancing gender diversity with the creation of a mixed Leadership model as synonym for innovation and sustainable corporate governance followed by concluding remarks.

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INTRODUCTION

Gender diversity is being recognized as a fascinating topic not only in politics but also in economics and research. In the 21st century, women still account for a small percentage of corporate boards of directors, which remain predominantly male in most of the countries around the world.

The absence of gender balance in corporate governance has sparked a global debate, leading policymakers, and governments to recognize gender equity in corporate boards as a necessary goal. As it is becoming an increasingly important issue, countries are now moving towards the improvement and enhancement of gender diversity in corporate boards. Regulators in the U.S., and in Europe have provided recommendations and enacted disclosure requirements to encourage firms to increase board diversity and heterogeneity. In other words, gender diversity with the implementation of the quota system, is creating a significative positive impact on the renewal of corporate governance bodies.

Despite regulators have been increasingly focused on board diversity linking it to key firm outcomes, progress toward diversifying boards has been slow at best. For instance, females and minorities are still underrepresented on many firms' boards. Since board quotas have not translated into an increase in the number of CEOs or board chairs, it can be concluded that the board gender quotas have not resulted in a more equal distribution of power. Furthermore, according to the opponents of quotas, ethical motives behind their enactments are not regarded as enough to push businesses to rise the number of women in managerial positions. Moreover, the "glass ceiling", the hidden barriers that prevent women from attaining higher-level positions, is still a problem persisting around the world. Women still face challenges in career advancement and in obtaining top positions even in countries where the problem of access to the labor market for women in corporate field has been mostly handled. Very few women are managers: in all countries in 2016, women with a managerial position represent less than 10 per cent of the total number of females employed.

Conducting a comparative analysis of various legal strategies taken in place by European countries and American States that enacted quotas and other affirmative actions, findings highlight the significance of the national context for gender equality as a boundary condition to understand the relationship between female board representation and the effectiveness of these regulative actions. In this paper, the theoretical and practical consequences of increasing female director representation across countries will be addressed, as well as how it affects a firm's financial and non-financial performance of companies.

This work provides a global vision of the functioning of a new model of board governance based on gender diversity and its "added value", which integrates both masculine and feminine "traits" and their fiduciary duties within companies and organizations. Despite this continuous evolution, gender gaps on corporate boards appear to be persistent and difficult to eliminate. Therefore, in the future the most important challenge will be to prove whether legal actions and other private mechanisms move towards a more gender-balanced equilibrium, such as the new shareholder activism. However, once the mandatory gender quotas expire, it will be crucial to verify if this evolution will continue on its own and whether further cascading effects will emerge.

I. DIVERSITY AND CORPORATE BOARDS

The influence of gender diversity on corporate boards has received a lot of attention in recent years[1]. The board of directors plays a vital role in solving agency issues and maintaining a balance between shareholders' and managers' interests. According to stakeholder theory, a diverse board may better meet the various requirements of the different company stakeholders and is a better monitor of executive behavior, as diversity provides a variety of perspectives to board oversight[2].

The quest for gender diversity in the boardroom has gained lot of interest in Europe in recent years, due to increasing evidence that gender diversity enhances company performance[3]. To achieve gender equality in corporate leadership, various European countries have passed laws requiring mandated quotas on company boards of directors, especially in the last decade. The United States, by contrast, continues to fall behind other countries in increasing the number of women serving on its corporate boards[4]. Diversity in corporate committees is generally a matter left to corporations' voluntary initiatives with the "*business case for diversity*" dominating the discussion[5]. The statistics published by organizations and legislators about the representations of minorities on boards are used to put pressure firms to appoint a greater number of women to their boards of directors and to continuously track their data. Since the benefits of gender parity on corporate boards do not concern solely an ethical duty, but also an important matter of governance in corporations and its operating margins, the law should attempt to enforce the number of mandatory quotas and find other more effective solutions for the upcoming years[6].

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[1] *See* Susan Franceschet, Mona Lena Krook, Jennifer M. Piscopo, *The Impact of Gender Quotas*, OUP (2012).

[2] *See* David A. Carter, Betty J. Simkins and William G. Simpson, *Corporate Governance, Board Diversity, And Firm Value*. 38 FIN. REV., 33–53 (2003).

[3] See Douglas M. Branson, *Initiatives to Place Women on Corporate Boards of Directors–A Global Snapshot*, 37 J. CORP. L. 793, 803 (2012); EUROPEAN COMMISSION, GENDER BALANCE ON CORPORATE BOARDS: EUROPE IS CRACKING THE GLASS CEILING (Mar. 2014).

[4] *See* Geeta Tewari, Emma DeCourcy and Shirley Ureña, *The Ethics of Gender Narratives for United States Corporate Boards,* NYU J. L. BUS. (Dec. 2019), available at SSRN: https://ssrn.com/abstract=3540374.

[5] *See* Julie C. Suk, *Gender parity and state legitimacy: From public office to corporate boards*, 10 INT'L. J. CONST. L., Volume 10, 449-64 (2012).

[6] *See* Patrizia Pastore, and Silvia Tommaso, *Women on corporate boards. The case of 'gender quotas' in Italy*, *Corporate Ownership & Control*, 13(4), 132-55 (2016), available at: http://doi.org/10.22495/cocv13i4p13.

Beyond these measures, in the last decade there has also been the rise of shareholder activism and shareholder resolutions in favor of gender equity in the boardroom, especially since corporate social responsibility (CSR) is receiving increasing attention. As the topic of gender disparity in corporate boards is receiving particular attention in 2021, a greater number investors and other stakeholders are concerned about the need for greater board diversity.

In this section I will examine women's advancement on corporate boards across the years and the theories that have been developed around the discussion about the lack of gender representation.

A. History And Data

Women accounts for over half of the world's population is women, currently acquiring a higher percentage of college degrees – associate through doctorate- than men[7]. The studies about the level of the education shows that female directors are professional figures with master's degree, academic experiences and post-master's degree qualifications. This study appears to portray a global image that favors the inclusion of women in corporate governance committees[8].

However, women had only played a minor role in the business field until the 1970s. Through the 60s and 70s, boards of directors were almost entirely run by white males and while a few token women were designated, those boards were mostly homogenously composed by male CEOs over 55 years of age[9].

Since the 1980s, there has been a worldwide increase in the number of female entrepreneurs, as the share of women entering the labor force rose during that period leading to an increase as well in associated research. However, the rise in women labor workforce has not met an equivalent increase in the share of female managers or directors in companies, with their representation on corporate boards of directors remains low. For instance, women's representation on boards in the United States rose between the 1970s and 1980s, but slowed down in the 1990s. In 1997, the average percentage of women directors for the 1000 Fortune board seats was only 9.6%[10]. In 1999, women occupied 10.4 percent of board seats in the S&P indexes. Between 1998 and 2002, the average number of female directors was 1.30, with an average board size of 11.2 directors[11].

[7] *See* Michael W. Kirst, *Women Earn More Degrees than Men; Gap Keeps Increasing*, STANFORD: THE COLLEGE PUZZLE (2013).

[8] European Commission: *Report on Equality between men and women: Workers' Group Summary* (2019).

[9] *See* Lorsch, J. W., and Maciver, *E. Pawns or Potentates: Reality of America's Corporate Boards,* HARV. BUS. REV., *(1989)*

[10] *See* Kevin Campbell, and Antonio Mínguez-Vera, *Gender diversity in the boardroom and firm financial performance,* J. BUS. ETHICS, 83(3), 435-451, (2008).

[11] See David A. Carter, Franz D'Souza, Betty J. Simkins, and W. Gary Simpson, *The gender and ethnic diversity of US boards and board committees and firm financial performance*, CORP. GOV. : INT'L REV., 18(5), 396-414, (2010).

In the last decade women's presence in the boardroom has reached an all-time high due to recent policy efforts and other initiatives. Despite this, according to the most recent data, only 25 companies on the Fortune 500 list are led by female CEOs[12]. In 2018, the percentage of women on the boards of Fortune 100 businesses rose to 25.7 percent, up from 19.6 percent in 2011[13]. At smaller companies, the statistics are worse. Additionally, "twelve of the 25 companies went public with no women on their boards in 2017 "[14].

Therefore, these indicators show that progress has slowed, particularly in the last decade. At current rates of development, women's representation on corporate boards would take about seventy years to be achieved in corporate boardrooms[15].

According to a study of more than 8,600 organizations in 49 countries, in particular, when legislation aimed to increase female representation in roles that are traditionally held by men is absent, such as, in jurisdictions with no mandatory or compulsory gender quota requirements, the ratio decreases further[16]. This shows how legislation aimed to increase female representation in corporate roles may have a positive impact in the recruiting process and directors' placement.

Recent rising trends have, fortunately, shown promise. The most recent report of Gender Diversity Index (GDI), which includes data of American firms through 2019 and 2020, finds that since 2011 The percentage of Fortune 1000 companies with at least 20% female board members has increased to 55 percent[17].

According to the annual (2020) review of gender diversity in boards of directors on the Russell 3000 Index Women on Boards Gender Diversity Index (GDI), women currently hold 22.6 percent of board seats, up from 20.4 percent in 2019 and 16.0 percent in 2017—a 6.6 percentage points rise in just four years, in line with the steady progress women have made in securing board seats over the past decade[18]. Despite this improvement, only one or no women are on the boards of directors of 1,064 companies (or one-third of those on the list).

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[12] See Mark Abadi, *There Are Only 25 Women CEOs in the Fortune 500—Here's the Full List*, BUS. INSIDER (Aug. 13, 2018).
[13] *See* 2020 Women on Boards, (2019).
[14] *See* Patrick McGreevy, *Gov. Jerry Brown Signs Bill Requiring California Corporate Boards to Include Women,* L.A. TIMES (Sept. 30, 2018).
[15] Id.
[16] *See CATALYST Women on Corporate Boards: Quick Take,* CATALYST *(*Mar. 13, 2020*).*
[17] Id. at 13.
[18] Id. at 27.

2017-2020 BREAKDOWN *RUSSEL 3000* COMPANIES

	2020	2019	2018	2017
RUSSEL 3000				
% WOMEN ON BOARDS	22.6%	20.4%	17.7%	16.0%
TOTAL WOMEN	6,034	5,252	4,477	4,082
TOTAL DIRECTORS	26,711	25,754	25,250	25,510
% ACTIVE COMPANIES	2,982	2,857	2,835	2,871

Figure n°1, 2017-2020 Breakdown, Russel 3000 Companies

In 2020, women won 744 board seats, while men lost 470 board seats, a slower pace than in 2019[19]. Sixty percent of the seats won by women were board seats, which did not necessitate men giving up their seats to make room for women. Women won 36 percent of new seats in the first six months of 2020, down from 42 percent in 2019. As it can be observed for the increase in the composition of boards, the percentage of companies with more women on board has been increasing by nearly 10 percent, meanwhile the number of corporations having less women (or no women) on boards continues to decline. In 2020, the percentage of all-male boards will have decreased to 17% globally. This trend is partially present in emerging markets, where all-male boards have fallen to 31% from over 34% previously. Hong Kong remains one of the few countries where all-male boards have actually increased by 5%. Saudi Arabia's share, on the other hand, dropped by 8 percent in 2020[20]. This trend reflects company's increasingly awareness of the benefits of greater diversity to the company's performance.

2017-2020 NEW DIRECTORS JOINING BOARDS

	2020 (6 mo.)	2019	2018	2017
# WOMEN	518	1,183	912	626
# MEN	905	1.651	1.639	1.702
TOTAL ADDED	1.423	2.834	2.551	2.328
% WOMEN	36 %	42 %	36 %	27 %

Figure n°2, "017-2020 New Directors joining Boards

Over the years it has been noticed that larger corporations continue to outperform smaller corporations in terms of diversity efforts. Although there is no definite study on why larger

[19] Id. at 21.
[20] Deloitte Global's Report, Women in the Boardroom: A Global Perspective, Sixth's Edition (2020).

organizations are more diverse than smaller ones, it is likely to be due to more scrutiny pressure by their investors, higher standard, and more funding for their search efforts. Smaller companies CEOs and their nominating committees are more inclined to rely on someone they know from their acquaintance circle.

Across all industries, the number of women on boards of directors has risen. Companies currently surpass the 20% target in ten of eleven industries, almost doubling the amount from 2018. In every sector the number of women on boards of directors has increased, except for the Energy sector, which fell below 20%. In 2020, Financial Services, Healthcare, Industrials, and Technology have entered the list of business sectors that have achieved the 20% gender diversity target.

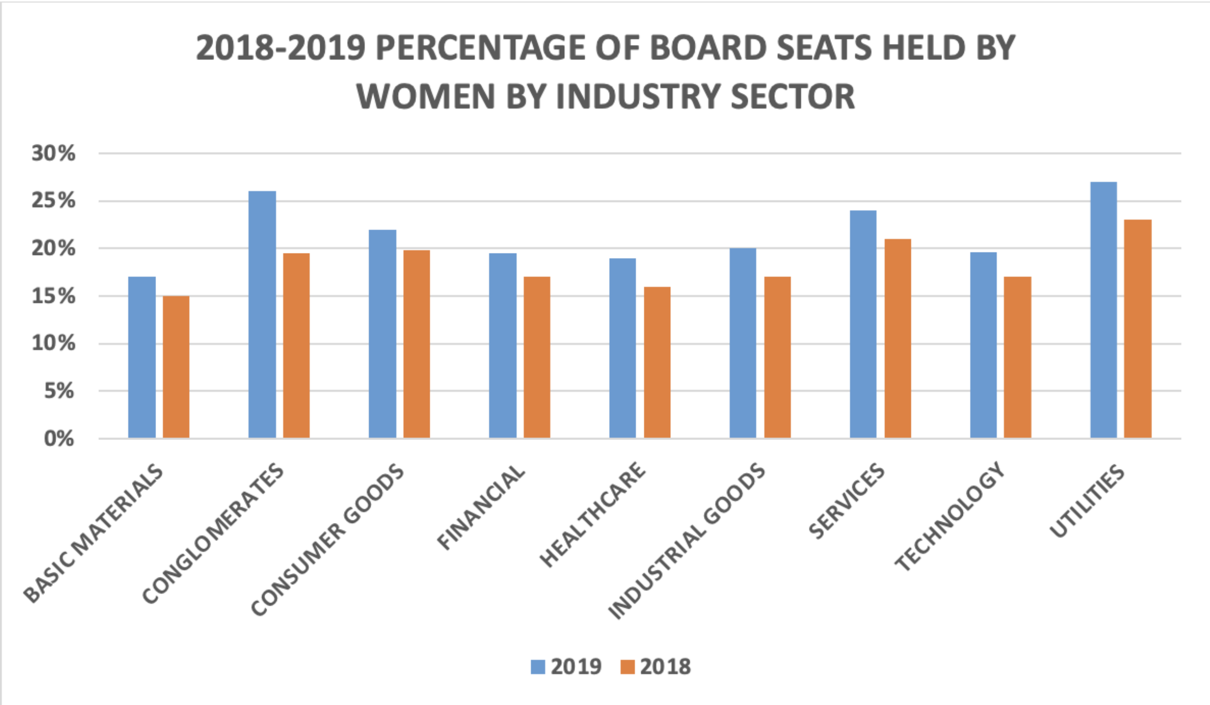

Figure n°3, "2019-2018 Percentage of board seats held by women by industry sector"

Looking at the differences in boardroom gender diversity by listing exchange, corporations listed on the New York Stock Exchange (NYSE) are more diverse than those listed on NASDAQ[21].

Taking a global perspective of the countries' situation about women in boardroom, the latest Deloitte report reveals the advances made by countries around the world in increasing gender diversity[22]. For instance, some countries, particularly those in Europe and Australia, are growing rapidly in diversity.

[21] Id. at 13.
[22] Id. at 20.

Others, on the other hand, appear to have a low percentage of women on their boards. Although the global average increased slightly, there are just six countries in the world with an average of more than 30%. Furthermore, the statistics at country's level about the women's advancement to the corporate elite have always differed from country to country. The substantial disparities in policies, gender imbalance, external factors and hiring barriers that exist across states and countries among countries reflect different state institutional environments.

2019 PERCENTAGE OF BOARDS SEATS HELD BY WOMEN

By country

COUNTRY	*PERCENTAGE*	COUNTRY	*PERCENTAGE*	COUNTRY	*PERCENTAGE*
NORWAY	41,0 %	**IRELAND**	19,9 %	**GREECE**	9,5 %
FRANCE	37,2 %	**AUSTRIA**	19,7 %	**INDONESIA**	9,3 %
SWEDEN	33,3 %	**SPAIN**	19,2 %	**TAIWAN**	9,3 %
FINLAND	31,9 %	**SWITZERLAND**	18,4 %	**BRAZIL**	8,6 %
NEW ZELAND	31,5 %	**USA**	17,6 %	**RUSSIA**	8,5 %
BELGIUM	30,5 %	**PORTUGAL**	17,0 %	**CAYMAN ISLANDS**	8,4 %
ITALY	29,3 %	**POLAND**	15,6 %	**CHILE**	7,7 %
SOUTH AFRICA	26,4 %	**BERMUDA**	15,6 %	**MEXICO**	6,5 %
GERMANY	26,2 %	**THAILAND**	14,2 %	**MOROCCO**	5,5 %
AUSTRALIA	25,4 %	**COLOMBIA**	13,9 %	**JAPAN**	5,2 %
DENMARK	25,4 %	**PHILIPPINES**	13,9 %	**ARGENTINA**	4,7 %
NETHERLANDS	23,0 %	**INDIA**	13,8 %	**UNITED ARAB EMIRATES**	3,8 %
UNITED KINGDOM	22,7 %	**SINGAPORE**	13,7 %	**SOUTH KOREA**	2,4 %
CANADA	21,4 %	**TURKEY**	13,2 %	**SAUDI ARABIA**	0,7 %
ISRAEL	21,0 %	**LUXEMBURG**	12,0 %	**QATAR**	0,6 %
MALAYSIA	20,6 %	**HONG KONG**	11,4 %		
NIGERIA	20,0 %	**CHINA**	10,6 %		

Figure n°4, 2019 percentage of boards seats held by women by country

In particular, data reveals that among the countries with the highest gender diversity, there is Norway leading with 41 percent of women on boards, which in 2005 became the first country to pass a gender quota legislation, followed by France with 37 percent of women on boards.

According to the MSCI research of All Country World Index (ACWI), there graphic projects three different future scenarios on the way to parity at the boards level[23]. If the current trend as 2020 persists, according to the MSCI research of All Country World Index (ACWI) companies, women will not make up 30% of company boards until 2029, and 2045 for them to reach 50%. In the optimistic scenario it may take until 2038 for women to comprise 50% of corporate boards, whereas gender parity will only be achieved in 2070 in the worst-case scenario[24].

[23] MSCI, Women on boards 2019 Progress Report, (2020).
[24] Id.

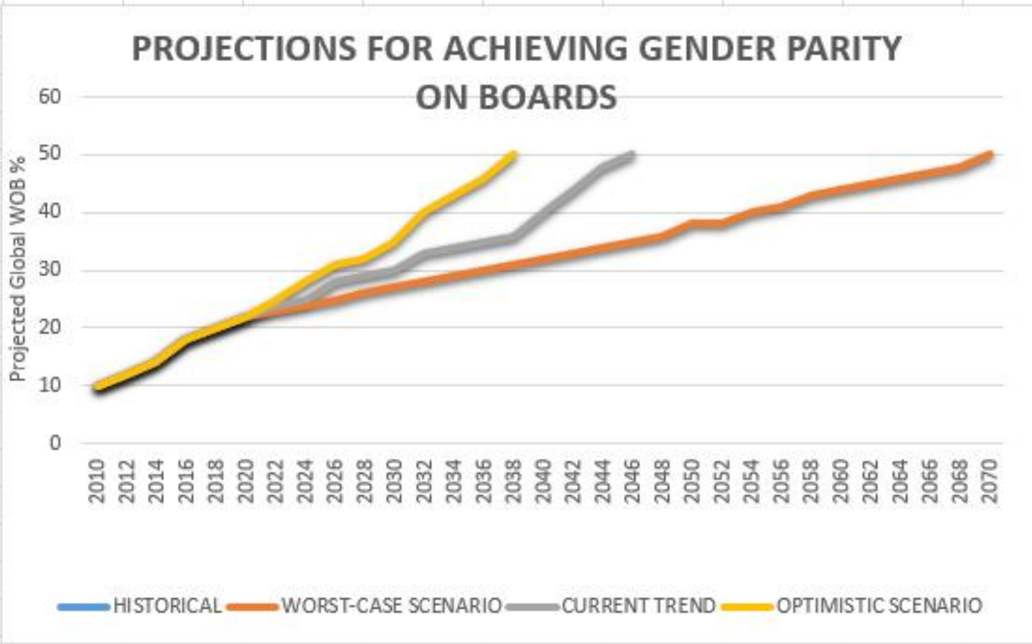

Figure n°5, Projections for achieving gender parity on boards

According to emerging studies, the economic repercussions of the pandemic have been disproportionately encountered by women, potentially erasing years of progress in this field. With the COVID-19 pandemic worsening already-existing workplace barriers for women at many business-level positions, the latter are being "1.5 times more likely than senior-level men colleagues to consider downshifting their jobs or quitting as a result of the difficulties caused by COVID-19"[25]. For this reason, in the last year finding organizations that have shown an ability to maintain a critical mass of female directors appears especially relevant.

As observed, even though previous studies have mostly documented increased female representation on corporate boards in many countries, the number of seats held by women may not be sufficient to have a substantial impact on board activities and firm performance. Women directors are more likely to affect board decisions only when their representation exceeds a certain level, or a "critical mass" which is reached when boards of directors include "at least three women." (critical mass principle, Granovetter, 1978; Kanter, 1977; Konrad et al. 2008).

During the last decades academics, policy makers (OECD 2019) and the media have been concerned about the lack of female representation on corporate boards and the slow progress into corporate boards (Hillman, Shropshire, & Cannella, 2007), resulting in a multidisciplinary academic study encompassing sociology, leadership, entrepreneurship, management, finance, corporate governance, and law. In the following section the debate around gender diversity in board composition in the context of corporate governance and its importance will be analyzed.

[25] Mckinsey, Why Diversity Matters, (2020).

B. Addressing the issue: the struggle for equality, the debate and the ideological approach.

Currently, boards represent the most critical component in enhancing corporate governance. The increasing gender diversity in corporate boards should be addressed as an important goal for the business world for improving the firm performance[26]. Globally, the rise in the percentage of women on board positions globally represents a positive sign of inclusion and the desire of companies and investors for a more inclusive kind of capitalism[27]. Furthermore, companies will benefit from new and more diverse viewpoints and experiences as the industry continues to change at rapid pace because of technological innovation and globalization. All businesses are active in talent development and this effort should include a strong focus on diversity, growth and inclusion to be effective and gain a sustainable competitive advantage over others[28]. However, the whole amount of data about the subject demonstrates that the progress is still too slow: despite women's contributions to the company and to the board, they are still disproportionately underrepresented higher up the ladder. In fact, statistics show that inequality starts at the very beginning of the corporate pyramid and continues to increase at the subsequent layer[29]. Simultaneously, the unconscious biases that persist in the corporate environment and obstruct gender equality, must be addressed. These may take several forms, such as ways that exclude experienced women from being considered as suitable candidates for corporate leadership positions, e.g. informal recruiting networks, cultural prejudices rooted in leadership skills, which limit the pool of potential applicants. Another issue in the corporate governance landscape is the "glass cliff" effect which occurs when a board of directors places a woman in a leadership role only after the male executives have been unable to solve. This phenomenon is known as a cliff because the organization is in such vulnerable position and failure is challenging to overcome[30]. Part of the failure is attributed to gender while being used as an alibi for why women are unsuitable for such leadership roles[31].

The existing literature on this topic is based on a set of well-known theories in corporate governance. Traditional theories of board governance such as the conventional organization theory[32] or the

[26] DELOITTE, Women in the boardroom: A global perspective – 5th edition, Deloitte, Global Center for Corporate Governance.
[27] Id. at 34.
[28] McKinsey & Company, Diversity Wins: How Inclusion Matters, Report, (May 19, 2020).
[29] Id.
[30] *See* Michelle K. Ryan and S. Alexander Haslam, *The Glass Cliff: Exploring the Dynamics Surrounding the Appointment of Women to Precarious Leadership Positions*, 32 ACAD. MGMT. REV. 549 (2007).
[31] *See* Katrin Benhold*, Female Leaders May Face 'Glass Cliff*,' N.Y. TIMES, Oct. 7, 2016.
[32] See Eugene Fama, *Agency Problems and the Theory of the Firm*. J. POLIT. ECON, *88*(2), 288-30, (1980).

resource-dependence theory[33] do not provide insight about the contribution of women to the effectiveness of the boards, since according to them the gender of a corporate director does not matter for his or her performance of board tasks. The link between corporate governance and reporting was shown by the agency theory[34]. Managers can exploit internal data to operate in their own best interests, rather than the best interests of shareholders. The board of directors exercises control over managerial operations and minimizes information asymmetry through accountability, providing transparency to the organization. Gender diversity is likely to influence corporate performance as board composition influences corporate governance. The stakeholder theory, on the other hand, argues that a corporation and its stakeholders are interrelated, since the latter have to be considered when management decisions are made, because a company's long-term profitability and even survival are determined by its relationship with stakeholders[35].

Past academic study and legislative action on board diversity have primarily focused on board gender and ethnic composition[36]. Most of the previous research on women directors has been focusing on the percentage of women on corporate boards, tracking the evolution of female representation on boards over time, focusing only the descriptive nature of representation. On the other hand, studies that are more analytically oriented are primarily concerned with the explanation behind the lack of presence of women on corporate boards[37], predicting the future of female representation in the upcoming decades.

Other qualitative findings, instead, focus on the perspectives and attitudes of women directors in their roles as board members[38]. Furthermore, only a few quantitative studies compare the characteristics of female directors to those of their male counterparts and investigate women's committee membership (Bilimoria and Piderit, 1994; Kesner, 1988). For this reason, women's contributions in the boardroom, as well as their impact and influence on board decisions and procedures, has remained understudied for the last decades. Board members' perspectives on board diversity and its influence are noticeably absent.

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[33] *See* Jeffrey Pfeffer, and Gerald R Salancik, *The External Control of Organizations: A Resource Dependence Perspective*, University of Illinois at Urbana-Champaign's Academy for Entrepreneurial Leadership Historical Research Reference in Entrepreneurship, (1978), Available at SSRN: https://ssrn.com/abstract=1496213 ; *See* Amy J. Hillman, Albert A. Cannella, Ramona L. Paetzold, *The resource dependence role of corporate directors: Strategic adaptation of board composition in response to environmental change,* 37 J. MGMT. STUD., 235-56, (2000).

[34] *See* Michael C. Jensen, and William H. Meckling, *Theory of the firm: Managerial behavior, agency costs and ownership structure,* 3 J. FIN. ECON, 305-60 (1976).

[35] *See* Jill A. Brown, and William R. Forster, *CSR and Stakeholder Theory: A Tale of Adam Smith*, 112 J. BUS. ETHICS, 301-12, (2013).

[36] *See* Rita Goyal, and Nada Kakabadse, *Improving corporate governance with functional diversity on FTSE 350 boards: directors' perspective*, 3(2) JCMS, 113-136, (2019).

[37] See Val Singh, and Susan Vinnicombe, *Why So Few Women Directors in Top UK Boardrooms? Evidence and Theoretical Explanations*, 12, CORP. GOV.: INT'L REV., 479-488, (2004).

[38] *See* Zena Burgess, and Phyllis Tharenou, *Women Board Directors: Characteristics of the Few*, 37, J. BUS. ETHICS, 39–49, (2002); *See* Morten Huse, and Anne Solberg,(2006).

Recognizing the limitations of traditional governance theories in describing the position and contributions of women on corporate boards, gender differences theories[39] and group effectiveness theories within the context of corporate boards not only explains how women directors make an impact on board effectiveness, but it further explains the board of directors acts as mediator between board structure (for instance, gender diversity) and board effectiveness. Other scholarly research studies focus on individual, board, business, and industry-level indicators such as gender pay gap, cultural and legal systems that may affect women's involvement on corporate boards[40]. Countries with more power in enacting legal statutes that influence governance practices such as board composition have a stronger influence on gender diversity. According to the institutional theory, a collection of heterogeneous institutional pressures can inspire and direct women's attitudes, career advancement, and the proportion of women on corporate boards.

Given these former theories, the case for gender diversity on corporate boards rests on two important claims. The first is that diversity ensures traditionally excluded groups to have equal access to power, like women and other minorities[41]. The second claim is that increased gender diversity is essential for good corporate governance, organizational processes and may lead to increased profits and better performance for the firm[42]. Also called "*business case for diversity*", this second claims relies on a corporate culture that prioritize shareholder value. For this reason, the question of whether and how women affect board effectiveness in strategic and operational control tends to dominate debate[43]. This is also the claim on which the major and most discussed controversy centers.

II. A DIFFERENT APPROACH: THE BUSINESS CASE FOR GENDER DIVERSITY IN CORPORATE BOARDS

In the corporate world, gender diversity is frequently discussed: influence of corporate activity continues to expand also in politics and media. The management, boards of directors, business associations, policymakers, governments, and the shareholder community may all contribute to the debate about the enhanced role that women should play in boardrooms.

[39] *See* Eagly, A. H., & Johannesen-Schmidt, M. C., *The leadership styles of women and men*, 57(4), J. SOC. ISSUES, 781–797, (2001).

[40] *See* Stephen Brammer, Andrew Millington, and Stephen Pavelin, *Gender and Ethnic Diversity Among UK Corporate Boards*, 15(2) CORP. GOV: INT'L REV, Wiley Blackwell, 15(2), 393-403, (2007); *See* Johanne Grosvold, Bruce Rayton, and Stephen Brammer, *Women on Corporate Boards: A Comparative Institutional Analysis*, 55 BUS & SOC. (2015).

[41] *See* Giovanni S. F. Bruno, Angela Ciavarella, and Nadia Linciano, *Boardroom gender diversity and performance of listed companies in Italy,* 87 CONSOB (Sept. 2018).

[42] *See* Deborah Rhode, and Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?*, 39 DEL. J. CORP. L., 377-426, (2014).

[43] *See* James A. Fanto, et al., *Justifying Board Diversity*, 89 N.C. L. REV., 901, 932 (2011); Id. at 5.

Many empirical studies have been conducted to examine the second argument, investigating whether gender diversity on corporate boards leads to higher firm performance[44]. The empirical evidence of the results found is currently mixed. While some analyses have identified favorable associations between board diversity and various metrics of firm performance, others have discovered the opposite or no relationship at all[45]. In this section, various academic research on the topic and the possible reasons and implications for the conflicted findings will in depth analyzed.

A. Gender Diversity and the correlation with financial performance

Previous research on gender board diversity has found that female representation had either positive or null effects on business performance, based mostly on cross-sectional data[46]. However, since the data in the research conducted is mainly cross-sectional, such estimations are challenging to interpret as causal effects. In fact, they could be biased by unobserved company factors that influence both the proportion of women in the workforce and the firm's profitability, or by reverse causality (when firm performance influences the share of women hired on boards)[47].

Using regression analysis instead, in a sample of US companies, additional research has revealed a strong correlation between board diversity and several indicators for firm performance[48]. In particular, among Fortune 500 businesses, some studies have found a causal link between female presence on boards and firm performance. For instance, a larger proportion of women on the board of directors of companies is correlated with substantially larger ROS and ROI.

A growing amount of research, including studies by McKinsey & Company, has found substantial evidence to support the value of having more women in top leadership positions.

According to a McKinsey study from 2015 study on Why Diversity Matters, companies with more women on their boards outperformed their competitors in terms of returns on equity, invested capital,

[44] *See* Roy Adler, *Women and Profits*, 79 HARV. BUS. REV. 30, 30 (2001) (Roy Adler's study found a positive relationship); *See* Anthony F. Jurkus et al., *Women in Top Management and Agency Costs*, J. BUS. RES. (Working Paper Mar. 2011), available at: http://perma.cc/PV38-UM6W (finding a positive relationship); *See* Julie I. Siciliano, *The Relationship of Board Member Diversity to Organizational Performance*, 15 J. BUS. ETHICS, 1313, 1317 (1996).
[45] *See* Siciliano *supra* note.
[46] *See* Nina Smith, Valdemar Smith, and Mette Verner, *Do women in top management affect firm performance? A panel study of 2,500 Danish firms*, 55 INT'L J. PROD. PERFORM. MANAG., 569-93, (2006); *Id at 11; See* Fitrija Fauzi, Stuart Locke, *Board structure, ownership structure and firm performance. A study of New Zealand listed-firms,* 8 ASIAN ACAD. MGMT. J. ACCT. FIN., 43-67 (2012).
[47] *See* Marc Eulerich, Patrick Velte, and Carolin Van Uum, *The Impact of Management Board Diversity on Corporate Performance. An Empirical Analysis for the German Two-Tier System*, 12 PROBS. PERSP. MGMT (PPM), 25-39 (2014).
[48] *See* Zawadi Lemayian, Grace Pownall, and Justin Short, *Why are US Corporate Boards Under-Diversified among Genders and Races?* , SSR Electronic Journal (2020), available at SSRN: https://ssrn.com/abstract=3567420 or http://dx.doi.org/10.2139/ssrn.3567420.

and sales[49]. They observed a robust correlation between gender and minority board representation and return on assets and return on investment[50]. According to a more recent study, Fortune 500 companies with a diverse board of directors saw a nearly 2% higher return on assets than companies with male directors[51]. Various studies worldwide have discovered a link between gender diversity on boards and financial success measures in other nations, such as return on equity, operating result, stock price growth and sales.

Another study from McKinsey looked at public, private and non-profit companies, and found that having three or more women on board of directors resulted in better performance in comparison to competitors[52]. The research examined firm performance according to the following indicators: "leadership, direction, accountability, coordination and control, innovation, external orientation, capability, work environment and values".

Furthermore, the Peterson Institute for International Economics has published a study that highlights the advantages of including women in C-suite roles.

It is worth noting that these studies show some intriguing links between gender and firm results.

However according rigorous, peer-reviewed studies, organizations do not perform better or worse when they have women on their boards of directors. Board gender diversity has either a very weak or no association with board performance, depending on which meta-analysis is performed. Furthermore, in some cases, there are several peer-reviewed studies finding a negative relationship, or no significant relationship between board diversity and firm performance, especially in the United States[53]. Zahra and Stanton discovered that the ratio of board member minorities, including women, was adversely associated to the organization's financial performance in terms of efficiency and profitability in a random sample of one hundred Fortune 500 businesses[54]. There was no link between diversity and ROE, profit margin, sales to equity, earnings per share, or dividends per share[55].

Conducting an analysis of 2000 firms, O'Reilly and Main's observed no positive association "*between either the number of women outside directors on the board or the addition of a woman to the board on return on assets*"[56]. Furthermore, several research on board composition have shown no evidence

[49] Id. at 25.
[50] Id.
[51] *See* Francesca Lagerberge, *Women in Business: the value of diversity*, GRANT THORTON, (2015).
[52] DESVAUX ET AL., MCKINSEY & COMPANY, WOMEN MATTER: GENDER DIVERSITY, A CORPORATE PERFORMANCE DRIVER 12-14 (2007).
[53] *See* Campbell *supra note* (They concluded that gender diversity had a significant causal effect on firm value as measured by an approximation of Tobin's Q, but performance did not have a similar effect on diversity).
[54] *See* Shaker A. Zahra, and Wilbur W. Stanton, *The Implications of Board of Directors' Composition for Corporate Strategy and Performance*, 5 INT'L J. MGMT., 229-33 (1988).
[55] Id.
[56] *See* Toyah Miller, and Maria del Carmen Triana, *Demographic Diversity in the Boardroom: Mediators of the Board Diversity—Firm Performance Relationship*, 46 J. MGMT. STUDIES 755, 777 (2009).

that it affects business performance. Other research has found no link between board diversity and business effectiveness for Scandinavian companies[57]. Other studies have come up with similarly contradictory findings. Since the connection between board diversity and organizational performance is ambiguous, some scholars have suggested that a realistic analysis of these correlations, as well as corresponding policy prescriptions, is difficult to determine[58].

In sum, some studies results suggest that there is no business argument for or against women being appointed to corporate boards. According to the latter, women should be nominated into the boardroom for gender equality purposes, not because diversity on boards improves company efficiency.

In addition, several studies document persistent marginalization of women on corporate boards[59]. However, these studies seek to determine whether this unbalanced representation likely stems from biased board hiring or a shortage of diverse candidates. Female and minority directors are less likely to serve in leadership positions on the board, despite possessing stronger qualifications and appearing to be no less effective as a director. On business committees, women still have limited influence. In this context, after verifying the same characteristics across male and female directors, Zelechowski and Bilimoria (2004) concluded that few women on corporate boards truly exhibited any power or were strategically well positioned[60].

To summarize, due to the high reliance of outcomes on the methodology utilized, empirical research on the impact of board diversity on corporate performance is ambiguous. Previous mixed results were caused by the presence of a variety of factors such as different time periods, countries, economic environments, types of companies, and diversity and financial performance measurement indicators[61].

[57] *See* Trond Randoy et al., *A Nordic Perspective on Corporate Board Diversity*, Nordic Innovation Centre, (2006), (analyzing board diversity in Norway, Denmark, and Sweden); *See* also Epsen B. Eckbo, Knut Nygaard, and Karin S. Thorburn, *Does Gender-Balancing the Board Reduce Firm Value?*, European Corporate Governance Institute (ECGI)—463 Finance Working Paper (Apr. 21, 2016).

[58] *See* Benjamin E. Hermalin & Michael S. Weisbach, *Boards of Directors as an Endogenously Determined Institution: A survey of the Economic Literature*, 9 ECON. POL'Y REV. 7 (2003).

[59] *See* Michelle Harding, and Zawadi Lemayian, *SEC Regulation S-K and Board Diversity* (Working paper 2018), available at: SSRN: https://ssrn.com/abstract=3223452 or http://dx.doi.org/10.2139/ssrn.3223452.

[60] *See* Deborah D. Zelechowski, and Diana Bilimoria, *Characteristics of Women and Men Corporate Inside Directors* in the US, 12 CORP. GOV.: AN INT'L REV., 337-42 (2004).

[61] Id. at 42.

B. Gender diversity, Efficiency and Corporate Governance

The theoretical justifications behind the enactment of gender diversity regulations can be divided into two categories: the exploitation of social benefits, as well as business benefits, such as enhanced profits and stock prices. Additionally, scholars consider a third category "corporate governance benefits", which is frequently included under the business benefits umbrella and not being recognized as a distinct category or basis for improving gender diversity on corporate boards[62]. The effects of the achievement of better gender diversity are beyond the solely financial performance of boards. Increasing presence of women on boards can be associated with the compliance of ethical and social standards.

Due to its direct link to the duty that directors hold in corporate boards of the company, the corporate governance argument detain the most significant importance. Good corporate governance solves internal company problems by giving incentives and control the internal decision-making process and managing the company with the intention to minimize risks and maximize the return on investment for investors. Thus, the implementation of diversity into the boardroom falls into good corporate governance practices in order to distribute power and responsibilities. Because the board is in charge of the company's governance, any changes to the board's composition should be evaluated in terms of their impact on corporate governance[63]. Moreover, the decisions of the board and its composition should reflect the current set of new principles within the marketplace where the companies operate in order to become successful and competitive. Since the board's main function in the firm is monitoring management decisions, any effect on firm's performance of the board composition necessitates clarification by its board's monitoring effectiveness[64]. Financial reporting, risk management, and internal control systems are often given to the audit committee for monitoring. Since the audit committee is so crucial to the board's monitoring function, most countries require it to be made up of a majority of independent directors. As a result, being actively engaged in certain board committees represents another opportunity for women directors to help to improve the board's monitoring ability[65]. According to studies, female directors are more likely than men to be appointed to monitoring-related committees and less likely to be assigned to a remuneration committee. More

[62] *See* Hevig B. Reiersen, and Beate Sjafjell, *Report from Norway: Gender Equality in the Board Room*, 4 EUR. CO. L. 191 (2008). (They found that corporate insiders believe that groups with gender balance deliver optimal performance in most areas that "drive innovation").
[63] *See* Maria E. Maher, and Thomas Andersson, *Corporate Governance: Effects on Firm Performance and Economic Growth*, SSRN Electronic Journal (2000), available at SSRN: https://ssrn.com/abstract=218490.
[64] *See* Lisa M. Fairfax, *The Bottom Line on Board Diversity: A Cost-Benefit Analysis of the Business Rationales for Diversity on Corporate Boards*, WIS. L. REV. 795, 831-34 (2005); *See* Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 YALE L.J. 71, 75 (2000).
[65] *See* Akshaya Kamalnath, *The Corporate Governance Case for Board Gender Diversity: Evidence from Delaware Cases*, ALB. L. REV. (2018), available at SSRN: https://ssrn.com/abstract=3128272 or http://dx.doi.org/10.2139/ssrn.3128272.

female directors on the compensation committee are linked to reduced CEO pay growth rates, which can be perceived as a better organizational outcome in terms of good governance[66]. This inequality extends to compensation for board appointments as well.

A more gender balanced board tends to improve company's efficiency, the quality of decision-making processes, corporate governance, and ethics, leading to innovation and growth[67].

The basic premise of the mentioned theories is that diversity gives the board the ability to consider a "wider range of options and solutions to corporate issues"[68].

Boardroom diversity may help in the prevention of "groupthink," a problem that may head to the board's failure to fulfill its supervisory role in corporate governance[69]. Furthermore, including women in major positions will bring value by providing different expertise and encouraging an inclusive environment.

Researchers have also investigated the link between board diversity and other board procedures such board oversight, M&As, and dividend payouts. Scholars have investigated whether diversity has an impact on the frequency and effectiveness of whistleblowing[70]. Women's frequent status as outsider and greater knowledge of unfairness may boost their propensity to disclose misconduct when detected[71].

The importance of executive directors' conduct emerges from Delaware's judicial cases, such as *In Re American International Group, Inc. v. Maurice R. Greenberg* and *Howard I. Smith*[72].The investigation has also revealed understandings concerning the possible development of management challenges that must not be ignored, in addition to offering insights relevant to the board diversity debate. In this scenario, the CEO also served as chair of the board of directors. This was possibly one motive for the boards' incapacity to monitor CEO excesses.

Furthermore, the fact that the CEO and his "inner circle" acted as a "criminal organization" shows that, if gender diversity has any ethical benefits, management may gain from it as it has control over the (mis)management of many elements of the corporation. In this case, the board was composed by

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[66] *See* Antonio L. García-Izquierdo, Carlos Fernández-Méndez, Rubén Arrondo-García, *Gender Diversity on Boards of Directors and Remuneration Committees: The Influence on Listed Companies in Spain, 9* FRONTIERS IN PSYCHOLOGY (2018).

[67] *See* Linda Senden, *The Multiplicity of Regulatory Responses to Remedy the Gender Imbalance on Company Boards,* 10 UTRECHT L. REV 5, 58-9 (Dec. 2014).

[68]*See* Donald J. Polden, *Forty Years after Title VII: Creating an Atmosphere Condusive to Diversity in the Corporate Boardroom*, 36 University of Memphis School of Law (2005).

[69] *See* Dachyun Kim & Laura T. Starks, *Gender Diversity on Corporate Boards: Do Women Contribute Unique Skills?,* 106 AM. ECON. REV. 267, 267-68 (2016).

[70] *See* Cindy A. Schipani et al., *Women and the New Corporate Governance: Pathways for Obtaining Positions of Corporate Leadership*, 65 MD. L. REV. 504, 530-33 (2006).

[71] *See* Marcia P. Miceli, Janet P. Near, and Terry Morehead Dworkin, Whistle-Blowing In Organizations, Cornell SC Johnson College of Business, 60-61 (2008).

[72] *In Re American Intern. Group, Inc*., 965 A.2d. at 763 (Del. Ch. 2009).

all male members, resulting a group very cohesive. As a result of this corporate culture, boards become more prone to groupthink, which will quite possibly inhibit their monitoring function.
In addition, the study by Adhikari et. al. reinforces this suggestion since it concludes that companies with women in top executive positions could be considered as the “Antidote to groupthink” and subjects to fewer litigations, particularly lawsuits related to environment, product and medical liability, labor and contracts that can cause a reduction in shareholder value[73].
Furthermore, studies show that women are more risk averse than men, which may have precluded female directors with similar incentives from participating in these unlawful operations. Furthermore, when decision-making organizations suffer from ‘groupthink,' risk-taking increases.
If every member in the group agrees will gain the group more confidence in the decision taken and will make it appear less dangerous than it is[74]. The fact that Greenberg and his inner circle were all male executives who spent a long time together at AIG may have contributed to groupthink and, as a result, greater inclination to participate in criminal behavior[75].
In fact, commentators often claim that corporate boards with major diversity make better decisions than homogenous boards. Women bring different skills, experiences, and thoughts, and therefore bring new information and viewpoints to the table. A study of Milliken and Martins found that workplace diversity, including gender diversity, has been related to better organizational results through the "number of alternatives considered, quality of thoughts, and degree of collaboration in complex tasks". In other words, they widen the board's "cognitive variety”: the more cognitive diversity a board contains, the more solutions it will consider and the more intensely it will discuss those options. However, even if minority members are appointed to corporate boards, there might be the case of being hesitant to share their opinions that differ from those held by the majority of the group during board meetings or having enough power to influence board decisions. This dynamic is more likely to occur in boards where diversity is still inconsistent, not exploiting at the fullest the benefits of cognitive variety.
According to Adams and Ferreira, companies with a stronger female representation, for instance, hold more meetings, have better attendance rates, greater engagement in decision-making process, conduct more rigorous monitoring, and are more likely to dismiss a CEO when the stock performs badly[76].

[73] *See* Douglas Cumming, T. Y. Leung and Oliver Rui, *Gender Diversity and Securities Fraud,* 58 ACAD. MGMT. J. (2015); *See* Mary Jane Lenard et. al., *Female Business Leaders and the Incidence of Fraud Litigation,* 43 MANAG. FIN., 59 – 75 (2017); *See* Akshaya Kamalnath, *Gender Diversity as the Antidote to 'Groupthink' on Corporate Boards*, 22 DEAKIN L. REV., 17-32 (2018).
[74] *See* Marlene A. O’Connor, *The Enron Board: The Perils of Groupthink*, 71 U. CIN. L. REV. 1233 (2003).
[75] *See* Simona Comi, Mara Grasseni, Federica Origo, Laura Pagani, *Unhinging heaven’s door. New Evidence on the Effect of Gender Quota Laws on Firm Performance in Europe,* Associazione Italiana Economisti del Lavoro (AIEL) (May 2014).
[76] *See* Renée B. Adams, Daniel Ferreira, *Women in the boardroom and their impact on governance and performance*, 94 J. FIN. ECON., 291-309, (2009).

Another study from 2017 showed that organizations with at least one female lead (including both directors and executives) are less likely to face financial reporting fraud litigation[77].

Research has suggested that board gender diversity is causally linked to improved corporate social responsibility practices (CSR)[78]. A similar study investigated the association between corporate social responsibility (CSR) practices and female directors, suggesting that having more women on boards improves CSR. Empirical evidence suggests that corporations with female directors give more to charity and recognize the interests of a broad group of stakeholders[79]. In addition, companies that participate actively in CSR, or plan to do so, will be more likely to nominate women to their boards of directors. Other studies have linked the presence of female directors to increased professional opportunities and gender equality practices in their companies.

According to some reports, the involvement of women on corporate boards of directors may have a favorable impact on the reputation of companies, especially those that communicate directly with consumers. According to researchers analyzing Spanish companies, media attention around the mere nomination of female directors could work as a good signaling mechanism for companies to their stakeholders. Other studies found a positive correlation between the reputation of the firm and its ranking with the presence of female directors, even though causality was not easily found.

In general, it can be shown that there is enough evidence that the mere presence of female board members can improve company's image and, as a result, on its performance.

III. LEGAL STRATEGIES FOR CHANGE

The improvement of gender parity in the corporate leadership sphere among countries has reached higher levels thanks to the increasing regulation activity from governments and legal entities on both the international and domestic front.

The strategies implemented in order to enhance board diversity have taken significantly steps through legislation and regulation. In fact, law can play a greater role in the gender diversity in the corporate governance field. The tool of public policy is considered an important strategy for advancing progress towards gender equality. Female labor supply might be supported by family policy, parental leave, and formal childcare provisions, while gender quotas on corporate boards could be used in breaking the glass ceiling. Additional provisions in the labor market, such as part-time and new forms of job

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[77] *See* Mary J. Lenard et. al., *Female Business Leaders and the Incidence of Fraud Litigation,* 43 MANAG. FIN., 59 – 75 (2017).

[78] *See* Eunjung Hyun et al., *Women on Boards and Corporate Social Responsibility,* 8 SUSTAINABILITY, 1-15 (2016).

[79] See, e.g., Marquis and Lee 2013 (finding a positive and significant relationship between the "proportion of female board members [and] overall philanthropy.").

flexibility in time and space, have also proved to play a relevant role in the promotion of female employment and the reduction in gender gaps in the corporate field[80]. Reduced gender disparities in the boardrooms can be achieved in a variety of methods, ranging from voluntary initiatives and the diffusion of best practices by both governments and businesses to legislative measures[81].

In this section international legislative efforts in order to close the gender gap in the corporate boardrooms and related target-based measures for publicly traded firms that are already adopted by several countries will be examined, ranging from soft law to hard law approach and quota regimes. A comparative analysis between European countries and the United States, analyzing the measures adopted in the different regulatory models for advancing gender diversity in high-level positions in companies will be conducted[82].

Following the legal spectrum, the regulations used to achieve gender balance on corporate boards be classified into three categories: binding regulations, non-binding regulations and no specific regulatory action. Regarding binding regulations, countries such as Norway, France, Germany and Italy have adopted women's quotas which require a greater female component in the composition of the Board of Directors of listed companies. Other states, such as the United Kingdom and Denmark, have adopted non-binding initiatives, i.e. voluntary self-regulation based on the "comply or explain" model, or the annual publication called "mandatory disclosure" in which companies publicly disclose information regarding the composition of the boards of directors or even in the dissemination of good corporate practices. It should also be emphasized that in some EU Member States, both self- and co-regulatory solutions, as well as public law approaches, may be implemented.

Finally, at the end of the spectrum there are other Countries that have not adopted any measures on this matter such as China and Bulgaria, where no specific regulatory responses have been made to address the issue of diversity.

This comparative analysis offers insights of how public and private regulators collaborate with each other in this regard and what factors are important to determine the strategy which is the most effective in the diversity matters. The ultimate objective is to find the best combination of legislation and enforcement policies in order to achieve the goal of more balanced board representation.

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[80] *Id at 42*.

[81] *See* Simona Comi, Mara Grasseni, Federica Origo, and Laura Pagani, *Where Women Make the Difference. The Effects of Corporate Board Gender Quotas on Firms' Performance across Europe*, University of Milan Bicocca Department of Economics, Management and Statistics, 367 Working Paper (2017), available at SSRN: https://ssrn.com/abstract=3001255 or http://dx.doi.org/10.2139/ssrn.3001255.

[82] Directorate General For Internal Policies Policy Department C: Citizens' Rights And Constitutional Affairs Gender Equality, Women on Corporate Boards in Europe.

A. Hard law approach

One way to accomplish gender diversity on corporate boards is by hard public law. The coercive or legislative approach is the most severe, since it entails the government implementing legislation. This is a legal or regulatory environment in which diversity-enhancing board policies such as quotas or codes are imposed on or highly recommended to businesses through law or regulation. This regime is indeed very strict concerning its compliance and enforcement. In particular, binding quotas are used in affirmative action legislation to ensure an appropriate level of female involvement on corporate boards of listed companies in each specific country.

States addressing the issue through coercive means, demonstrate their commitment to workplace equality by de-institutionalizing important biases and prejudices that prevent women from progressing up the corporate ladders, providing and creating more favorable legal protection against gender discrimination. These policies advocate an institutional framework based on gender-neutral norms and practices that promote fairness and equal treatment for all workers. As women progress through the rankings, such norms may lead to less discriminatory promotion and hiring practices.

As a result, policymakers and advocacy groups that focus on establishing state-level diversity-enhancing resolutions will boost the number of female directors in the short-term period. These policies will most likely generate a medium- and long-term impact on women's careers and increasing the proportion of independent directors and institutional investors.

1. Hard law and quotas regimes

Corporate board quotas are applicable to company boards of directors and establish representation thresholds for women's representation (typically 33–50%). These corporate measures, which focus on the proportion of women required to serve on corporate boards, are enforced at national level but only apply to a subset of boards within a country. For instance, state-owned enterprises, publicly traded corporations, and/or any companies with a specific number of employees or yearly revenue level may be subject to quotas. The composition of the board of directors does not change on a regular basis or for all corporations at the same time. As a result, most corporate quotas specify a compliance phase-in period, usually between three and five years[83]. In most cases, corporations were granted a set amount of time to reach the required quota so that they could gradually adjust to the new gender-balanced board standards. Depending on the type of company, a phased application with sequentially

[83] *See* Bruno supra note 41.

higher quotas was developed in several countries. This regime is quite rigorous in terms of compliance and enforcement: existing businesses that do not comply with the regulation may be dissolved following a court ruling. Finally, national laws differ in terms of the presence and type of penalties for non-compliance[84].

In this regard, Norway serves as an international role model for hard public law in 2006, the first country in Europe to implement a legal sanctioned quota that mandates representation of 40 percent of both genders on company boards, for both public limited and state-owned enterprises[85]. During the two-year transition phase, the majority of businesses were able to meet the quota requirements[86]. Corporations with only male board members should fill any vacant seat with a woman, the sanction in case of legal non-compliance means the invalidity of any director's assignment[87]. For this reason, legislative mandatory corporate quotas have already evoked intense political and legal debate.

Three separate normative arguments can be distinguished for supporting quotas and for taking action: the economic, business case argument; the private, individual fairness, equal opportunities and equal qualifications argument; and the general societal, public interest and fundamental rights rationale[88].

B. Soft law approach

Soft law regime consists in the definition of rules which companies may or may not decide to comply with, without however incurring penalties. Several Countries, such as Spain and the United Kingdom, have opted for a regime of non-binding measures, aimed at ensuring long-term gender equality in Boards of Directors. This has led to different results among the countries that have adopted such measures. For example, the Finnish government, which has adopted self-regulatory measures, registered 31.9 percent of women in its Boards in 2019, thus reaching fourth place in the world ranking for gender diversity published by Deloitte.

[84] *See* Barbara Black, *Stalled: Gender Diversity on Corporate Boards*, University of Cincinnati College of Law Scholarship and Other Publications, 185, (2011).

[85] Norwegian Companies Act 2003, sec. 6-11a.

[86] S*ee* Paul Hastings, *Breaking the Glass Ceiling: Women in the Boardroom*, Fourth Ed., (Sec. United States), 54, (2015).

[87] *See* Marc De Vos, Philippe Culliford, *Gender Quotas For Company Boards*, Intersentia, 1–34, (2014).

[88] Id. at 79

1. Self-regulation

In several countries, in absence of binding public legislation, business organizations have taken several steps to promote gender equity in boardrooms. Such as in the case of United Kingdom, Spain, Sweden, these initiatives have the objective to induce companies to concretely address the issue of women in the boardroom. This occurs as a result of the enactment of best practices, corporate code guidelines or recommendations. However, in this regime, gender diversity norms included in these codes generally imply with no hard rules or requirements and penalties being enforced. For instance, the British Corporate Governance Code and the Warsaw Stock Exchange's Polish Code of Best Practice for WSE Listed Companies requires companies to provide annual information about the compositions of the Management Board and the Supervisory Board and advice shareholders and companies that an "*equal proportion of women and men*" in leadership and managerial roles should be reached, without specifying what "balanced" entails. Only after 2012, these recommendations fall under the mechanism of "comply or explain"[89]. In addition to corporate governance codes applied to publicly listed companies, corporations may also adopt other, more specific tailored measures, such as certificate programs, as well as mentoring and education. An excellent example of mentoring program is the United Kingdom FTSE 100 Cross-Company Mentoring Executive Programme and The Future Boards Scheme is a cooperation between the 30% Club, the UK government, and Board Apprentice, a non-profit organization committed to expanding the number and diversity of non-executive directors. This program allows top executive women to spend a year on the board of directors of a major corporation, gaining beneficial boardroom experience[90]. In the Netherlands, up to date more than 239 Dutch Corporations have adhered to this type of voluntary programs and their compliance has been displayed on the The Dutch 'Talent to the Top' official website.[91] However, since these programs are on voluntary basis, no penalty is provided and they are strictly dependent on the corporate policy, mostly of large companies, leaving out all smaller private companies which do not plan yet to adhere to the goals for female board membership.

[89] Warsaw Stock Exchange, Code of Best Practices for WSE Listed Companies, Art. 9, Art. 2 sub. A. ; Provision No. 1 point 2a of Chapter II of Good Practices as amended by resolution No. 20/1287/2011 of 19 October 2011.
[90] The Future Boards Scheme, 30% Club Growth through Diversity, (2016).
[91] Id. at 4.

2. Target Regimes: Comply or Explain Approach

Given the opposition to quotas, some diversity activists urge for a "comply-or-explain" approach. This strategy can take several forms, but a common proposal is "*companies having a lower proportion (than 30% women on their boards) would have to explain [in their annual reports] if they inteded to fill a vacancy with a man*"[92]. In this regard, the European Council is developing a regulation that would force major publicly traded companies to disclose their board diversity policy, including the achievements that have emerged from it[93]. In case of not compliance of such policy, they have to give "*clear and reasoned explanation as to why they do not*"[94].

In other words "*listing rules of several stock exchanges require as part of their agreement with listed companies that the companies 'comply' with governance requirements or 'explain' why they do not*"[95].

Since 2012, Denmark has passed the Gender Equality Act and the Companies Act. The regulations require private and public enterprises to set clear and realistic goals and develop a hiring policy, which involves a comply-or-explain approach: companies must report on the policy's implementation annually and eventually provide a reason for why the target was not reached. A fine may be imposed if the company fails to report on this[96].

There is a legal "comply-or-explain" duty embedded into Corporate Governance Codes. For instance, the Finnish Corporate Governance Code, which urges listed companies to illustrate and report the progress made about equal representation in their boards, rely on the 'comply or- explain' mechanism, in which the reason for a divergence from the code has to be recorded in the yearly report of the organization.

In the United States, the Securities and Exchange Commission (SEC) introduced a regulation in 2010 that pushed corporations to conform with the comply-or-explain on diversity issues[97]. The rule requires companies to disclose "*whether, and if so how, the nominating committee (or the board) considers diversity in identifying nominees for director*"[98]. Furthermore, companies whose boards have a diversity policy must clarify the way the policy is implemented and how the firm estimates its

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[92] *See* Aaron A. Dhir, *Norway's Socio-Legal Journey: A Qualitative Study of Boardroom Diversity Quotas*, chap. 4 in Challenging Boardroom Homogeneity: Corporate Law, Governance, And Diversity, New York: Cambridge University Press (2015).

[93] Proposal for a Directive of the European Parliament and of the Council Amending Council Directives 78/660/EEC and 83/349/EEC as Regards Disclosure of Non-financial and Diversity Information by Certain Large Companies and Groups, COM (2013), 207, Apr. 16, 2013.

[94] Id.

[95] *See* Miroslav Nedelchev, *Good Practices in Corporate Governance: One-Size-Fits-All vs. Comply-or-Explain*, 4 INT. J. BUS. ADM., 75-81, (2013).

[96] Id.

[97] 17 C.F.R. § 229.407(c)(2)(vi) (2012).

[98] Id.

effectiveness[99]. The SEC permits businesses to define the concept of diversity "in ways that they consider appropriate," contributing to board heterogeneity[100].

In the United States, drastic events such as the Covid-19 pandemic in 2020 have accentuated social problems such as racism and sexism for which individuals and institutions have mobilized to address them. However, the efforts made could potentially generate other difficult situations.

An example is given by the diversity rules and disclosure amended by U.S. Securities and Exchange Commission, approved in August 2021. The main objective of the New Rule 5605(f) is to require Nasdaq-listed companies to have at least two diversity directors. The term “diversity director” include one director who self-identifies as female and another who identifies as an “underrepresented minority”[101]. Nasdaq Global Select Market and the its global market companies are required to comply with the rule by August 7, 2023 and August 6, 2025 by adding to their boards one diverse director and two diverse directors respectively[102]. If a corporation does not meet one of these requirements, it must indicate which aspect(s) of board diversity were not met and provide explanations in this regard. Such information must be included in its proxy or information statement (or Form 10-K or 20-F if it does not file a proxy) prior to the company’s annual meeting of shareholders or on its website[103].

Again, companies are subject to the SEC principle of "comply or explain" mechanism. However, these rules can cause a decrease in investor returns and therefore the pursuit of social justice objectives by the Nasdaq could cause damage to investors[104].

Moreover, under the Sarbanes-Oxley Act of 2002, companies are required to disclose whether they have implemented an ethical guideline for their senior financial managers and whether their boards' audit committees have at least one financial expert[105]. Companies must provide the reason why they did not implement such code or not appointed an expert.

Another example is the Dodd-Frank Wall Street Reform and Consumer Protection Act: companies must also declare whether they have differentiated the roles of board chair and chief executive officer, and if they have not done so, they must explain why not[106].

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[99] Id.

[100] *See* Deborah L. Rhode, Women And Leadership, Oxford University Press, 125-26, (2017).

[101] NASDAQ Rules, Rule 5605.

[102] Id.

[103] Id.

[104] *See* J. M. Fried, *Will Nasdaq's Diversity Rules Harm Investors?*, European Corporate Governance Institute - Law Working Paper, 579, 2021.

[105] Id at 42.

[106] *Sarbanes-Oxley Act of 2002*, Pub. L. 107-204, §§ 406, 407, 116 Stat 745 at 789-90; *Dodd-Frank Wall Street reform and Consumer Protection Act*, Pub. L. 111-203, § 972, 124 Stat 1376 at 1915 (2010).

3. Mandatory disclosure

Publicly traded companies must now include a statement about Diversity on Corporate Governance in their annual report. Adding a section on "Diversity" would help to clarify the subject and provide a standard for comparison[107]. Increasing board diversity and emphasizing its absence is the main focus of this institutional approach, as well as mobilizing stakeholder pressure to hold companies accountable[108]. Another way the board conducts its monitoring function is by publicly disclosing pertinent information about the company.

Voluntary disclosure efforts can help raising more awareness about the issue, putting more pressure on corporations to appoint more diverse board members.

According to a study, gender diversity on boards of directors encourages more public disclosures for public corporations in the United State. Overall, these findings suggest that when it comes to public disclosures, women directors tend to be more cautious[109].

Large institutional investors could impose disclosure requirements and use their influence as shareholders to better encourage gender diversity among companies in which they retain major investments**.** In addition, corporations may help by publishing report cards that allow investors to prioritize the issue of gender diversity in their investment decisions.

In this regard, the Norwegian Sovereign Fund which owns 1.5% of shares globally, distributed in approximately 9,000 companies, is increasing its commitment towards gender equality on corporate boardrooms. Among its objectives for closing the gender gap in the workplace for 2022, it intends to invest only in companies with at least 30% of women on their boards of directors.

Furthermore, according to the stakeholder agency theory, information asymmetries and conflicts of interest that arise between a corporation and its stakeholders could be reduced thanks to the implementation of Corporate Social Responsibility (CSR) disclosure[110]. Gender diversity on boards could be considered as a corporate governance instrument for implementing a sustainable management plan and exercising control over CSR activities, which can contribute to a strengthening of the company's reputation (Francoeur, Labelle, & Sinclar Desgagné, 2008) [111]. In addition, a higher proportion of female directors usually leads to more board independence.

[107] *See* Irene Karamanou and Nikos Vafeas, *The Association between Corporate Boards, Audit Committees, and Management Earnings Forecasts: An Empirical Analysis,* 43(3) J. ACCOUNT. RES., 453 (2005).
[108] Id.
[109] *See* Ammad Ahmed, Deborah Delancy and Chew Ng, *Does Gender Diversity on Corporate Boards Influence the Frequency and Quantity of Public Disclosure?* (Paper presented at AFAANZ conference, 2016).
[110] *See* Charles W.L. Hill, and Thomas M. Jones, *Stakeholder-Agency Theory*, 29 J. MGMT. STUD., 131-54, (2009) ; *See* Neil A. Shankman, *Reframing the Debate Between Agency and Stakeholder Theories of the Firm,* 19 J. BUS. ETHICS, 319–34, (1999).
[111] *See* Claude Francoeur, Réal Labelle, and Bernard Sinclair-Desgagné, *Gender Diversity in Corporate Governance and Top Management*, 81 J. BUS ETHICS, 83–95 (2008).

Other forms of co-regulatory regimes exist and are being implemented on national level, such as the enactment of Codes and Charter for adding more women in the management of companies, such as the Charter enacted by the Danish Minister for Gender Equality in 2008 for both public and private sector companies.

C. *Explaining the different approaches and comparing their effectiveness*

The above study reveals a great deal of heterogeneity in many aspects of regulatory and enforcement solutions that have been implemented and are still being developed in this field of corporate governance.

Apart from variations in the public and/or private regime's nature where each company is embedded, there is substantial alteration in the size and form of corporations affected by them (private, listed, and/or state companies); their duration (temporary or permanent);, the implementation phase and the monitoring activities related to a particular regulatory action and the adoption of suitable sanctions to infringements[112]. In this framework it is important to identify the variables that can possibly explain the diversity in strategies and multitude regulatory decisions applied for this specific course of action. The societal EU fundamental principles claim emphasizes the significance of a balanced representation in terms of preserving and promoting social justice and democratic legitimacy, which in legal terms translates into the notion of equal opportunities[113]. This might explain the tangible and meaningful regulatory action taken by most European countries on the matter of gender diversity in the corporate boardrooms.

However, the issue of gender diversity on corporate boards appears to be viewed insufficiently relevant in states where no explicit regulatory action has been taken. For instance, in countries such as Bulgaria, China or Russia, no justification is seen as a sufficient or convincing driver and there is no step toward the creation of a more constructive strategy to address and overcome persistent disparities in this domain[114]. In other countries, self-regulatory approaches are induced by the necessity of companies from the corporate governance board to behave in a responsible and sustainable, with the goal of gaining the general public's trust and the increasing emphasis that shareholders are putting on gender diversity.

The rationale behind the mandatory approaches instead, such as hard quota rules, illustrates that reaching balanced participation is in the Government's interest to move a significant step toward

[112] Id at 65.
[113] Id.
[114] Cf. L. Warth, *Gender Equality and the Corporate Sector,* UNECE Discussion Paper Series, No. 2009.4.

gender equality and a more equal distribution of power in the corporate environment.[115] However, the implementation of quotas finds its rationale in the business case justification, given that rather than being enforced by equality law, the quota provisions were imposed by amendments of company law.

As a result of increasing political pressures, in some countries both hard quotas rules and soft targets were used as legally binding measures to address the issue of gender diversity. In some countries the hard legislative approach was justified because voluntary initiatives have proven not to be efficient enough and advancement has not been so much rapid so far[116]. In other countries, such as United Kingdom and Denmark, mandatory rules were rejected, favoring more intermediate outcomes such as soft targets and a comply-or-explain approach with corporate governance codes and charters or opting for co-regulatory regimes or conditioned self-regulation. Furthermore, it has been detected a correlation between self-regulatory approach and countries with a liberal welfare system such as the UK. For this reason, self-regulatory action and the creation of corporate social responsibility policy is deemed to be more suitable under the previous system and a hard law solution should only be considered if self-regulation fails to achieve the desired results. The government of social-democratic countries, such as Nordic ones, on the other hand, tend to participate in the market and impose enforceable regulations to promote more gender parity by aiming for the best welfare standards for all citizens[117].

While Norway has established a very hard quota-based strategy, other Nordic countries such as Finland, Sweden and Denmark have chosen a mixed approach of soft public law regulations[118].

Governments intervene more readily and implement social policies in countries that are typically characterized as welfare schemes that are conservative corporatist such as Italy, France and Germany, since the state is perceived to have a redistributive function as well.

An equal opportunities approach is more concerned with providing full equality for men and women to serve on corporate boards of directors, rather than with achieving a particular outcome. In this regard, the approach of hard quota legislation is more top-down outcome-oriented and that self-regulatory and co-regulatory approaches are more bottom-up opportunities-oriented[119].

According to a European Parliament report on the efficacy of legal instruments comparing to voluntary regimes, the strictest and most binding regulatory and compliance mechanism of targets or

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[115] The website of the Norwegian Ministry for Children, Equality and Social Inclusion as quoted by G. Selanec, 'Executive Summary', in Selanec & Senden 2013.

[116] *See* the proposal for the Law: Kamerstukken, no. 53 - 211/2, 4, 5 -7, 2010-2011.

[117] *See* J. Armstrong & S. Walby, Gender Quotas in Management Boards, PE 462.429, p. 12, (2012) available at: <http://www.europarl.europa.eu/document/activities/cont/201202/20120216ATT38420/20120216ATT38420EN.pdf>,

[118] *See* V. Heidenreich, *Why Gender Quotas in Company Boards in Norway – and not in Sweden?,* in F. Engelstad & M. Teigen, Firms, Boards and Gender Quotas: Comparative Perspectives, 2012, at pp. 147-183.

[119] Id. at 79.

quotas tend to be the most powerful in terms of achieving equality of outcome. As a result, it reached the conclusion that "*legal instruments that implement quotas are an efficient and quick way of achieving improvement in gender diversity*." [120] Voluntary regimes have resulted in a slight rise in the percentage of women on corporate boards, but the results are much smaller and slower.

Only by imposing quotas it was possible to achieve for the first-time 40 percent of representation from the underrepresented sex in the boardroom.[121] Since Norwegian quotas were incorporated into company law rather than equality law, the system has allowed the imposition of strong penalties for non-compliant businesses. If the sanctions would have been more limited, the outcomes could have been significantly different[122]. Other studies have found that in Norway, rapid and true change was only made following the introduction of a quota law with the implementation of strict penalties, while previous voluntary measures were assumed to be ineffective.

However, the Norwegian success can be attributed not only to the – harshness of the – quota regime, but also to voluntary initiatives that were implemented with it, such as professional training programs for eligible female candidates and stakeholder collaboration to support this change.

As a result, soft and hard law policies can be seen as complementarities rather than competing with each other. However, it seems that countries that have implemented soft regimes have also seen positive effects, implying that elements other than the legal binding nature of regulatory regimes and strict warrants are at play and have an impact on their efficacy. Thus, the progress accomplished by countries such as Finland can be considered noteworthy, reaching 31,9 percent of board seats held by women at the end of 2019, accounting a 16% increase in the last ten years[123].

However, in some other cases, self-regulatory codes, by not setting any concrete targets for businesses to meet and by not providing for any penalties, they may provide less effectiveness in achieving the desired result. Furthermore, as the Polish case demonstrates, detailed guidelines explaining how deviant a corporation's policies are missing, and it is unclear which entity is responsible for reviewing these explanations, as neither the Code of Good Practice nor the Warsaw Stock Exchange's website identify any supervisory authority. Certainly, in addition to the target's conceptual vagueness, the adoption, regulation, monitoring, and compliance mechanisms given can be important reasons for some states' failure to make substantial progress.

[120] *See* Storvik & Teigen 2010, The quota story: five years of change in Norway, in S. Vinnicombe et al. (eds.) Women on Corporate Boards of Directors: International Research and Practice, 2008.
[121] Deloitte Report 2019.
[122] *See* J. Armstrong & S. Walby, Gender Quotas in Management Boards, PE 462.429, p. 12, (2012).
[123] Id. at 20.

In conclusion, it is fundamental for both hard law enforcement and self- and co-regulatory approaches to be combined with the implementation of additional supportive measures and corporate best practices for promoting gender diversity in senior management roles.[124]

The adoption and implementation of work-life balance initiatives, as well as the development of transparency with gender diversity key performance metrics, assisting women in their career advancement within the corporate environment and networking and mentoring have been identified as the most critical best practices in this regard.[125]

IV. GENDER QUOTAS FOR CORPORATE BOARDS

Over the last 30 years, there has been a tremendous increase in the number of women's quotas in corporations around the world[126]. In particular, many European countries during the last decade, have passed laws requiring mandated quotas on corporate boards of directors in order to achieve gender balance in corporate leadership. Aside from gender diversity, gender quota requirements may have an impact on at least two other aspects of board functioning. For instance, corporate quotas vary the board structure, with the size of the board, the number of new members, as well as their qualities and leadership styles. As a result of fairness perception of the selection procedure, they also change individual attitudes, group dynamics, and organizational decision-making processes. These characteristics must be examined when determining the benefits of quotas in improving company governance and financial performance. The design of these quotas is usually analyzed for their hardness and progressiveness such as the year of acceptance, the timeline for its implementation schedule, the target, desired increase, length, and scope. It should be noted that the institutional contexts in which the quotas are embedded, shape the results of each quotas scenario, affecting the potential outcome in gender diversity on corporate boards.

With a primary focus on the various legislations enacted in Europe and in particular, starting with the Norwegian model, this section will analyze the efficacy and effectiveness of gender quotas in the corporate environment. This section will examine other States that followed the Norwegian example, enacting mandatory quotas, such as the case of Italy and France. There are countries that adopted quotas with explicit and mandatory provisions. Other quotas mandated levels of representation, but only required an explanatory disclosure when firms failed to meet public goals.

[124] Id at 25.
[125] Id.
[126] *See* Melanie M. Hughes, Pamela Paxton, and Mona Lena Krook, *Gender Quotas for Legislatures and Corporate Boards*, 43 ANN. REV. SOC, 331-52 (Jul. 2017).

As much as the need of implementing corporate gender quotas in order to strength gender equality is widely accepted and broadly recognized, the legislation enacted to accomplish this goal is still controversial, generating a big debate around their effectiveness. In fact, among the several difficulties that arise in the pursuit of more efficient corporate governance is whether these legislative incentives of mandatory quotas represent a significant level of change[127].

A. Europe and the Norwegian Model

Norway was the first country to adopt legislative actions to promote gender-balanced representation on corporate boards. Following Norway's example, several EU countries have subsequently implemented similar legislation, albeit with slight variations in the guidelines in terms of targeted enterprises, gender quota size, and severity of penalties for non-compliers[128].
When it comes to corporate gender equality, Norway is the most frequently mentioned country, since it was the first country in the world to pass a legislation requiring a gender quota for corporate boards of directors[129]. The law, which requires "*33 to 50 percent representation of the minority gender depending on the size of the board of directors*," was implemented in three phases[130]. Gender quotas for public limited corporations were enforced in late 2003 with no penalties for non-compliance. However, the proportion of women on these corporations' boards of directors had changed little in the two years since the mandatory quota was enacted (it was around 17% at the end of 2005)[131]. Consequently, the Norwegian government imposed harsh penalties on companies that failed to meet the specified quota by 2008. According to statistics, the proportion of women on boards of Norwegian public limited businesses had been successfully achieved by the end of that year, going from 18,0% to 40,3%[132]. In 2021, after 18 years the first enactment of the gender quotas, Norway retains the highest figure of women in the corporate boardrooms in the world, reaching 41% at the end of 2020.

[127] Id.
[128] Id. at 73.
[129] Norway's Companies Act 2003, §§ 6–11a. Requirement regarding the representation of both sexes on the board of Directors. On the board of directors of public . . . companies, both sexes shall be represented in the following manner: [1] If the board of directors has two or three members, both sexes shall be represented; [2] If the board of directors has four or five members, each sex shall be represented by at least two; [3] If the board of directors has six to eight members, each sex shall be represented by at least three; [4] If the board of directors has nine members, each sex shall be represented by at least four, and if the board of directors has more members, each sex shall be represented by at least 40 percent; [5] The rules in no. 1 to 4 apply correspondingly for elections of deputy directors.
[130] *See* Angela R. Foster, *A Quest to Increase Women in Corporate Board Leadership: Comparing the Law in Norway and the U.S.*, 26 Wash. L. Rev. 381, 405, (2017).
[131] European Commission (2012), Women in Economic Decision-making in the EU: Progress Report, Luxembourg: Publications Office of the European Union.
[132] Id at 60.

Companies in Norway were also more likely to have a woman chair on the board of directors and a woman CEO once the corporate quota was implemented[133]. Furthermore, the Norwegian government has created a database enabling firms to fully analyze eligible female applicants' CVs[134].

The Norwegian Government has set goals and worked in order to submit a report to parliament annually on the status of efforts to promote equality and diversity not only in executive management positions in the State, but in all sectors and the entity of Royal Ministry of Children, Equality and Social Inclusion is responsible for the inclusion of the percentage of women in executive managers in enterprises in the official report.[135]

Norway took a bold step forward in corporate governance when it implemented a corporate board quota in 2003. In doing so, it acknowledged the private sector's major role in determining equality issues, and the state's responsibility to ensure that the private sector rectifies persistent inequality.

In Europe, several countries have followed the example of Norway, such as France, Italy, Iceland and Belgium, by adopting mandatory quotas. According to data from the European Commission, one third (33%) of director positions in French listed companies are currently held by women[136]. On January 28, 2011, six months before the approval of the Golfo-Mosca act in Italy, the French Republic approved the "Loi Copé-Zimmermann". The quota law implemented a gender quota in two phases, initially establishing a mandatory quota of 20% of female directors for listed and non-listed companies (with revenues or total assets accounting over 50 million or with a minimum of 500 persons employed in the last three years) to be reached by 2014 and, subsequently, a quota of 40% to be achieved by 2017. Furthermore, corporations with no female board members should fill every vacant seat with a female nominee after three years of the law's implementation. Noncompliance with this law results in the position of any director who does not meet the quota requirement being nullified[137]. The aim was to succeed to achieve gender equality of the management bodies, setting as a goal the 40% share of the underrepresented sex in the BoDs, guaranteeing access to roles of responsibility.[138] The law has also identified and made visible a new generation of "board ready" women, making substantial progress with regard to the presence of women in the Boards of Directors.

[133] See Ming Zhu Wang, and Elisabeth Kelan, The gender quota and female leadership: effects of the Norwegian gender quota on board chairs and CEOs, 117 J. BUS. ETHICS, 449–66 (2013).

[134] See Kenneth Ahern, and Amy K. Dittmar, The Changing of The Boards: The Impact on Firm Valuation Of Mandated Female Board Representation, 127 Q. J. ECON., 137-97 (2012).

[135] Norwegian government, Gender equality in practice, 2015-2016.

[136] J. Carlos Benito Sánchez, *Gender Quotas in* Corporate Governance: A Comparative Perspective, 140, *(*2018).

[137] See , B. Gresy, *France: The Measures of Positive Discrimination within the Boards of Directors of Undertakings*, in De Vos & Culliford, 123-130, (2014); A. Masselot & A. Maymont, Balanced Representation between Men and Women in Business Law: The French 'Quota' System to the Test of EU Legislation, Centre for European Law and Legal Studies Online Paper Series (University of Leeds) Volume 3, 2014, issue 2.

[138] *See* A. Allioui, B. Habba, T. Berrada El Azizi, *Women's Leadership and Pragmatism Incidences on Performance of Listed Family-Owned Firms in the Cultural Context of Arab Countries,* 251, (2021).

Now more than 9 out of 10 French companies have at least one woman on the board of directors and more than half of French companies have at least three women as directors of the company. In particular, France can be taken as an example of a country in which the interaction of the tax quotas with the corporate system has proved to be successful[139].
As mentioned above, the increasing female participation of women on corporate boards and supervisory bodies of companies could also be seen in the Italian corporate governance landscape. Female representation on boards of both publicly traded and state-controlled firms exceeded 33%[140]. The introduction of women's quotas in Italy has guaranteed women a minimum number of positions in managerial, professional and political roles. Consequently, the proportion of women in the Board of Directors of companies has grown over the past 10 years, "surpassing North America and the rest of the world." The Golfo-Mosca act enacted in August 2011 represents the first affirmative action and aimed at supporting the managerial careers of women in Italy within the framework of Italian company law: corporate boards of listed companies must be renovated reserving a quota of at least one-fifth of its members to women, until reaching at least one-third in 2022[141]. The original provision stated that gender balance should be ensured for three terms, reaching a total of 9 years. The Consob (the National Securities and Exchange Commission) has been made responsible for monitoring compliance and can issue a warning and, impose a fine of EUR 100,000 up to EUR 1 million in case of non-compliance (EUR 20,000 up to EUR 200,000 for auditors). Failure to do so may result in the company's board of directors being dissolved[142]. Newly listed firms will also be subject to quota regulations. The provisions contained in the Golfo-Mosca Act have recently been extended by the 2020 Budget Law (Law No. 160 of 27 December 2019) for listed companies for three further renewals. The new discipline thus requires these companies to introduce clauses in their statutes which, in the composition of the management and control bodies, reserve "at least two fifths" of the members to the less represented gender and no longer just one third, as required by law of 2011. Therefore, in principle, the operation of the provisions on gender balance, initially foreseen for only three mandates from the Golfo-Mosca Law enactment, has been extended, for listed companies, until the year 2038[143]. In addition, empirical studies have shown that after the introduction of the Golfo-Mosca act, both the control activities and the strategic function of the board of directors have been strengthened[144]. "With the obligation of a greater gender balance in the governing bodies, the newly appointed directors have

[139] Id. at 132..
[140] *See* Angela Ciavarella, Magda Bianco, Rossella Signoretti, Women on Boards in Italy, Consob.
[141] D. L. n°120/2011 CD. Golfo-Mosca.
[142] Id. at 65.
[143] See Eva .R. Desana, Fabiana Massa Felsani, *Democrazia paritaria e governo delle imprese. Nuovi equilibri e disallineamenti della disciplina*, in Federalismi.it, 24, (2020).
[144] *See* S. De Masi, *La Diversità di genere negli organi di governo delle imprese*, 143, (2019).

improved the functions of the board, making it more active and efficient[145]." It is concluded that the law has led not only to direct effects, linked to the greater presence of women, but has also improved the efficiency of the council by making it more attentive to its tasks. This legislative intervention is in fact aimed at guaranteeing not only equal access to the top management of companies for the under-represented sex, but, above all, a gender rebalancing useful for the very functionality of these bodies, enabled to take 'better' decisions[146].

In 2012, the European Commission, the EU's executive department, expressed concern about the promotion of gender diversity in economic decision-making[147]. The directive's stated purpose was to "*substantially increase the number of women on corporate boards throughout the EU by setting a minimum objective of 40% presence of the under-represented sex*" for non-executive directors of stock-exchange listed companies and requiring companies to pre-establish neutral and unambiguous selection criteria for filling such board positions[148].

B. The Leverage Effect of Corporate Quotas

In support to the quota measure, the legislative conclusions and declarations mention research which prove that "*companies with a greater share of women serving on the board of directors tend to have higher profits and take fewer risks*"[149]. As diversity positively increases at the senior level due to mandatory corporate quotas, the leadership diversification will favor a successful transformation at each department and level within a corporation[150].

Supporters of gender quotas in the workplace argue that they will encourage women in achieving leadership roles, with beneficial effects on firm performance[151]. Moreover, the EU Commission concluded that: "*legal instruments to enforce quotas are effective and fast means of achieving change*"[152]. Furthermore, such regulations might generate spillover effects on other labor market gender disparities. Gender quotas are a means to boost women's empowerment while driving progress toward economic gender equality. According to some studies on Italian firms, after the gender quotas

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[145] Id at 25.
[146] Id.
[147] Proposal for a Directive of the European Parliament and of the Council COM(2012) 614 final on Improving the Gender Balance Among Non-Executive Directors of Companies Listed on Stock Exchanges and Related Measures, (Nov. 14, 2012).
[148] Id.
[149] *See* David A. Carter, Betty J. Simkins and William G. Simpson, *Corporate Governance, Board Diversity, And Firm Value*. 38 FIN. REV., 33–53 (2003).
[150] *See* David A. Thomas, *Diversity as Strategy*, HARV. BUS. REV., (Sept. 2004)
[151] Id. at 82.
[152] *See* Jo Armstrong, and Sylvia Walby, *European Parliament's Committee on Gender Equality*, (2012).

were implemented, the percentage of women with a degree increased by 12%, and in particular, the proportion of newly appointed women with a degree in economics, management or law rose even more. The average age of newly appointed women remained unchanged, and their managerial experience did not differ statistically significantly. Additional information on the characteristics of Italian board members reveals that the beneficial effects on productivity are linked to a significant improvement in the quality of newly appointed female directors. Furthermore, regarding the quality of newly appointed individuals, there is an increase in their age and average board experience[153]. Gender quotas seemed to have caused a complete redesign of the boards in Italy, with the appointment of more experienced members and/or with more academic backgrounds, regardless of gender. In this regard, the development of searchable databases collecting the CVs of women that met strict requirements for managerial capabilities could have helped corporations in reaching the necessary gender quota at no cost for firm performance. Furthermore, as Post and Byron suggest, successful company outcomes are not only dependent on the number of women on the board, but also their active level of participation within the board mechanisms.

According to the results, gender quotas lead to heterogeneous effects in each country. These variations may be due in part to changes in the institutional contexts among countries, particularly in terms of the existence of severe sanctions and the size of the target group.

C. Arguments Against the Implementation of Quotas

The implementation of gender quotas on corporate boards could be considered as a critical policy for promoting gender equality. Historically, in the United States, mandatory quota laws have had adverse consequences, since businesses would do whatever it takes to prevent penalties, which does not necessarily achieve the legislative aim. Mandatory quotas are just not suitable for the American corporate framework. However, it is undeniable that the purpose of enforced gender quotas is to increase the representation of females on corporate boards in order to provide women with equal employment and promotion opportunities.

Opponents of gender quotas dispute that if boards are already set up to maximize company value – or any other metric used for evaluating corporate performance – the imposition of a binding constraint on the number of women on corporate boards will inevitably result in outcomes below the optimal level.

[153] Id. at 79.

Adams and Ferreira (2009) show that gender diversity has a detrimental influence on firm performance in the United States, implying that setting gender quotas for directors can diminish firm value. In addition to the direct impact on firm performance, current male board members may be reluctant to accept newly hired women, especially if they perceive they were employed solely because of the legislation and not because of their capabilities[154]. Quotas are assumed to be unfair because they tend to equalize results, and hence they compromise rewarding members who are less competent than others and thus more likely to perform poorly. For example, if highly skilled women cannot be hired, board gender quotas may lead to internal disputes, with negative consequences for corporate strategy and the management[155]. Not only is there a risk of lowering average quality if there are not enough women with the right skills to be appointed, but it might occur a potential "mismatch" within the team[156]. Finally, some firms may try to avoid the law – or at least lessen its impact – by altering their legal status, limiting the board size or recruiting women only for non-executive positions[157].
Overall, given the many potential implications on firm earnings, the evidence implies that a substantial positive effect from this shift, even across several companies and over the years, is extremely unlikely. Even if there is a link between company's earnings and female board representation, it might be due to the most profitable companies appointing more women, rather than more women making companies more profitable.

V. STATE OF GENDER DIVERSITY IN CORPORATE BOARDS IN THE U.S.

As mentioned, gender diversity in the United States is improving, but not at the rate it should be. When it comes to female directors on the boards of publicly traded corporations, the United States still lags behind some of its European counterparts.
Similar resolutions were approved in several states, but because they were non-binding, they did not lead to significant improvements in board diversity[158]. Nonetheless, the percentage of women in boardrooms in the United States remains disappointingly low[159]. Statistics illustrate that the percentage of female directors in the United States is steadily increasing, at an annual rate of 0.8

[154] *See* Monika Leszczyńska, *Mandatory Quotas for Women on Boards of Directors in the European Union: Harmful to or Good for Company Performance?*, 19 EUR. BUS. ORG. LAW, 35–61 (2018).
[155] *See* Harry J. Holzer, and David Neumark, *What Does Affirmative Action Do?*, 53 ILR REV., (2000).
[156] Id.
[157] *See* Jason Zhang, Hong Zhu, and Hung-bin Ding, *Board Composition and Corporate Social Responsibility: An Empirical Investigation in the Post Sarbanes-Oxley Era*, 114 J. BUS. ETHICS, 381–92 (2013).
[158] *See* Jill Fisch, and Steven Davidoff Solomon, *Centros, California's 'Women on Boards' Statute and the Scope of Regulatory Competition*, 20 EUR. BUS. ORGAN. LAW REV., 493-520, 2019.
[159] *See* Felix von Meyenrick, Alexandra Niessen-Ruenzi, Markus Schmid, and Steven Davidoff Solomon, *As California goes, so goes the nation? Board gender quotas and the legislation of non-economic values*, January 20, 2021.

percent. This means that if no constructive steps are taken and the current rate of growth is maintained, achieving gender diversity on US boards will take more than 40 years.

In addition, in the USA, the lower's a firm's rank in the Fortune 100, the lower the proportion of women on the board. The federal government has mostly failed to overcome the lack of diversity on business boards, despite the numerous attempts of advocacy groups, investors, and academics. To date, the sole government action taken is the Securities and Exchange Commission's ("SEC") recent implementation of a disclosure requirement addressing board diversity [160]. Proxy Disclosure Enhancements Regulation enacted in 2009 requires disclosure of "*whether, and if so how, a nominating committee considers diversity in identifying nominees for directo*r"[161]. In addition, if the nominating committee does have a policy regarding the consideration of diversity, disclosure is required as to "*how this policy is implemented, as well as how the nominating committee (or the board) assesses the effectiveness of its policy*"[162]. The rule does not require firms to adopt a diversity policy, citing only that the implementation or absence of such a policy should be available to shareholders[163].

Some States are moving faster than others in the enacting legislative acts favoring diversity in the board structure. In the US, California was the first State to pass such a resolution, followed by other states that adopted similar legislations with the aim of pushing more women directors on corporate boards in their jurisdictions.

A. The California Senate Bill 826

In the U.S., California became the first state to demand proactive change needed to completely accomplish gender equality, passing a legislation in 2018 that establishes a quota for the amount of women on corporate boards for all domestic and international corporations headquartered in the State[164]. The law "SB 826", which went into effect on January 1, 2019, requires that, by the end of the 2019 calendar year, publicly held corporations whose "*principal executive offices, according to the corporation's SEC 10-k form*" are located in California must have at least one woman on its board of directors[165]. By the end of the year 2021, such corporations will be required to have a certain

[160] Proxy Disclosure and Solicitation Enhancements, 74 Fed. Reg. 35,076, 35,084 (Jul. 17, 2009).
[161] The SEC's 2009 Proxy Disclosure Enhancements Rule was effective as of February 28, 2010 for most publicly traded companies with fiscal years ending on or after December 20, 2009. The final rule is available at 74 Fed. Reg. 68334 (Dec. 23, 2009).
[162] Id.
[163] Id.
[164] Cal. Legis. Serv. Ch. 954 (S.B. 826) (current version at CAL. CORP. CODE § 301.3), (2018).
[165] Senate Bill 826 (2018), Corporate Board Gender Diversity.

number of women on their board of directors proportional to the size of the board[166]. The senate bill, signed by the Governor Jerry Brown, required the appointment of two female directors to boards with five members, and three female directors to boards with six members or more by the end of 2021.

A company with shares listed on a major U.S. stock exchange is described as a "publicly owned corporation" under SB 826. Although the law does not establish a major U.S. financial market, markets such as Nasdaq Global Market, NYSE American and The New York Stock Exchange are all expected to qualify. The bill requires the Secretary of State to release numerous reports on the official website on or before specified dates, reporting, among other aspects, the number of corporations that are in conformity with these provisions[167].

SB 826 was enacted as part of the California foreign corporation statute. It does, however, differ from in two major ways from the rest of the California foreign corporation statute. Its application is solely dependent on where the corporation's major executive offices are located. The other sections of §2115, on the other hand, only apply if the company conducts more than half of its business in California and has more than half of its voting securities held by California citizens[168].

The bill also allows the Secretary of State to enforce penalties for violations of the bill. Corporations that do not comply with these quotas will be subject to fines up to $100,000 for a first violation and up to $300,000 payment for each subsequent violation (California Corporation Code)[169]. For an all-male board of six or more directors, the maximum fine imposed under the Bill's provisions is $900,000 a year. In addition, organizations should not underestimate the burden of public criticism. Instead, they should carefully consider important factors such as the impact of their decisions on brand reputation, recruiting and retention, and investor relations.

The reasons behind the enactment can be found as follows in section 1 of the Senate Bill. The Legislature finds and declares that "*more women directors serving on boards of directors of publicly held corporations will boost the California economy, improve opportunities for women in the workplace, and protect California taxpayers, shareholders, and retirees, including retired California state employees and teachers whose pensions are managed by CalPERS and CalSTRS*"[170]. Another reason can be found in the absence of women serving on boards in more than one-fourth of California's public companies in the Russell 3000 Index in June 2017, while only 12% of the companies mentioned above had three or more female directors on their boards. Furthermore, as in other States, female directors are less likely to be found in smaller companies with only 8,4% of the

[166] CAL. CORP. CODE § 301.3(b)(1)–(3) (West 2018).
[167] Id.
[168] See §2115 (a).
[169] Id. § 301.3(e)(1).
[170] Id. at 165.

overall director seats in the 50 California-based companies with the lowest revenues[171]. Furthermore, between 2014 and 2016, nearly half of the 75 largest IPOs had no women on their boards. In particular, many California-based technology businesses have gone public with no female directors on their corporate boards.

Comparing the composition of boards for Californian firms that filed proxy statements from January to July 2019 pre-and post-enactment of SB 826, it can be seen that before the enactment of the SB 826 there were 650 firms headquartered in California, with 188 (29%) having no female directors. From pre-SB 826 to post-SB 826, the number of female directors on boards has increased by 23% (143 board seats)[172]. It can therefore be concluded that California enterprises are growing at a faster rate than control firms located in other States, implying that it is not related to a general increase in female board representation as a whole. Among the 136 companies that added a female director, 40% replaced male directors and 60% expanded the board. Firms seek to enlarge their boards when their pre–SB 826 boards are small, and replace directors when their boards are huge, implying that expanding a board beyond a certain size is expensive[173]. As of January 13 2020, there were only 16 firms with no female directors, implying that SB 826 is being implemented by almost all corporations in California. In California firms with no female directors are typically younger and smaller other companies**.** According to records, among the publicly traded corporations of Fortune 500 chartered in California, only one, Apple, is not fully compliant yet with SB 826's requirements for December 31, 2021. Apple will come into compliance with the addition of a single woman director by that date[174].

1. The impact of the gender quotas on U.S. stock return

According to a 2017 MSCI study, companies in the United States with three or more female directors at the start of the five-year period from 2011 to 2016 reported 45%, firms with no female directors at had higher earnings per share better earnings per share. SB 826 has indeed created an exogenous shock to the composition of boards that permits to examine the impacts of gender quotas on American firms. In fact, as more of 12 percent of all publicly held U.S. firms headquartered in California, the mandate has an impact on a large and diverse group of companies with a market capitalization of

[171] *See* Barrett Annalisa, Greene Daniel T., Intintoli Vincent J., Kahle Kathleen M., *Do Board Gender Quotas Affect Firm Value? Evidence from California Senate Bill No. 826*, Journal of Corporate Finance 60 (2020).
[172] Id at 171.
[173] Id.

more than $5 trillion[175]. However, the announcement of the introduction of SB 826 affected negatively the stock market, generating spillover effects also to non-California firms. A straightforward explanation would be that some of the non-California firms are affected by the quota law in California through direct trading relationships.

Furthermore, after the enactment of the gender quota, the demand for female directors increased substantially in California. This effect is particularly pronounced in companies that need additional female directors to meet the quota.

However, California enterprises had registered a negative return of -2.6 percent on average over a two-day event window suggesting that SB826 is costly to affected firms, whereas non-California firms have a negative announcement return of -1.9 percent on average[176]. This is significant given that companies outside California do not face any changes related to their organizational structure due to gender quota[177]. The average drop in shareholder value for non-California enterprises was $104.51 million, while it was $328.31 million for California firms. The number of female directors required reduces stock returns, with a mean of 1.06 percent for companies that must add one female director by 2021 and a mean of 1.64 percent for companies that must add three female directors by 2021. According to multivariate analysis, every female director a company is compelled to hire by 2021 will result in a 0.5 percent drop in shareholder wealth[178]. Studies have found that the implementation of gender quota has a stronger impact on California businesses that are also more sensitive to regulatory laws. The most common explanation behind this loss of value could be given by the frictions in the director labor market that make it more expensive for companies to hire more female directors[179]. This includes costly access to different job networks for qualified female candidates or the establishment of new recruiting procedures in order to find qualified female applicants in their director search. The shareholders would also expect too much monitoring, resulting in a decrease in firm value[180]. Assuming a board expansion, firms face direct compliance expenses for new director appointments. By 2021, the median company will need to hire two female directors at a cost of $345,636 per year. The economic impact of the law is stronger for smaller enterprises. Although due to increased director pay, the monetary cost of compliance is higher for larger companies.

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[175] *Id.*
[176] Id. at 154.
[177] Id.
[178] *See* Greene, D., V.J. Intintoli, and K.M. Kahle, *Do board gender quotas affect firm value? Evidence from California* Senate Bill No. 826, Journal of Corporate Finance, forthcoming, (2019).
[179] Id at 130.; *See* Daniel Greene,Vincent Intintoli, and Kathleen M. Kahle, *Do Board Gender Quotas Affect Firm Value? Evidence from California Senate Bill No. 826,* J CORP FIN. (2019).
[180] Id at 74.

In addition, SB 826's negative effect on stock returns is amplified for companies with a limited number of female candidates and for younger and lesser-known companies (below the median age) that have less ability in attracting female candidates. However, for firms affiliated with VC funds having a female presence, this negative effect on younger enterprises can be mitigated. Findings support the hypothesis that female-led venture capital firms can support emerging companies in attracting and retaining female directors. Overall, findings imply that when directors are simpler to replace, U.S. stock returns are much less negative.

The main driver of the negative announcement returns is related to investor's aversion for governmental interference with company affairs and legislation that forces corporations to change their organizational structure in order to accomplish non-monetary objectives. Due to the expectation that other similar legislation will follow in the upcoming years, the amount of uncertainty related to the law's introduction might explain the mentioned reactions[181] .

As a result, even a cost-neutral strategy could have a negative impact on stock prices if predicted costs are associated with a perceived change toward the value maximization of stakeholder value.

2. Legal challenges and open questions

California's determination to regulate non-economic values is shown by the establishment of the gender quota. However, the SB 826 has a variety of unresolved issues and ambiguities that could inhibit implementation that caused criticism and opposition. Furthermore, compared to the case of Norway, it is unclear whether U.S. companies will see similar effects due to cultural differences and a high reliance on equity financing. Despite being enacted, the efficiency of California's gender quota is widely questioned and debated. It makes no mention of the directors' identity, how directors are chosen, or their powers and responsibilities. It does not impose any skill or knowledge requirements, unlike Dodd-Frank act[182]. By disqualifying any present board members, it also has no impact on current corporate operations or shareholder choice. Apart from the non-criminality with comparably weak penalties, the Senate Bill 826 remains an open question about its constitutionality, since it could be in violation of the corporate "internal affairs doctrine", as well as California and federal civil rights legislation of Equal Protection Clause and Civil Rights Act arguments of the 14th Amendment of the

[181] *See* Johathan Brogaard, and Andrew Detzel, *The Asset-Pricing Implications of Government Economic Policy Uncertainty*, 1 MANAGE SCI, 61, 3-18, (2015); *See* Bryan Kelly, Lubos Pastor, and Pietro Veronesi, *The Price of Political Uncertainty: Theory and Evidence from the Option Market*. SSRN Electronic Journal, (2013).

[182] Dodd-Frank Wall Street Reform and Consumer Protection Act Pub. L. No. 111-203, §§951-953, 124 Stat. 1376, 1899-904 (2010) (codified as amended at 15 U.S.C.§§78j-3, 78l, 78n to 78n-1).

U.S. Constitution, and Article I, Section 7 of the California Constitution[183]. The *"SB 826 would likely be challenged on equal protection grounds and the means that the bill uses, which is essentially a quota, could be difficult to defend"*[184]. The full bill's implementation may be delayed for several years as a result of equal protection litigation. SB 826 will likely have no effect at all if equal protection clause is successful. The report continues as follows*: "Whether the gender classification in [SB 826] is subject to strict or intermediate scrutiny may vary on whether a challenge is filed in state or federal court"*[185]. If this statute is challenged, the State will have a hard time demonstrating a compelling government interest in imposing a gender-based quota system for a private corporation[186]. So far, the SB 826 has been challenged on equal-protection grounds in several lawsuits. In *Meland v. Padilla* a conservative legal organization claimed on behalf of a public company shareholder that, in requiring a female board member, the law stopped him from voting as he desired[187]. The plaintiff's case was dismissed by the United States District Court for the Eastern District of California. The plaintiff in *Crest v. Padilla* attempted to stop Secretary of State Alex Padilla from using taxpayer funds to implement the statute, claiming that it violated the California constitution by imposing an unconstitutional gender-based quota. However, later in June, a State Superior Court Judge overruled Padilla's argument that the plaintiff lacked standing.

When it comes to justify gender classification, Courts look at whether the methods adopted to achieve the State's goal are narrowly tailored, which means they must be the "*least restrictive or discriminatory means of achieving the State's objectives in gender diversity*"[188].

The "internal affairs doctrine", instead, implies that a corporation's internal affairs (e.g., corporate governance) should be governed by the state law in which it is incorporated. According to Fisch and Solomon (2019) and Grundfest (2019), the statute is unlawful because it tries to extend California Corporate Law to companies incorporated in other states or countries. Given that just 72 firms are chartered and based in California, the law, if amended in accordance with the corporate internal affairs doctrine, would have a very limited reach (Grundfest, 2019). In fact, most companies with headquarters in California are incorporated in Delaware, Nevada, or elsewhere outside the United States. Of the corporations charted in California, these businesses account for only 1.59 percent of all listed corporations in the United States.

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[183] Assembly Committee on Judiciary, Staff Report on SB 826, Hearing of June 26, 2018 (Prepared by Thomas Clark and Sandra Nakagawa) (hereafter cited as "Assembly Judiciary Committee Staff Report").
[184] Id.
[185] California courts apply "strict scrutiny" to classifications based on gender, whereas federal courts apply a "heightened scrutiny" test that appears to require an "exceedingly persuasive justification" for a gender-based classification to survive.
[186] *See* Joseph A. Grundfest, *Mandating Gender Diversity in the Corporate Boardroom: The Inevitable Failure of California's SB 826*., Stanford Law School and The Rock Center for Corporate Governance September 12, 2018
[187] Creighton Meland, Plaintiff, v. Alex Padilla, Secretary of State of the State of California, in his official capacity, Defendant, (2020).
[188] Id.

In this regard, a lawsuit been filed against the law in August 2019[189]. For instance, in Edgar v. Mite Corp.[190] the Supreme Court explained that "*the internal affairs doctrine is a conflict of laws principle that recognizes that only one State should have the authority to regulate a corporation's internal affairs – matters unique to the corporation's relationships with its current officers, directors, and shareholders – because otherwise a "corporation could be faced with conflicting demands*"[191]. The composition a corporation's board of directors is an example of a matter "among or between the corporation and its current … directors" that must be governed by a single jurisdiction[192]. In CTS Corp. v. Dynamics Corp. of America[193], the Supreme Court declared that the Commerce Clause required that company internal affairs be governed by: "one uniform system, or plan of regulation"[194] ."So long as each State regulates voting rights only in the corporations it has created, each corporation will be subject to the law of only one State"[195]. Since gender diversity on corporate boards is seen as an issue of internal corporate governance like shareholder voting, the SB 826 is assumed to interfere with both. SB 826 limits the ability of the board to select directors in the case of a vacancy interfering with shareholders by imposing a monetary penalty in case the shareholders fail to elect the minimum number of women directors required by the law.

As a result, California cannot impose a minimum number of women directors on corporations headquartered in California but at the same time chartered in Delaware, whereas Delaware allows its chartered corporations to hold a number of female directors which is consistent with the board's business judgment, approved by the shareholders and which is bound to corporation's bylaws and charters[196]. There is a blatant discrepancy between California and Delaware law.

The Delaware Supreme Court concluded that Section 2115, which governs the internal affairs of a corporation chartered outside of California, is unconstitutional because it breaches "*Delaware's well-established choice of law rules and the federal constitution*"[197]. Despite Section 2115, a California Court of Appeals recognized in dicta that internal governance is governed by the rules of the state of incorporation, not by California law[198]. As a result of the litigation over SB 826, major elements of Section 2115 will be invalidated as they apply to corporations chartered outside of California.

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[189] *See* Andrew Sheeler, *California man sues to overturn 'woman quota' in state gender equity law*, Sacramento Bee, Nov. 13, 2019; U.S. News & World Report, Lawsuit Challenges California Law Requiring Women on Boards, August 2019.
[190] Edgar v. Mite Corp., 457 U.S. 624 (1982).
[191] Id.
[192] Id.
[193] CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69 (1986).
[194] Cooley v. Board of Wardens, 12 How. 299 (1852).
[195] Id.
[196] See Cain et al. 2016. Similarly, the NYSE and Nasdaq establish mandatory thresholds for director independence, and those requirements are generally viewed as supplementing rather than conflicting with Delaware law.
[197] VantagePoint Venture Partners 1996 v. Examen, Inc., 871 A.2d 1108, 1116 (Del. S. Ct. 2005).
[198] Lidow v. Superior Court, 141 Cal. Rptr. 3d 729 (Cal. Ct. App. 2012).

Furthermore, corporate law in the United States is largely concerned with maximizing shareholder value while reducing managerial agency costs. As a result, the SB 826 raises the issue of how closely the internal affairs doctrine is tied to the goal of maximizing of shareholder value, as well as the concept of shareholder primacy.

US differs drastically to European countries approach to company law. Comparing US to European corporate law, most European countries have corporate rules that state that company's managers must take into account all the corporation's stakeholders, not just stockholders, acting in the best interest of the society, while managing their business[199]. It can be concluded that in Europe, company law extends beyond shareholder value and internal corporate affairs as they do in US States.

In conclusion, given the minimal sanctions, likely unconstitutionality, and potential limited effect on corporate board workings, it is unlikely that the adoption of the gender quota will generate strong effects.

In contrast, shareholder activism, driven by California's dominance in the nation's capital markets, may produce significantly higher diversity at a much faster pace across a far wider spectrum of businesses. It can attain greater results without compromising the advancement of affirmative action legislation.

B. Nothing that happens in California stays in California: Other Jurisdictions

SB 826 is the first attempt in the United States to require board diversity and to expand corporate law standards to address societal issues rather than purely economic concerns. California's reputation as a progressive leader is consistent with the enactment of SB-826. Since California retains the notoriety for being an early adopter of new laws, shareholders in other states might expect similar legislation in their States. As stated by SEC commissioner Hester Peirce in her speech at the 2018 Annual SEC conference: "Nothing that happens in California stays in California"[200]. As a result, the gender quota has been later implemented by other States. States that have followed California in the past are extremely likely to do so again in the future, for instance, by enacting a gender quota or other policy that enforces non-economic principles on companies. States with a high regulatory density are said

[199] See, e.g. Hopt 1994, p. 208 ("Maximization of shareholders' wealth has hardly ever been the objective of German stock corporations … ."); Roe 2003 (French corporate law "is said to encourage managers to run the firm in the general social interest, for all the players in the firm."); Raaijmakers and Beckers 2015, p. 293.

[200] *See* Kate Conger and Noam Scheiber*, California's Contractor Law Stirs Confusion Beyond the Gig Economy*, The New York Times, Sept. 11, 2019; *See* Christine Mai-Duc, and Lauren Weber, *It Isn't Just Uber: California Prepares for New Gig Worker Rules. . . and Confusion*, The Wall Street Journal, Dec. 17, 2019.

to be more prone to adopt California's legislative approach, while being influenced at the same time by the state’s political orientation.

The States that have enacted council diversity measures similar to the quota introduced in California are Colorado, Maryland, Illinois, New York, Washington and New Jersey. Studies have found correlation in States more prone to progressive environmental policies with propensity to gender diversity laws. Other States instead, have adopted a more measured approach, ranging from disclosure requirements for board composition in annual state filings of data to enacting Diversity Acts.

The Colorado legislature passed a joint resolution in 2017 encouraging "*fair and varied gender representation on company boards*" and requiring corporations to have a minimum number of female directors by December 2020, depending on the size of the firms. This was a non-binding resolution with no disclosure requirements.

Effective from October 1, 2019, Maryland law required corporate entities, based in Maryland, to include the overall number of female directors in their annual reports[201]. The Maryland requirement is not limited to publicly traded companies; the charter specifically applies to limited liability companies, trusts and other entities with revenues exceeding $5 million. Maryland law also includes a 10-year "expiration" clause, which means the provision will expire on September 30, 2029, unless it will be extended through legislation.

In August 2019 the State of Illinois enacted a Board Diversity Disclosure Act (HB 3394)[202]. As in the case of California law, the Illinois requirement is applicable to all public corporations, both domestic and foreign, with their "principal executive office" in the State. Apart from enforcing minimum standards for female managers, the Illinois statute varies from California law. First, Illinois law acknowledges racial and ethnic diversity in addition to gender diversity. Second, Illinois mandates that information on qualifications for board and CEO positions have to be provided for identifying and evaluating nominees for the board and executive officer positions, including a description of company’s policies for promoting diversity. The Illinois Secretary of State must report each year the number of corporations having at least one female executive.

New York State was among the latest jurisdictions to implement a board diversity requirement. The statute, similar to Illinois, has established a “Women on Corporate Boards Study”. The bill has placed the obligation on the part of domestic and foreign companies authorized to do business in the State to publish their data regarding the composition of the Board of Directors, identifying the number of female directors in the annual state documents, thus collecting information in order to continue to

[201] Senate Bill 911 (2019).

[202] P.A. 101-0589.

study the matter more in depth. New York State demands a minimum of 30% of women directors by December 31, 2022.

A few other states have passed resolutions similar to Maryland's "encouragement" strategy. In Ohio, for instance, a resolution was introduced for encouraging all private and public companies doing business in the State to improve gender diversity on their boards of directors and in senior management positions, as well as the creation and disclosure of goals in order to monitor their progress[203]. The Iowa and Kahuna Delaware instead, the State where the majority of public companies are incorporated, remains silent on this issue.

VII. FUTURE PERSPECTIVES

Given the lack of women at the top levels of corporate management and the assumption that they are essential to ensure the efficiency of corporate governance, gender diversity among boards of directors and executive roles has received increasing attention during the recent years.

Gender equality in the business environment and increased representation of women on corporate boards are essential in guaranteeing future economic success for companies. Diversity must prioritize in the corporate agenda and a high priority for the management of the board. Boards of directors must treat diversity as a priority, not only just as a requirement of procedures or legislation. The invisible glass ceiling must be eliminated, as it stops women from receiving well-deserved promotion and credit. A gender-diverse organizational culture reflects a wide range of perspectives and offers innovative ways to solve corporate challenges, allowing for a deeper understanding of issues and improved decision-making. Having more women on the board of directors reduces risk-taking, which improves the company's reputation, profit quality, and especially long-term viability.

Leaders have the chance to change the future of work by investing in inclusive workplaces, developing more fair care systems, boosting women's advancement to leadership positions, and implementing gender parity. Pushing in this direction helps to break down gender biases in leadership, develop new, much-needed role models, inspire women to pursue successful careers, and, in the end, results in better businesses and fairer society.

As reaction to the gender equity case, several initiatives in corporate social responsibility (CSR) programs have emerged, such as sustainability reports, since they contribute to the organization’s social impact. GRI (Global Reporting Initiative) Standards, which are the most widely used reference

[203] HCR 23 – Ohio House

for creating sustainability reports, incorporate gender diversity and equal opportunity in respect to organizational regulatory bodies as part of their social dimension[204].

Gender-related corporate social responsibility (CSR) initiatives are gaining traction among all stakeholders, as the commitment to achieve gender equality has risen to the top of the agenda.

A. *A different approach: The Role of Shareholder Activism in enhancing Gender Diversity*

Alternative change mechanisms to governmental quotas for promoting gender diversity on company boards in the United States involve shareholder resolutions. Diversity resolutions are frequently criticized as ineffective alternatives to quotas because the great majority fail to formally pass. In this case, especially within the American landscape, major institutional investors' involvement is far more likely than SB 826 to raise the percentage of female directors on boards of publicly traded companies. Shareholder activism has the potential to achieve this goal on a national basis, rather than being limited to the relatively small number of firms based and chartered in California[205].

Furthermore, shareholder activism can achieve those benefits rapidly, with no collateral damage to affirmative action jurisprudence or litigation-induced delays[206].

Private negotiations (i.e. withdrawn proposals) influence in a greater way the degree of diversity on corporate boards compared to external pressure like voted proposals. It was found that proposals supported by institutional investors, who have better private negotiation capabilities, are more likely to promote board gender diversity[207]. Furthermore, where board gender diversity is insufficient, shareholders are more inclined to support diversity measures thanks to their voting power diversity measures.

The State of California can use its considerable capital market clout to force institutional investors, such as CalPERS and CalSTRS to follow a shareholder activism strategy that would boost the percentage of women and minorities on corporate boards of directors[208]. Activist campaigns can be undertaken by the State to prevent directors of publicly traded companies from being re-elected if they fail to meet numerical diversity targets by certain dates[209]. The most important stage of this plan

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[204] See Milagros Gutiérrez-Fernández, and Yakira Fernández-Torres, *Does Gender Diversity Influence Business Efficiency? An Analysis from the Social Perspective of CSR,* An Analysis from the Social Perspective of CSR. Sustainability*. 12., (2020).*

[205] *See* Mahdi Rastad, and John Dobson, *Gender diversity on corporate boards: Evaluating the effectiveness of shareholder activism*, QREF, 2020.

[206] Id.

[207] Id. At 106.

[208] Id at 177.

[209] Id.

is to require institutional investors to include clearly specified numerical objectives in their voting rules. This strategy was already implemented by the New York State Common Retirement Fund. "*It aims to vote against all board directors seeking reelection in corporations with no women on their boards. When a corporation has only one woman on its board of directors, the Fund will vote against re-election of members of the board's governance committee*"[210].

Similarly, Massachusetts' Pension Reserve Investment Management has stated that it will "*vote [against]... all board nominations if the board is less than 30% diverse in terms of gender and ethnicity*"[211]. The largest institutional investors, on the other hand, tend to conform to more vague standards that never bind them to vote for director elections based on any numerical diversity standard. In particular, CalSTRS amended its Corporate Governance Principles in November 2017, stating that it will "*vote against Nominating and Corporate Governance Committee members, and if necessary, the entire board, if CalSTRS felt that sufficient progress had not been made for a company's lack of board diversity'*'[212] . CalSTRS worked with a total of 281 corporations as part of its 2017-2018 diversity program, and withheld votes for 291 directors, including 144 members of nominating and governance committees, as a result of the new policy[213]. Since then, at least 50 companies have appointed a woman to their boards[214].

In recent years, large institutional investors like Blackrock, State Street and mutual funds like Vanguard have joined the gender equity cause and are now more focused in driving long-term corporate governance changes[215]. The best way to serve the shareholders' interests is for a company to have a diverse board with a great variety of opinions, executives' background, experience and personal characteristics such as gender, race and age. The power of active dialogue and engagement within the board leadership and the company is assumed to one of the preferred approaches to drive greater corporate diversity. In the long term, good results are more likely to follow if the leadership team is well-composed and high functioning. By voting against the nomination of the Chair of the board or governance committee, these large institutional investors can use their proxy voting power to help boosting the proportion of women on the board[216]. BlackRock Inc., for instance, posted on its website in 2018 its willingness to see at least two women directors on every board. The investor has

[210] Press Release, Office of the New York State Comptroller, DiNapoli: State Pension Fund Will Vote Against Board Members at Corporations with no Women Directors (Mar., 2018).
[211] Pension Reserves Investment Management Board, Proxy Voting Guidelines – 2018, at 19-20 (Feb., 2018).
[212] CalSTRS, Corporate Governance Principles, at 6.
[213] Id.
[214] Id.
[215] BlackRock, Proxy Voting Guidelines for U.S. Securities, at 5 (Feb. 2018); Ellen Odoner and Aabha Sharma, Weil Gotshal, Updated BlackRock Proxy Voting Guidelines, The Harvard Forum on Corporate Governance and Financial Regulation (Feb. 9, 2018).
[216] State Street Global Advisors, Guidance on Enhancing Gender Diversity on Boards, at 2 (2018).

requested 300 Russell 1000 companies with less than two female directors, solicitating information about their boardroom and employee diversity policies[217] .
The impact of these institutional investor interactions may outweigh any possible impact of SB 826. Shareholder activism is not limited exclusively to the corporations chartered in California and in the rest of the United States. Gender activism as a new type of shareholder mobilization is gaining traction in the United Kingdom as well. Rather than imposing a speedy increase in revenue, the main goal would be to push hesitant corporations to close their gender pay gaps and provide explanations for how they plan to do so. Gender-balanced businesses generally outperform, as shown in a substantial number of studies and it constitutes one of the drivers of this new type of shareholder mobilization.
"Keeping Gender on the Agenda" is another example of Annual General Meeting (AGM) activism promoted by ShareAction that use the investment system's power to benefit people and planet, with a particular focus on the gender pay gap and board diversity.
Gender movement is also pushing huge pension and investment funds to catch up and engage in active investing towards a better gender diversity future. The word " gender lens investing" refers in particular to strategic investments in gender-balanced enterprises and leadership teams, as well as women-led businesses, such as the Legal & General Investment Management's Girl fund. The L&G Future World Gender in Leadership UK Index (Girl) fund tracks the Solactive L&G Gender in Leadership UK Index, which assigns a score of zero to 100 to each of the 370 top UK companies. The Pax Ellevate Global Women's Index Fund, for example, invests in companies that are committed to gender balance on their boards of directors and in top management. Almost all of the companies in the new Fund have two or more women on their boards of directors, reaching over 70% of the total number of companies[218].
The benefits would accrue on a national level without compromising affirmative action jurisprudence, divisive litigation, or the lawsuit-related delays and expenditure[219]. In fact, companies might be more propense to change if they have the world's major institutional investors opposing the election of directors at corporations that fail to comply with those minimal standards in diversity[220].
Shareholder's proposals are indeed a valuable alternative mechanism to gender quotas and other governmental regulations that is not subject to negative side effects. Shareholders can use both internal and external pressure on the management of the company to promote board gender diversity. It is shown that board diversity is more responsible to private negotiations, which results in a withdrawn proposal, rather than to social pressure resulting in a voted-on-proposal. In particular, the

[217] *See* John D. Stoll, To Shatter the Glass Ceiling, Don't Force It, Wall St. J., Sept. 8, (2018).
[218] See Avivah Wittenberg-Cox, Shareholders Acitvism Pivot To Gender, Forbes, 2019.
[219] Id at 177.
[220] Id.

outcome of shareholder activism can be used by proposal sponsors in order to effectively valuate the best shareholder activism channel for promoting board gender diversity. Institutional investors are shown to be the most effective sponsors.

B. Sustainable Corporate Governance

Corporate governance sustainability refers to a company's shared vision of the future, as well as the present, with the goal of maximizing corporation's resources for long-term value creation. Since economic, environmental, and legislative issues are being recognized in the strategic planning, this approach safeguards the interests of all stakeholders[221]. As a result, board composition represents a key feature which influences company outcomes and might affects social and environmental aspects of the companies[222].

Women on boards are part of a wider vision of corporate responsibility that covers economic and managerial aspects[223].

In the last decades, the advantages of gender diversity have gained the attention of European market players and regulators, who have started to recommend and/or require listed companies to have a heterogeneous gender composition in top management, as well as to encourage women's participation in decision-making processes, which can be considered critical for the European economy's competitiveness and sustainability[224]. Such considerations lead to affirm that a company's deep understanding of sustainability is one of the key drivers for gender balance in boards of directors.

Regulatory interventions may accelerate the achievement of United Nation Sustainable Development Goals to be reached by 2030. Sustainable Development Goals are listed in the report on Sustainable Development (SDGs). Such considerations lead to affirm that only the awareness by companies for sustainability is one of the real drivers for the gender equity in boards of directors[225].

Many businesses and organizations have embraced and focused on sustainability as the cornerstone in their pursuit for expansion and long-term success as a result of these SDGs. As a result, financial reporting on sustainability should be prioritized. Academic research has clearly demonstrated the link

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[221] *See* Sabina Nielsen, and Morten Huse, *The Contribution of Women on Boards of Directors: Going beyond the Surface,* 18 CORP.GOV.: AN INT'L REV., (2010).

[222] *See* Scott G. Johnson, Karen Schnatterly, Aaron D. Hill, *Board Composition Beyond Independence: Social Capital, Human Capital, and Demographics,* 39 J. MGMT., 232-62 (2013).

[223] *See* Huse Morten, *The "Golden Skirts": Lessons from Norway About Women on Corporate Boards of Directors*, in Diversity Quotas, Diverse Perspectives: The Case Of Gender, Ashgate Publishing Ltd, Gröschl S and Takagi J (eds), 16-7 (2012).

[224] *See* Patrizia Pastore, *Italian lesson about getting women on the board five years after the implementation of the gender quota law*, 16 CORP. OWN. & CONTROL, 185-202, (2018).

[225] *See* Corinne Post, Noushi Rahman, and Emily Rubow, 2011 *Green governance: Boards of directors' composition and environmental corporate social responsibility*, 50 BUS & SOC'Y, (2011).

between sustainability and financial performance, and it is becoming increasingly entrenched in mainstream financial analysis and reporting[226].

The sustainable legislative model for governance brings structural change, such as, notably, rules to promote greater gender balance on corporate boards and the trend with the corporate reporting requirements concerning environmental and governance issues. These rules have the aim of affecting changes in investor behavior and decisions, which in turn will affect corporations[227]. However, these rules operate in a restrained manner as they generally operate on a "comply or explain basis".

The next challenge is to illustrate how and to what extent the gender mix might influence firm success and market results in the long term.

The further challenge is to illustrate how and how much the company performance results can be positively influenced by gender balance in the long run.

In addition to these interventions, technological changes have the potential to transform the global employment and the corporate landscape. Women's empowerment can be enhanced by the digital revolution, which can provide more work and opportunities for them. A great challenge is how to exploit technological changes to further enhance gender equity. On the other hand, the scarcity of women in STEM (science, technology, engineering, mathematics) educational disciplines is considered a crucial dimension of current gender gaps. There is an urgent need to fill this gap, as these disciplines open better opportunities and provide access to higher leadership careers and empowerment.

Companies must undertake a proactive approach as well. Companies should examine their corporate cultures and ensure that structured and clear options for women to advance into more active leadership roles, such as mentorship programs, are available[228].

Finally, it is expected women to be involved in innovative processes in the corporate field, growth-oriented plans for the future of the firm and the longevity of the firm than in fast-growth[229].

C. The Mixed Leadership Model as synonym for Innovation

The current model of corporate governance needs reform. The development of a mixed leadership model is changing the game of good governance, leading to a more flexible management model

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[226] *See* High Grove, and Mac Clouse, *Focusing on sustainability to strengthen corporate governance*, 2 CORP. GOV. SUSTAINABILITY REV. 2. 38-4, (2018).

[227] *See* Akshaya Kamalnath, *The value of board gender diversity vis-à-vis the role of the board in the modern company*, SSRN Electronic Journal (May 19. 2015), available at: https://ssrn.com/abstract=2608301.

[228] *See* Joann S. Lublin, *Boards Try Buddy System to Get Newcomers Up to Speed*, WALL ST. J. (Sept. 18, 2017).

[229] *See* Barbara Bird, and Candida Brush, *A Gendered Perspective on Organizational Creation*, 26 ENTREP. THEORY PRACT., 41–65, (2002), available at: https://doi.org/10.1177/104225870202600303.

required by current evolutions. Balanced teams outperform unbalanced teams and provide firms with clear concrete recommendations for improving their talent management, regardless of gender.

Women and men are different according to several attributes, including risk aversion, attitude towards negotiation and competition, time horizon, social preferences and networking. These attributes, which together define the so called "style of leadership", are likely to affect firms' business and financial performance, social and sustainability performance, international performance (export and trade) and labor market outcomes, although to a limited extent[230]. Companies need directors with diverse perspectives, experiences, and perspectives, who share the same purpose and collective vision in order to improve firm performance. Within the framework of a mixed leadership model, this new approach of corporate law should be perceived as a new way of thinking; a voice of innovation with the creation of a dynamic board, which is not a simple conformism but a solution to develop and maintain highly engaged employees.

Can gender policies and gender diversity on corporate boards boost economic growth, in particular "inclusive economic growth" whose benefits reach everybody in the long-run? In a period of a "war of talent", better use of all talents in the corporate system, male and female, is necessary for the benefit of the business. As women are as or more educated than men, productivity and talent equal to those of men, their involvement in the economy and in the business decision-making could represent a diver of growth in the long run[231].

Good corporate decision-making necessitates the ability to consider different points of view, from people with various backgrounds, experiences, and perspectives. Studies have shown that advancing women to positions of leadership helps the firms to get diversity of thought; a complete stakeholder representation; availability of essential skills; consumer-based representation and investment decision may lead to more social responsibility in decision-making[232]. In fact, the board's capability to assure the company's strategic leadership is influenced in part by its composition, which should include directors with the perfect combination of experience, skills, and capabilities.

For instance, the importance of an heterogenous composition of the board emerges from Delaware's judicial cases[233]. By using the observation from these cases, it is possible to identify the impediments to board monitoring and assess the merits of monitoring arguments for board gender diversity[234]. A

[230] Id.

[231] *See* PAOLA PROFETA, How Women Affect Firms' Outcomes, in Gender Equality And Public Policy: Measuring Progress In Europe, Cambridge University Press, (2020).

[232] *See* Jude Browne, *Corporate Boards, Quotas for Women, and Political Theory,* Policy Brief for The Foundation for Law, Justice and Society, (2014), available at: http://www.fjs.org/ sites/ www.fjs.org/files/publications/Browne.pdf. Accessed 29/09/19.

[233] *In Re Del Monte Foods Co. Shareholders Litigation*, 25 A.3d 813 (Del. 2011); *Air Products and Chemical*s, Inc. v. Airgas, Inc. and Ors., 16 A.3d 48 (Del. 2010).

[234] *See* Seletha R. Butler, *All on Board! Strategies for Constructing Diverse Boards of Directors,* 7 VA. L. & BUS. REV. 61, 76 (2012).

greater proportion of female directors could also serve to boost the company's overall gender diversity. The more women on the boardroom, the more likely it is to encourage gender diversity from within. In addition, studies show that shareholder proposals that typically call for increased gender diversity also advocate for greater racial diversity as well[235].

Overall, the mixed leadership model promotes board monitoring by being more active in processes related to board independence. Promoting more women on corporate boards is made by the interlinking of three legislative objectives: gender equity, improved corporate governance, and corporate sustainability, that reflects the importance of implementing a heterogenous strategy[236].

[235] *See* Christine I. Wiedman, and Carol Marquardt, *Can Shareholder Activism Improve Gender Diversity on Corporate Boards?* Canadian Academic Accounting Association (CAAA) Annual Conference, 2015 Available at SSRN: https://ssrn.com/abstract=2538909

[236] *See* Beate Sjåfjell, And Irene Lynch Fannon, Corporate Sustainability: Gender As An Agent For Change?, Cambridge University Press, (May 24, 2018).

CONCLUSION

The aim of this paper was to examine the role of gender equity on corporate boards, and to test the validity of claims made in favor of mandatory regulations for board gender diversity. I have shown that for several decades, gender diversity has been a world-wide concern, which remains relevant in the economic and legislative fields and in corporate governance reforms. In fact, I illustrated how the increase in female graduates in degrees relevant to business careers has not resulted in a proportionate increase in board members or even to management executives, therefore making a case for legal intervention for better gender diversity[237].

I have analyzed the most recent data on the number of women on corporate boards, which showed how legislation aims to enhance female representation in typically male-dominated roles. Examining the business case rationale for gender diversity, I have shown how an increasing number of empirical studies favors the impact of board diversity on company performance and good corporate governance practices. Making a comparative analysis about the legal measurements adopted by countries on the matter of gender equity, I have highlighted the effect of obligatory law from the mandatory corporate quotas to the soft-regulative measures such as the comply-or-explain approach. Most of the data and analyses developed in this paper are based on evidence of recent studies conducted on samples of European and American companies. I have showed how Europe has been a true laboratory of analysis in this field. Many European Union member states have enacted legislation, either mandatory or voluntary, to promote women to corporate boards, while others have just implemented some guidelines or disclosure requirements for firms[238]. This includes the evolution of female participation on corporate boards with the introduction of new policies such as gender quotas, paternity leave and flexible work arrangements.

Given the intrinsic constraining nature, gender corporate quotas may be useful as a temporary measure to break down the male-dominated equilibrium of decision-making positions.

These changes, however, promote a debate involving various counterparts: companies, who must adapt their corporate governance to gender balance criteria, their shareholders who are called to renew the corporate bodies and finally consultants. However, mandatory quotas were effective in terms of increasing the number of women on boards, not in terms of increasing the influence of women directors. As a result, these legislative acts created a formal rather than substantial gender balance. Even if policies play an important role in shifting from a low to a high gender diversity, gender quotas

[237] *See* Elena Doldor, Susan Vinnicombe, Mary Gaughan and Ruth Sealy, *Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms*, Equality and Human Rights Commission Research Report 85 (2012).

[238] *See* Eleonore Lepinard, and Ruth Rubio-Marin, *Completing the Unfinished Task? Gender Quotas and the Ongoing Struggle for Women's Empowerment in Europe*, in Transforming Gender Citizenship: The Irresistible Rise of Gender Quotas In Europe, Cambridge University Press (2018).

are nevertheless not enough: family policies and, in particular paternity leave have the potential to move towards a better equilibrium, which is a step towards gender equity in corporate boards[239].
From the analysis conducted, it appears that any regulatory and enforcement method must fit within – legal – culture and have broad societal, public, shareholder, and stakeholder support in order to be successful. As observed from the debated enactment of SB 826, the efficiency of the quota in California had a variety of unresolved issues that had the potential to inhibit its implementation, causing criticism, opposition and leading to several lawsuits. For instance, innovative approaches that suit different legal systems are needed to be implemented to accelerate progress on gender equity in corporate leadership. To heal the gap and fill the obstacle to promotion, companies may consider adopting different solutions: this includes hiring more women at the basic managerial level, thereby increasing the chances of a woman reaching higher positions; working on recruiters to establish clear evaluation criteria for the candidates (encouraging the use of Artificially Intelligence to evaluate candidates' applications) and training more women for the transition to the managerial level.
As it can be seen in the American landscape for gender equity, various stakeholders, especially the ones who hold major stakes, could also influence and push companies to integrate into corporate and executive metrics efforts to meet diversity and inclusion goals. This new activist approach that involves shareholders is in line with a more focused view in driving corporate governance in the long-term. A diversified corporate board model, which combines the actions of several leadership styles, could help the organization achieve long-term success. Men and women in decision-making jobs broaden perspectives, enhances creativity and innovation in the company, diversify the pool of talents and competencies, minimizes conflicts, and improve decision-making processes. However, the challenge is still open for companies to recognize that diversity must be met with a sense of inclusiveness that will enable women to be part of a new model, satisfying good governance standards and leading to a sustainable corporate governance.

[239] Id. at 229.

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