

УДК 342.9

DOI <https://doi.org/10.24144/2307-3322.2022.76.2.41>

GENDER BALANCE IN THE BOARD OF DIRECTORS

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Sabovchik A. Gender balance in the board of directors.

Globally, men occupy more board seats than women. In this article the author is dealing with the issue of legislative gender quotas, which seems to be the fastest way to achieve gender balance on the boards.

Also, the “comply or explain” governance system, meaning an approach to equality when all people should be treated similarly, regardless of prejudices, preferences, or historical disadvantages, unless particular distinctions can be justified.

Controversial questions of racial diversity among female directors are mentioned. The gender pay gap on corporate boards, concerning differences between pay received by men and women for comparable work. And it appears to be dependent on several factors, including whether the company is in a male dominated industry and whether the female director is married or has children.

Gender diversity can play an important role in supporting innovative activity and organizational change. That's why inclusion of female directors has a direct and positive impact on a company's profits and risk management. Women board directors also broaden a company's market knowledge as well as raise its profile.

Researches have found that women need to hold at least three board seats to create a “critical mass,” which can lead to better financial performance. Studies suggest that enterprises need to reach a critical mass of women in top positions in order to reap the benefits of gender diversity, such as improved governance. Reaching this threshold allows a minority to exert their influence and ensure their voice is heard.

Summarizing all the above, we can name the following main results of this study: There are more women on boards and more boards with women. More boards are reaching a 30 per cent critical mass of women. All-male boards are on the decline, but they still exist. The enterprise survey shows that gender balanced boards are more likely to have enhanced business outcomes compared to those with fewer women on their boards. In addition when there is gender balance on the board, the enterprise is more likely to have women in senior management and in top executive positions. Alternatives to quotas gaining popularity include “comply or explain” commitments, and rules of national stock exchange regulators. “Glass walls” are limiting women's influence in boardrooms due to the lack of a critical mass, women's absence from key committees, the low number of women appointed as board chairpersons, and women serving as non-executive board members.

Keywords: gender quotas, gender balance in women's representation on boards, “comply or explain” governance system, gender pay gap, female directors.

Сабовчик А. Гендерний баланс у раді директорів.

У всьому світі чоловіки займають більше місць у раді, ніж жінки. У цій статті авторка торкається питання законодавчих гендерних квот, які, здається, є найшвидшим способом досягнення гендерного балансу в радах.

Крім того, система управління «виконуй або пояснюй», що означає підхід до рівності, коли до всіх людей слід ставитися однаково, незалежно від упереджень, уподобань чи історичних недоліків, якщо не можна виправдати особливі відмінності.

Згадуються спірні питання расової різноманітності серед жінок-режисерів. Гендерний розрив в оплаті праці в радах компаній, що стосується різниці між оплатою чоловіків і жінок за порівнянну роботу. І, здається, це залежить від кількох факторів, у тому числі від того, чи є компанія в промисловості, де домінують чоловіки, і чи одружена жінка-директор чи має дітей.

Гендерна різноманітність може відігравати важливу роль у підтримці інноваційної діяльності та організаційних змін. Ось чому залучення жінок-директорів має прямий і позитивний вплив на прибутки компанії та управління ризиками. Жінки-директори ради також розширюють знання про ринок компанії, а також підвищують її авторитет.

Дослідження виявили, що жінкам необхідно займати принаймні три місця в раді директорів, щоб створити «критичну масу», яка може призвести до кращих фінансових показників. Дослідження свідчать про те, що підприємствам необхідно досягти критичної маси жінок на вищих посадах, щоб скористатися перевагами гендерного розмаїття, такими як покращення управління. Досягнення цього порогу дозволяє меншості здійснювати свій вплив і гарантувати, що їх голос буде почутий.

Підсумовуючи все вищесказане, виокремлено наступні основні результати цього дослідження: У правліннях більше жінок і більше в правліннях жінок. Все більше правлінь досягає 30 відсотків критичної маси жінок. Чоловічі переваги у штаті скорочуються, але вони все ще існують. Опитування підприємств показує, що гендерно збалансовані ради директорів з більшою ймовірністю матимуть кращі бізнес-результати порівняно з тими, де в радах менша кількість жінок. Крім того, коли в правлінні є гендерний баланс, на підприємстві більше шансів мати жінок у вищому керівництві та на вищих керівних посадах. Альтернативи квотам, які набувають популярності, включають зобов'язання «виконуй або пояснюй» і правила національних регуляторів фондових бірж. «Скляні стіни» обмежують вплив жінок у залах засідань через відсутність критичної маси, відсутність жінок у ключових комітетах, низьку кількість жінок, призначених головами правління, і жінок, які є невиконавчими членами правління.

Ключові слова: гендерні квоти, гендерний баланс у представництві жінок у радах, система управління «виконуй або пояснюй», гендерний розрив в оплаті праці, жінки-директори.

Formulation of the problem. In today's conditions, the issue of gender balance in boards of directors is gaining more and more publicity. At the same time, various countries are increasingly resorting to the settlement of this issue by introducing quotas or establishing requirements for the creation of the "critical mass" or introducing the principle of "comply or explain" governance system. At the same time, in practice, a number of researchers also say that the inclusion of female directors has a direct and positive impact on a company's profits and risk management. Women board directors also broaden a company's market knowledge as well as raise its profile. It is also about the statement that setting quotas on women in the boardroom - doesn't work. The prospects of the research are to confirm the opinion about the need to implement the correct gender policy in the boards of directors, while giving the countries the right to make an independent choice - by which methods or by which principles, also from the above mentioned, the governments of the countries will achieve the specified goals.

Analysis of scientific sources. In the science of Ukrainian corporate law, the issue of gender balance in boards of directors has not been studied separately. However, it is important to note the works of foreign scientists on this issue, namely: Bertrand, Marianne; Black, Sandra; Jensen, Sissel; Lleras-Muney, Adriana; Eli Freedberg; Terjesen, Siri; Aguilera, Ruth; Lorenz, Ruth; Badkar, Mamta; Edgecliffe-Johnson, Andrew; Pucheta-Martinez, Maria Consuelo; Bel-Oms, Immaculada; Geiler, Philipp; Renneboog, Luc; Gregory-Smith, Ian; Main, Brian; O'Reilly III, Charles; Geiler, Philipp; Renneboog, Luc; Carolyn Wiley and Mireia Monllor-Tormos and Anastasia Boden.

The purpose of the article is to research the issue of gender diversity in boards of directors, as well as to analyze effective tools that could ensure compliance with this principle in real life.

Presenting of the main material. The issue of gender balance on boards of directors is really important and matters. The following arguments should be given to strengthen this statement and a somewhat broader understanding of the specifics of the problem.

Legislative gender quotas are probably the fastest way to achieve gender balance in women's representation on boards of directors. However, due to unintended consequences, it remains to be seen whether quotas are the most effective way.

Increasing the participation of women on corporate boards inspires heated debate around the world, with some countries even adopting legislation to enforce their presence. But although boardroom diversity is increasing, women remain underrepresented, and progress is slow. Women need to hold at least three board seats for companies to reap diversity.

According to Governance Metrics International [1, p. 35], men comprise over 90 percent of all directorships globally, and as a result heavily determine the composition of the boardroom. One simple

example – companies with a woman board chair were more likely to have a larger share of women board members (28.3%) compared to companies with men board chairs (17.1%). And that explains a lot – in 2018 only 5.3% of board chair positions were held by women.

And concerning legislative enforce of women’s presence on boards – nearly three-quarters (71.8%) of MSCI ACWI [2] companies located in jurisdictions with *established compulsory quotas* had at least 30% women directors in 2019. Among companies located in jurisdictions with *no elective or compulsory gender quota requirements*, only 20.3% of boards reached the 30% women director threshold, and 23.0% had no women directors.

All this is clearly seen in the following table.

Women’s Global Representation on Boards, 2019 [3]						
Country	% Women Directorships, 2019	% Women Directorships, 2016	% With Three or More WOB, 2019	% With 1-2 WOB, 2019	% With Zero WOB, 2019	Quota and Year Introduced
Australia	31.2%	26.0%	58.2%	40.3%	1.5%	No
Canada	29.1%	22.8%	63.0%	35.9%	1.1%	Pending
France	44.3%	37.6%	98.6%	1.4%	0.0%	Yes, 2010
Germany	33.3%	19.5%	81.0%	17.2%	1.7%	Yes, 2015
India	15.9%	12.8%	21.3%	78.8%	0.0%	Yes, 2013
Japan	8.4%	4.8%	3.4%	63.2%	33.4%	No
Netherlands	34.0%	18.9%	65.2%	34.8%	0.0%	Yes, 2013
Sweden	39.6%	35.6%	96.6%	3.4%	0.0%	Yes, 2016
Switzerland	24.9%	17.5%	48.8%	51.2%	0.0%	Pending
United Kingdom	31.7%	25.3%	82.2%	17.8%	0.0%	No
United States	26.1%	20.3%	56.2%	42.8%	1.0%	CA Only, 2018

European Union. In the European Union, quotas are improving progress. As of October 2018, women held 26.7% of board seats in the largest publicly listed companies in EU member states [4, p. 20]. Women comprised 6.7% of board chairs in 2018, which more than doubled from 3.3% in 2012. Nine of the top 10 countries ranked by the percentage of companies with three or more female directors were in Europe, all but one of these countries (UK – as it was EU member state then) have gender quotas in place. Also several studies (as by Marianne Bertrand et al.) - concluded that the gender quota in Norway do reduced the gender gap on boards [5, p.47].

Canada. Nearly a Quarter of Financial Post 500 Board Seats Are Held by Women. Women held nearly one-quarter (24.5%) of Financial Post 500 board director seats in 2018, up from 22.6% 2017 [6, p.52]. Of all Financial Post 500 companies, 15% had no women on their board.

United States. Boards in S&P 500 and Fortune 500 Companies are gradually diversifying more than one-quarter (26%) of S&P 500 board directors are women, a record high [7]. There are no all-male boards in the S&P 500; all companies have at least one woman director. Despite reaching these milestones, the representation of women on S&P 500 boards continues to be low.

On average, boards today have 2.8 woman directors, compared with 1.7 a decade ago. Only 8% of boards include just one woman, an improvement from 36% in 2009. In 2019, women accounted for almost half (46%) of new board directors in the S&P 500.

Quotas in the United States. In September 2018, California became the first state to introduce quotas requiring publicly traded companies to include women on their boards of directors. Illinois, Massachusetts, New Jersey, and New York have all introduced legislation aiming to improve the representation of women on corporate Boards [8, p. 78].

“Comply or explain” governance system.

Another approach to addressing the disproportionality on corporate boards has been the adoption of the “comply or explain” governance system by Governments and organizations such as stock exchanges. This system requires companies to address the issue of proportionate gender representation with regards to board and executive appointments in their company filings and other reports and to explain the reason for any failure to comply with particular gender guidelines issued by the organization.

The “comply or explain” system exemplifies equality of opportunity, an approach to equality whereby all people should be treated similarly, regardless of prejudices, preferences, or historical disadvantages, unless particular distinctions can be justified. Fifteen countries have inserted requirements to report gender diversity board composition in their corporate governance codes [9, p. 240].

Controversial questions of racial diversity among female directors.

Protests in the United States in 2020 have ignited a controversy that progress on board diversity has advanced significantly faster for white women than for racial minorities [10, p. 12].

A 2020 report revealed that in the wake of California’s adoption of female quotas, mandating gender diversity on boards, 511 board seats were filled by women. 77.9% of those seats were filled by white women, 11.5% by Asian women, 5.3% by African American women, and 3.3% by Latina women [11, p. 34].

Companies in the UK are facing similar scrutiny. A 2019 analysis of FTSE board directors found that 100% of female board directors in the FTSE 100 were white, as were 97% of female directors in the FTSE 250 [12, p. 14].

The gender pay gap on corporate boards.

The gender pay gap refers to differences between pay received by men and women for comparable work. A number of studies, including a study on top managers of listed UK companies and one on companies listed on the Madrid Stock Exchange, have concluded that a gender pay gap exists between male and female directors [13, p. 473].

Philipp Geiler and Luc Renneboog found that female executive directors of listed UK companies earn 23% less than their male counterparts [14, p. 355]. At the same time another study by Gregory-Smith, Main and O’Reilly III on FTSE350 companies, however, found no evidence of such a discrepancy once the director’s traits (including age and tenure) and other company features such as firm size and price to book ratio are taken into account [15, p. 112].

The director gender pay gap appears to be dependent on several factors, including whether the company is in a male dominated industry and whether the female director is married or has children [16, p. 355]. Other relevant factors found by Maria Consuelo Pucheta-Martinez and Inmaculada Bel-Oms include whether the Compensation Committee contains female members and the size of the companies [17, p. 480].

Inclusion of female directors has a direct and positive impact on a company’s profits and risk management. Women board directors also broaden a company’s market knowledge as well as raise its profile.

Gender diversity can play an important role in supporting innovative activity and organizational change. For example, companies with greater gender diversity are associated with higher R&D intensity, obtain more patents, and report higher levels of overall innovation (particularly when there is a critical mass of women directors). This pattern is also reflected in external accolades; companies recognized as innovators have more women directors.

Women, on average, possess more types of functional expertise, they are also more likely to bring expertise in the areas of risk management, human resources, sustainability, corporate governance, regulatory/legal/compliance, and political/government. Of the most underrepresented board skills overall, four of the five (human resources, risk management, sustainability, political/government, and R&D) were more likely to be possessed by women than men.

Women are more likely to bring important and underrepresented skills to corporate boards and steps should be taken to increase their presence. When boards expand their search to increase gender diversity, they will acquire greater functional diversity in key areas which will, in turn, increase the effectiveness of the board.

The creation of the “critical mass”.

Research from scholars and organizations has found that women need to hold at least three board seats to create a “critical mass,” which can lead to better financial performance [18, p. 21]. Studies suggest that enterprises need to reach a critical mass of women in top positions in order to reap the benefits of gender diversity, such as improved governance. Reaching this threshold allows a minority to exert their influence and ensure their voice is heard.

Defining a critical mass varies depending on the number of board members. In the United States, the board is usually around 7 to 9 members, hence three women members meets this criterion. Internationally, an increasing number of countries are using the 30 per cent figure due to targeted initiatives such as the 30% Club [19].

Overall, our computation shows that nearly two thirds (approximately 64 per cent) of enterprises do not have the critical mass of women on their boards needed to enhance their influence and better effect change.

Going into the regional landscape, Europe and Central Asia portrays the highest share of enterprises with critical mass. Combining the shares of enterprises reporting 30 to 39 per cent (18.4 per cent) and 40 to 60 per cent (19.6 per cent), approximately 38 per cent of enterprises in the region are better able to leverage the talent and experience of female presence on their boards. High numbers of enterprises in Latin America and the Caribbean (37.6 per cent), Asia and the Pacific (31.8 per cent) and Africa (30.8 per cent) also report having reached this target. By contrast, the highest share of enterprises with all-male boards comes from the Middle East and North Africa (28 per cent), followed by Africa (12 per cent), Europe and Central Asia (12 per cent), Latin America and the Caribbean (10 per cent) and Asia and the Pacific (6 per cent). Additionally, at the sectoral level, the highest share of enterprises with all-male boards come from the construction industry (20 per cent), and enterprises in the education sector represent the lowest share of enterprises without women on boards [20, p. 52].

Setting quotas on women in the boardroom ... doesn't work [21, p. 12].

While quotas may add a handful of women to corporate boards, they come at the expense of the broader goal of equality – which requires not equal numbers, but equal dignity for women.

Even where there is evidence of discrimination, arbitrary quotas are a clumsy tool for remedying it. As future Supreme Court Justice Ruth Bader Ginsburg observed as a lawyer in the late 1970s, laws that purportedly “help” one gender might inadvertently reinforce antiquated stereotypes about that group. Ginsburg famously challenged an employment-related scheme that gave death benefits to widows but not widowers. During an oral argument before the Supreme Court, she noted that while the law was framed as a means of helping women, it assumed a man would not need help if his wife died because he was the primary breadwinner. The law thus attributed to men “status, dignity and importance” not afforded to women.

Quotas undermine the progress women are making without government mandates. Between 2010 and 2015, the share of women on corporate boards increased by 54% globally. Women now hold about 20% of board positions for the 500 U.S. corporations that make up the Standard & Poor's index. In Illinois, every public company is already compliant with the proposed mandate. Of the largest 3,000 public companies, 84% have at least one woman on their board, making them already compliant with any of the proposed mandates.

The laws will likely undermine many future gains women make by casting doubt on whether a woman is being hired based on her merit or to meet a quota.

Proponents of the “woman quota” argue that increasing the number of female board members will have a trickle-down effect that will result in more women in management positions and more female-friendly policies. But evidence from countries that have imposed quotas show this outcome is unlikely.

Since 2008, Norway has required 40% of board positions on public companies to be filled by women. Research suggests that more than 10 years later, the mandate has not significantly increased the number of women in senior management positions, nor has it reduced the pay gap between men and women. Seven years after the quota was enacted, the country had no female CEOs. Similarly, women occupy only 10% to 20% of senior management jobs in France, Germany and the Netherlands, despite 30% to 40% female board member quotas in those countries.

Data regarding whether having more female board members improves corporate performance is mixed, but it may harm corporate performance in industries where firms are forced to fill the quotas with less experienced women. After Norway enacted its mandate, several public companies went private rather than abide by the quota.

Some proponents advocate for quotas as a remedy to sex discrimination. Even where there is evidence of discrimination, arbitrary quotas are a clumsy tool for remedying it and probably don't satisfy the requirements of the Constitution. The high court has struck down quotas in the context of university admissions in USA, stating that while the government may sometimes pursue greater diversity, it cannot use straight quotas to achieve it.

When endorsing California's “woman quotas,” former California Gov. Jerry Brown acknowledged these legal hurdles. In a signing statement, he said that while the state's quota might be struck down, the law is necessary because some people aren't “getting the message” about female equality. But do states empower women when they mandate female representation on corporate boards? Or do they send the message that women can't make it to the boardroom without the government's help?

Research suggests that quotas can have a harmful psychological effect on employees: people who are told they were given a leg up in the hiring process tend to have lower self-esteem than those who believe they were hired based on merit.

It's often the case that when the government seeks to regulate businesses, it creates a host of unintended consequences. Here, the proposed mandates penalize companies even when there's no evidence of discrimination, ignore the gains that women are making without quotas and undermine the achievements of future female hires.

Women are making great strides in achieving leadership positions without government mandates. If states want to contribute to the cause, there are less divisive and more constitutional means of ending discrimination. States can, for example, enforce their nondiscrimination laws. Or they can invest in public-awareness campaigns that shed light on discriminatory policies.

But states should not remedy discrimination by mandating more of it – regardless of who it purportedly benefits.

Conclusions. Gender representation on corporate boards of directors refers to the proportion of men and women who occupy board member positions. To measure gender diversity on corporate boards, studies often use the percentage of women holding corporate board seats and the percentage of companies with at least one woman on their board.

Globally, men occupy more board seats than women.

Most percentages for gender representation on corporate boards refer only to public company boards. Private companies are not required to disclose information on their board of directors, so the data is less available.

Summarizing all the above, we can name the following main results of this study:

- There are more women on boards and more boards with women.
- More boards are reaching a 30 per cent critical mass of women.
- All-male boards are on the decline, but they still exist.
- The enterprise survey shows that gender balanced boards are more likely to have enhanced business outcomes compared to those with fewer women on their boards. In addition when there is gender balance on the board, the enterprise is more likely to have women in senior management and in top executive positions.

- Alternatives to quotas gaining popularity include “comply or explain” commitments, and rules of national stock exchange regulators.

- “Glass walls” are limiting women’s influence in boardrooms due to the lack of a critical mass, women’s absence from key committees, the low number of women appointed as board chairpersons, and women serving as non-executive board members.

- Quotas and other measures are still being adopted or are under consideration to improve gender diversity in boards. However, there is more work to be done to determine whether the use of quotas through legal regulations are effective in delivering the intended result.

But the main conclusion is that women should be appointed to boards not simply because they are women but because they bring a relevant perspective for enterprise.

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