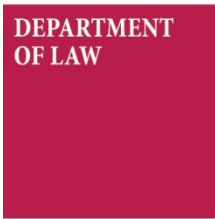




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LAW 2015/22  
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Gender quotas for corporate boards in Norway

Mari Teigen



European University Institute  
Department of Law

## **GENDER QUOTAS FOR CORPORATE BOARDS IN NORWAY**

Mari Teigen

EUI Working Paper **LAW** 2015/22

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ISSN 1725-6739

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Printed in Italy  
European University Institute  
Badia Fiesolana  
I-50014 San Domenico di Fiesole (FI)  
Italy  
[www.eui.eu](http://www.eui.eu)  
[cadmus.eui.eu](http://cadmus.eui.eu)

## **Legal Struggles and Political Mobilization around Gender Quotas**

This paper is part of a case study series stemming from a project, "Gender quotas in Europe: Towards European Parity Citizenship?" funded by the European University Institute Research Council and Jean Monnet Life Long Learning Programme under the scientific coordination of Professors Ruth Rubio-Marín and Eléonore Lépinard. Gender quotas are part of a global trend to improve women's representation in decision-making bodies. In the past decade they have often been extended in terms of the numbers to be reached (40 or 50% instead of 30%), and in terms of the social field they should apply to (from politics to the economy to the administration). The aim of the project is to assess and analyse this global trend in the European context, comparing the adoption (or resistance to) gender quotas in 13 European countries in the fields of electoral politics, corporate boards and public bodies.

The case-studies in this series consider the legal struggles and political mobilization around Gender Quotas in Austria, Belgium, Denmark, France, Germany, Italy, Norway, Poland, Portugal, Slovenia, Spain, Sweden, and the U.K. They were presented and discussed in earlier versions at a workshop held in September 2014 at the EUI. Based on the workshop method, all working papers have reflected on similar aspects raised by their country case, concerning: 1) domestic/national preconditions and processes of adoption of gender quotas; 2) transnational factors; 3) legal and constitutional challenges raised by gender quotas in both the political and economic spheres; and 4) new frontiers in the field.

The working papers will be also made available on the blog of the workshop, where additional information on the experts and country information sheets can be found, and new developments can be shared. <https://blogs.eui.eu/genderquotas>.



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## **Abstract**

The gender quota reform for corporate boards, first adopted in Norway in 2003 and fully implemented from 2008, has had great repercussions. A wave of diffusion of corporate board quota legislation has swept across Europe, and some other parts of the world. This paper departs from the ongoing European processes of gender quotas for corporate boards being in the making, and examines how the Norwegian expansion of gender quota regulation from the public sector to the corporate world was made possible. The strong tradition in Norway to introduce gender quota arrangements to promote gender balance is emphasized in particular.

The paper addresses national preconditions and processes. Central questions are: How does this reform fit with the Norwegian gender equality policy tradition? And what external factors – and institutional tensions – facilitated the policy process? What kind of problem(s) did the gender quota legislation aim to solve? What were the main positions in public and political debates surrounding the policy process? What was the role of policy agency for the result of the policy process?

## **Keywords**

Gender quotas, gender balance, corporate boards, gender equality policy, economic decision-making



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## **Introduction**

Recently, demands for gender balance in decision-making assemblies have expanded from politics to the economic sphere. Persistent male dominance in the upper echelons of business life is faced with increasing criticism. Generally, the idea that men are superior to women, and hence more suited to control resources and possess top-positions, lack legitimacy (Charles & Grusky, 2004). In this context, the Norwegian adoption of gender quotas for corporate boards in 2003, revealed a first example of a regulative approach to promote gender balance in economic decision-making. The legislation was radical and innovative, no other country had prior to Norway even considered any similar kind of regulation. In the last few years' time, a wave of diffusion of gender quotas for corporate boards has swept across Europe, and other parts of the world (Fagan et al., 2012; Teigen, 2012b; Armstrong & Walby, 2012; Terjesen, Aguilera & Lorenz, 2014).

This paper departs from the ongoing European processes of gender quotas for corporate boards being in the making, takes a step back and analyses the starting point: the adoption of gender quotas for corporate boards in Norway. The reform constitutes an innovative however at first controversial, legal regulation. This paper examines how the Norwegian expansion of gender quota regulation from the public sector to the corporate world was made possible. The strong tradition in Norway to introduce gender quota arrangements to promote gender balance is emphasized in particular. Gender quotas and positive action procedures have been a central gender equality instrument in Norway to promote gender balance (Teigen, 2011).

The purpose of this paper is to describe and explore the interplay of contextual factors and processes connected to institutional, discursive and policy aspects that in sum pushed towards the making of the gender quotas for corporate boards. The paper addresses national preconditions and processes. Central questions are: How does this reform fit with the Norwegian gender equality institution? And what external factors – and institutional tensions – facilitated the policy process? What kind of problem(s) did the gender quota legislation aim to solve? What were the main positions in public and political debates surrounding the policy process? What was the role of policy agency for the result of the policy process?

In the next section I will provide an account of the Norwegian legislation for gender quotas on corporate boards, as well as show the development of gender balance on corporate boards for the last decade. The major part of the paper presents an analysis of main factors and processes for the making of gender quotas for corporate boards in Norway, distinguishing between aspects concerned with the institutional, the discursive and the policy agency context. In the final part I attempt to show how these different factors and processes interplayed. In the concluding remark I attempt to reflect upon the development of gender quotas for corporate boards in light of political quotas and thus a larger discussion about the demarcation of the political and the economic sphere.

## **A note on data**

The analysis presented in this paper is based on empirical analyses of all relevant documents from the political process, as well as other types of information, e.g. from the media debate. The most important documents are: 1) Consultation proposal on revision on the Gender Equality Act, from the Ministry of Children and Family Affairs 1999,<sup>1</sup> 2) White paper from the Ministry of Children and Family Affairs:

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<sup>1</sup> Consultation proposal from the Ministry of Children and Family Affairs 1999. (Høring: Forslag til endringer i likestillingsloven, Barne og familiedepartementet, 1999).

Proposition on reforms to the Gender Equality Act (2000-2001)<sup>2</sup> 3) Consultation proposal on gender representation in public limited companies, state limited companies and state businesses, etc., proposal to change the Company's Act and some other Acts<sup>3</sup>, 4) White paper from the Ministry of Children and Family Affairs: Proposition on reforms to Company legislation on gender representation in company boards<sup>4</sup>. An in-depth analysis of the first stages of the political process is provided in Teigen (2002), Evenrud (2010), Engelstad (2011) and Sørensen (2011). Cvijanovic (2009) provides an analysis of the media debate on the issue gender quotas for corporate boards. Central aspects of deregulation policies were described in the government commission report NOU (2000:19) on the privatization of public enterprises.<sup>5</sup>

### *The introduction of gender quotas for corporate boards*

The Norwegian gender quota legislation for corporate boards applies for a wide range of companies: in the boards of public limited companies (PLC), inter-municipal companies<sup>6</sup> and state enterprises<sup>7</sup>. Cooperative companies<sup>8</sup> and municipal companies<sup>9</sup> were included from respectively 2008 and 2009. The numerous private limited companies, however, often small, family-owned businesses, were not subject to gender quota legislation. Nevertheless, a requirement of at least 40 percent of each gender in the board rooms today regulates central parts of Norwegian business life. In this paper the main focus is on public limited companies.

The criteria for gender representation on the boards is set in the *Norwegian Public Limited Liability Companies Act*<sup>10</sup> in its article 6-11a. *Demand for representation of both genders on the board.*<sup>11</sup> Parallel formulations apply for the other types of companies object to the gender quota ruling.

Figure 1 shows the increase in the presence of women on the boards of public limited companies. The legislation adopted in 2003 was formulated as a "threat» legislation: if not the companies voluntarily had reached the gender demands until July 2005, the legislation would be effectuated. Although the

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<sup>2</sup> <http://www.regjeringen.no/nb/dep/bld/dok/regpubl/otprp/20002001/otprp-nr-77-2000-2001-.html?id=123306>, (08.05.2013). Proposition to parliament 77 (2000-2001), Ministry of Children and Family Affairs: Ot.prp. 77 (2000-2001), Om lov om endringer i likestillingsloven mv., Barne- og familiedepartementet.

<sup>3</sup> <http://www.regjeringen.no/en/dokumentarkiv/Regjeringen-Stoltenberg-I/bfd/Horinger/2001/Horing-kjonnrepresentasjon-i-styrer.html?id=421560>, (08.05.2013). Consultation proposal from the Ministry of Children and Family Affairs 2001. (Høring: Kjønnsrepresentasjon i styret i allmennaksjeselskaper, statsaksjeselskaper og statsforetak, m.v. – forslag til endringer i allmennaksjeloven og i enkelte andre lover, Barne- og familiedepartementet, 2001).

<sup>4</sup> <http://www.regjeringen.no/en/dep/bld/dok/regpubl/otprp/20022003/otprp-nr-97-2002-2003-.html?id=127203>, (08.05.2013). Proposition to parliament 97 (2002-2003), Ministry of Children and Family Affairs: Ot.prp. 97 (2002-2003), Om lov om endringer i lov 13. juni 1997 nr. 44 om aksjeselskaper, lov 13. juni 1997 nr. 45 om allmennaksjeselskaper og i enkelte andre lover (likestilling i styrer i statsaksjeselskaper, statsforetak, allmennaksjeselskaper mv.), Barne- og familiedepartementet

<sup>5</sup> <http://www.regjeringen.no/en/dep/fad/documents/nouer/2000/nou-2000-19.html?id=117394>, no translation to English. (08.05.2013)

<sup>6</sup> <http://www.lovdatabasen.no/all/hl-19990129-006.html>, article 10, no translation to English. (08.05.2013)

<sup>7</sup> <http://www.lovdatabasen.no/all/nl-19910830-071.html>, article 19, no translation to English (08.05.2013)

<sup>8</sup> <http://www.ub.uio.no/ujur/ulovdata/lov-20070629-081-eng.pdf>, article 6-4a (08.05.2013)

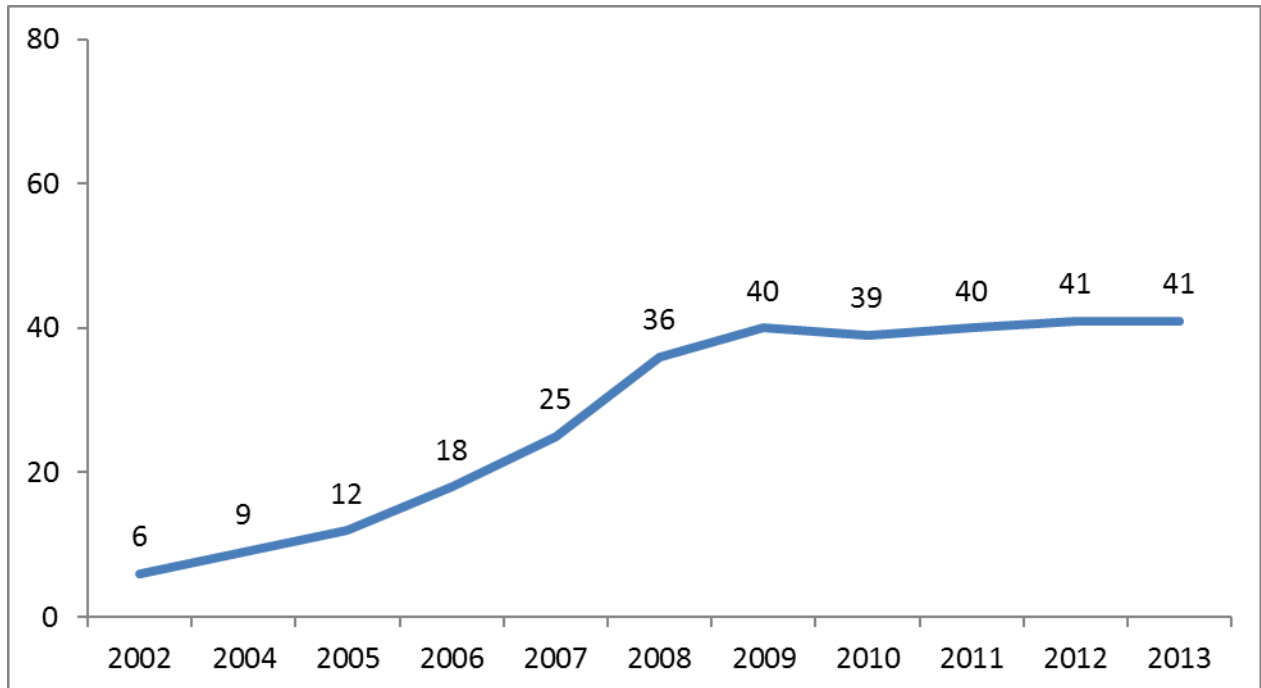
<sup>9</sup> <http://www.lovdatabasen.no/all/hl-19920925-107.html#80a>, article 80a, no translation to English (08.05.2013)

<sup>10</sup> The rules regarding representation of both sexes are to be applied separately to employee-elected and shareholder-elected representatives in order to ensure independent election processes.

<sup>11</sup> The demand for gender representation is formulated as follows: 1) Where there are two or three members of the board, both genders should be represented. 2) Where there are four or five members of the board, both genders should be represented by at least two members. 3) Where there are six to eight members of the board, both genders should be represented by at least three members. 4) Where there are nine or more members of the board, the membership should comprise at least 40% men and 40% women. 5) Rules 1 to 4 also apply for the election of deputy members.

representation of women increased between 2003 and 2005, the target set of at least 40 percent women was far from reached for the public limited company boards. Thus, in late autumn 2005 the government decided to effectuate the legislation for new established companies from 2006 and all PLCs from 2008.<sup>12</sup>

Fig. 1: Proportion of women on the boards of Public Limited Companies, Norway, 2002-2012.  
Source: Statistics Norway.



### **Institutional perspectives**

This part will emphasize three, in itself independent, institutional factors, that each in its own way have contributed to pave the way for the gender quota reform for corporate boards in Norway: the state feminist institution, and in particular its emphasis on gender quota policies; industrial democracy and its regulation of employee representation on corporate boards; and finally the clash between state feminist policies and neoliberal deregulation policies.

#### ***The Norwegian Gender Equality Policy institution***

The politics of state feminism (Hernes, 1987) in Norway consists of three core elements. A first element is the Gender Equality Act, which was put into force in 1979. The Norwegian Gender Equality Act combines protection against discrimination with active duties for public authorities and employers to promote equality. Furthermore, it has included provision for positive action from the beginning, which has paved the way for preferential treatment and gender quota arrangements. A second element is family- and welfare policies. The Norwegian welfare state adopted maternity leave schemes and sponsored childcare policies from early on, and these policies have been regarded as part

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<sup>12</sup> A main reason for the effective implementation of gender quotas for corporate boards was probably the rather tough sanctions that were implemented for breaching the law. The Company Act applies identical sanctions for breaching all its rules, with forced dissolution as the final step. Consequently, a company that does not have a legal board, despite several warnings with the possibility of correcting the matter, will be subject to forced dissolution.

and parcel of woman friendly policies, characterizing Norwegian state feminism. The generous leave schemes and the extensive childcare facilities have facilitated the reconciliation between family and work by promoting women's participation in the labour market, as well as promoting men's participation in the family and care for children. Third and finally, from the 1970s gender quota policies have been established in Norway to promote and regulate gender balance of decision making assemblies.

### ***Positive action and gender quota arrangements in Norway***

The existing positive action and quota arrangements can be divided into three main types: preferential treatment, promoting procedures and minimum representation rules. *Preferential treatment* is the most widely dispersed in recruitment and promotions in public administration (state and municipal sector), in some private companies, and in connection with admission to gender-skewed types of education; applicants from the under-represented gender are given priority, when qualifications are equal or about equal. As a result of the carefulness of the formulation of these procedures, they have proved to have only minor direct effects. In spite of their relative efficiency, studies indicate, however, that they positively affect organizations' prioritizing and legitimizing of gender equality (Teigen, 2002). *Promoting procedures* constitute a slightly different kind of positive action procedure, which imply that candidate's chances are improved by being moved upwards in a ranking. The "additional point" system is the most commonly applied procedure to balance the gender composition of students within gender-skewed fields of learning. "Earmarking" is another promoting procedure, mainly applied at universities to increase the representation of women in academic positions. "Earmarking" of university positions for women, recruitment positions, as well as professor positions, played an important role as the gender-equality strategy of Norwegian universities in the 1990s. This procedure was abolished after the procedure had been judged by EFTA's surveillance authority (ESA), which concluded that this particular formulation of positive action would be in contravention of the principles of equality and proportionality.<sup>13</sup> *Minimum representation*, or quotas in the restricted sense of the word, establishes requirements for the gender composition in terms of fixed distributions. In the Norwegian context, such arrangements are generally formulated as a demand for at least 40 percent of each gender. Principles of minimum representation exist as voluntary agreements in five of the major Norwegian political parties, with the exception of the Conservative Party and the right wing Progress Party. Voluntary quota arrangements are also widely dispersed among civil society organizations. Legislative quotas regulate the gender composition of publicly appointed boards, councils and committees, and were first introduced in 1981 in Section 21 in the Gender Equality Act. For more than twenty years this was the only legislative quota arrangement in Norway. Recently, as is the subject of this article, a wide range of publicly and privately owned company boards are subject to the same requirements, through a revision of the Company's Act.

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<sup>13</sup> A similar Swedish arrangement was abolished by the European Court of Justice in the Abrahamsson case (C.407/98), as a contravention of the EU equal treatment directive (Article 141 (4)).

Table 1: Types of positive action/quota procedures according to field of the society

<b>Field of society</b>	<b>Types</b>	<b>Adopted</b>	<b>Procedures</b>
<b>Education</b>	Preferential treatment	Upper secondary education, 1982, Norwegian School of Economics and Business Administration, 1980	Candidates of the under-represented gender are given priority in cases of equal qualifications (same amount of school points).
	Promoting procedures	Norwegian University of Science and Technology, 1981 (additional points), 1997 (earmarking procedure)	Additional school points granted to applicants of the under-represented gender; earmarking of school places for candidates of the under-represented gender, with strict restrictions according to qualifications.
<b>Employment</b>	Preferential treatment	State sector, 1981; municipal sector, 1985	In recruitment and promotions applicants of the under-represented gender are given preferential treatment when qualifications are equal or about equal.
<b>Politics</b>	Minimum representation	Liberal Party 1974; Socialist Left Party 1975; Centre Party 1979; Labour Party 1983; Christian Democratic Party 1989	Quotas (at least 40 % of each gender) regulate party election lists and appointments within party organizations in five of the seven major political parties
<b>Organizations:</b>	Minimum representation	The Norwegian Confederation of Trade Unions, 2005	Quotas (at least 40 % of each gender) regulate composition of decision-making bodies, as far as it is possible
<b>Public commissions</b>	Minimum representation	1981, first regulation of gender composition in the Gender Equality Act, 1988, 40 % of each gender, included in the Local Government act, 1992	Minimum 40 % of each gender should be represented in publicly appointed boards, councils and committees
<b>Corporate boards</b>	Minimum representation	Adopted 2003 in company legislation (PLC), implemented for new companies 2006, full implementation 2008	Minimum 40 % of each gender should be represented in the boards of public limited companies and publicly owned enterprises

Gender quota arrangements have played a particular central role in the institutionalization of Norwegian gender equality policy (Teigen, 2011; Skjeie & Teigen, 2012). These schemes have for the most been rather powerful in achieving their aim, although the wider ripple effects have been modest (Skjeie & Teigen, 2012: 60). In Norway, such arrangements are generally formulated as a demand for at least 40 percent of each gender. Principles of minimum representation exist as voluntary agreements in five of the major Norwegian political parties, with the exception of the Conservative Party and the right wing Progress Party. Since 1981 legislative gender quotas have regulated the composition of

publicly appointed boards, councils and committees in Norway. A regulation of representation of at least 40 percent of each gender has been the ruling since 1988 in the Gender Equality Act, article 21, and in the Municipal Act since 1992.<sup>14</sup> Until the introduction of gender quotas for corporate boards the regulation of gender balance in public commissions was the only form of gender quota legislation in Norway.

### ***Employee representation on corporate boards***

The idea that gender balance on corporate boards could be regulated did not emerge in the public debate before the late 1990s. Until this it was taken for granted that it was primarily the responsibility of the owners to select those they found the best suited to protect the company's interests. However, the owners' autonomy to choose all the board members had been restricted since 1972. With the revision of the Companies Act in 1972, workers in companies with more than 30 employees were given the right to elect up to one-third of the members of the board of directors; In companies with more than 200 employees, the company was obligated to set up an enterprise assembly, where one third of the members were elected by employees and two thirds by shareholders (Engelstad, 2012).

Employee representation on company boards expresses an adherence to workplace democracy, as well as an extended view of board members mandate. The enlargement of industrial democracy was presented by the government as a reason for introducing gender quotas for corporate boards in the consultation document in relation to the preparation of a revision of the Gender Equality Act.

In the government's white papers preparing for the gender quota legislation, the regulation of employee representation on boards was used as an argument for an enlargement of the industrial democracy by including also women (Consultation proposal on revision on the Gender Equality Act, from the Ministry of Children and Family Affairs 1999, p. 58). By constructing a parallel between employee and gender representation, the already existing restrictions to the autonomy of the owners in relation to the composition of company boards was emphasized. The evident difference between representing employee interests and gender interests on a company board was not touched upon in the governments' arguments, and by and large not central in the opponents' arguments.

### ***Neoliberal deregulations policies meet gender equality policies***

The first initiative to introduce a gender quota regulation for corporate boards came in the consultation audit regarding a major revision of the Gender Equality Act in 1999. The proposition was then to expand the impact scope of article 21 in the Gender Equality Act to include all company boards. An important context for such a radical proposition was the ongoing processes of deregulation. Heavy deregulation of publicly owned businesses was effectuated in Norway from the 1980s and onwards (Engelstad et al., 2003; Stjernø, 2005). Behind neoliberal policies of deregulation lies the idea that state governing hampers economic growth and that the role of the state needs to be down-played to the benefit of stringent market criteria to secure distribution and well-being (NOU, 2000:19; Jenson, 2010; Simon-Kumar, 2011). An unintended effect of the deregulation processes in the Norwegian economy was that they delimited the scope of the existing gender quota regulation, in article 21 in the Gender Equality Act. Thus, deregulated, but still publicly owned companies were no longer subject to the regulation of gender balance in public boards and commissions.

Important parts of Norwegian gender equality policies have been oriented towards state control, rules and regulations, while policies of deregulation and liberalization is rationalized by the necessity to

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<sup>14</sup> Public commissions constitute a central part of Norwegina the corporatist system. The coporatist system consists of structural arrangements for expertise exchange, involvement and negotiations between the state/municipalities and the social partners and other key civil society organizations. Public commissions plays a particularly significant role in policy preparation in Norway and Finland (Wollendorp, 2011).



reduce government regulation and power of business and industry (Derthick & Quirck, 1985).<sup>15</sup> Thus, typically, neoliberal policies of deregulation and gender quota policies appear contradictory. A national distinctive effect of deregulatory reforms was that many state-owned companies were no longer subject to the quota regulation in article 21 in the Gender Equality Act. The diminishing scope of the gender quota legislation as a consequence of deregulation is considered in the accounts given by the government for an expansion of article 21 (White paper, Ministry of Children and Family, 1999).<sup>16</sup>

A clash between the logic of the gender equality and the logic of market competition opened a window of opportunity and made salient the possibility of an expansion instead of confinement of the scope of the gender quota legislation.

Two additional factors are relevant. First, in Norway the state is a prominent owner and actor in economic life, and in particular among the listed companies registered on the Oslo Stock Exchange. More than 40 percent of the ownership on the Oslo Stock Exchange is publicly, mainly state, owned.<sup>17</sup> The legitimacy of state expansionary policy was probably strengthened by this fact. Second, simultaneously as the debate on gender quotas for corporate boards arose, there were other movements in the direction of expansion of the impact field of gender equality policies in working life. Until the revision of the Gender Equality Act in 2002, the pro-activity clause of the Act had been restricted to the public sector, from 2002 the duty to promote gender equality includes all employers as well as the social partners (The Gender Equality Act, § 1a). Hence, at the turn of the millennium, mandatory gender quotas on corporate boards and the expanded pro-activity clause can be interpreted as expression of movements in the borders between the state and the economic field.

The argument this far is that deregulation policies emerged as an exogenous threat, of which an unintended effect would be that the boards of publicly owned companies would not be ruled by article 21 in the Gender Equality Act. This tension between gender equality and deregulation became critical in relation to the revision of the Gender Equality Act which was first sent to consultation to the involved parties in 1999. Thus I argue that a window of opportunity was opened for expansion instead of delimitation of the scope of mandatory gender quotas on corporate boards. However, a window of opportunity requires that there are actors to seize the opportunity and push towards political reform. The importance of political agency is what we are going to deal with in the next session.

## **Discursive context**

This part will first emphasize the significance of the heated “women to management” debate in the 1990s for preparing the ground for a policy situation searching for policy initiatives to promote gender balance in top positions in the business world. The second part provides an analysis of the main arguments and positions in the public debate on the adoption of gender quotas for corporate boards.

### ***Women to Management***

The “women to management” debate was high on the public agenda in the 1990s in Norway, as well as in most of the industrialized world. To some extent the “women to management” debate hit Norway particularly hard by the way it interfered with a national self-image of being particularly successful in affairs of gender equality. The relatively few women in top positions were perceived as a paradox to

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<sup>15</sup> According to Vogel (1996) considerable confusion exists over the term ‘deregulation’. Deregulation can be described as “the reduction and elimination of government regulations” and liberalization as “the introduction of more competition within a market” (Vogel, 1996:3).

<sup>16</sup> Consultation proposal from the Ministry of Children and Family Affairs 1999. (Høring: Forslag til endringer i likestillingsloven, Barne og familiedepartementet, 1999).

<sup>17</sup> <http://vpsinfo.manamind.com/sectorstats/index.do?l=no>

the gender equality achievements of the country. In fact all the Scandinavian countries are characterized by a discrepancy between a relatively balanced representation of men and women in political decision-making on the one hand, and strong gender segregation horizontally and vertically in the labour market (Charles & Grusky, 2004). Some studies indicate in fact that the representation of women in top management in business and industry is higher in many European countries and the U.S., than in the Scandinavian countries (Birkelund & Sandnes, 2003). While others show that male dominance in top positions in business is a general trend characterized by surprising similarity across countries.<sup>18</sup> At the turn of the millennium, parallel power and elite studies showed that women were especially poorly represented in top management in business in all the Scandinavian countries (Teigen & Wängnerud, 2009; Niskanen, 2011). Norwegian data shows that the business elite express more negative attitudes towards gender equality policies in comparison with the other elite groups. Measures to promote gender equality are less institutionalized in business compared to in the state and municipal sectors (Skjeie & Teigen, 2003). This situation consisting of a poor representation of women in senior positions in economic life combined with a lack of will within business to adopt initiative to promote gender equality formed an important backdrop for why improving gender balance in the board rooms became a pressing political issue. Besides what appeared as a denial to act within business probably sharpened the political will to act on behalf of the economic sphere and instruct private business to adopt effective gender equality measures. Consequently, the long established and generally accepted claim for self-regulation of private businesses was challenged by a growing claim for state regulation and governance to promote gender balance. From the mid-1990s a debate emerged over whether the gender balance of corporate boards could be regulated in the same manner as public boards and commissions were through article 21 in the Gender Equality Act.

### ***The public debate on gender quotas for corporate boards***

The institutionalization of party quotas and legal quotas for public commissions were certainly important for why the introduction of gender quotas for corporate boards appeared applicable. Nonetheless, even though gender quota policies have been more widely used in Norway than probably most other countries, they provoke opposition. The debate prior to the adoption of gender quotas for corporate boards was high heated and polarized into camps of opponents and supporters. The public and political debate over the gender quota for corporate boards have been studied through analysis of the media debate (Cvijanovic, 2009) and through analysis of the policy documents prepared by the government and the responses of organized interested in the consultative processes (Teigen, 2002; Evenrud, 2010; Engelstad, 2011; Sørensen, 2011).

The participants in the public debate on gender quotas for corporate boards were primarily people in top positions. The main voices against gender quotas for corporate boards were expressed by corporate managers and owners and representatives of employer's organizations, while the supporters were represented mostly by politicians, high-ranked civil servants, as well as from representatives connected to the gender equality machinery. The supporting politicians came from a broad spectrum of political parties, mainly the Norwegian Labour Party, the Conservative Party and the Christian Democratic Party. Opponents among politicians mainly represented the Progress Party and the Conservative Party, but there were few participants from the opponents' side representing the political parties. The women's organization did not take an active part either in the newspaper debate or in the consultation process.

The central arguments in the public debate represented a wide range of opinions. Still they can be divided into three main types of argument, about justice, utility and democracy.

*The justice argument:* The proponents of gender quotas for corporate boards argued that gender balance in economic decision-making positions concern issues of justice, often without specifying

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<sup>18</sup> <http://20-first.com/wp-content/uploads/20-first-2014-Global-Gender-Balance-Scorecard.pdf>.

when “justice” is relevant in this context. Albeit, argued that justice is a matter of redistribution of resources, and the claim is that positive action/gender quota is a necessary tool to achieve gender equality. The strong male-dominance in Norwegian corporate boards and in economic decision-making in general, is then posited as unacceptable, and as a possible indication of unfair treatment of women.

The main counter argument based on justice argued that regulation of the gender composition would not be fair. Recruitment to corporate boards should not be based on the gender of candidates. The owners should have the right to select the candidates they find most suitable to sit on the board. Gender quota regulations are considered illegitimate unequal treatment and as discrimination against men.

*The utility argument:* Arguments about utility and profitability were particularly central as arguments in favour of gender quotas for corporate boards. The claims were that since the total talent potential of a population is distributed fairly evenly between men and women, male dominance in corporate boards indicates an under-utilization of women’s skills. This argument insinuates that businesses perform better if they include women. Simultaneously interesting by the way it uses the rhetoric of business life and thus appears more unassailable.

The main counter arguments based on utility claim that gender quotas on corporate boards would lead to less competent women replacing more competent men. This argument is grounded on the opinion that not enough women have the relevant experience, and that the recruitment of qualified women have to start earlier and further down the organizational hierarchy to create a pool of well-qualified women. Moreover a related argument against the gender quota reform has been that the gender quota legislation would lead foreign investors to be less inclined to invest in Norwegian companies, with the consequence that Norwegian companies would lose competitive advantage. The debate on effects of gender quotas for business performance is ongoing. Some analysis finds a negative effect (Ahern & Dittmar, 2012), other non-effect or a moderate positive effect for the in advance poorest performing companies (Dale-Olsen et al., 2013)

*The democracy argument:* Arguments concerned with democracy were also central for the governments’ justifications of the gender quota reform. The argument was that gender balanced participation in economic decision-making is crucial for the Norwegian democracy, and in particular the importance of equal rights to participation in the boards of the biggest and most influential companies, where the state often is a major owner. In addition it was argued that regulation of gender balance of corporate boards implied an enlargement of industrial democracy.

A main counter argument concerned with democracy hold that gender quota regulations were at stake with the principles of shareholders democracy. The claim has been that gender quota regulations would hinder owners’ democratic rights to recruit the candidates they find the most suited, as well as interfere with the election process. The argument is that the owners invest and risk their own money and should therefore have the right to decide who they want to represent them on the board.

The debate in advance of the gender quotas for corporate boards’ reform was, as mentioned, heated. The debate did not comprise of an active participation of diverse actors, rather it was mainly a top-down process. Civil society actors, as the women’s organizations, did mainly not participate in the debate. The position of the women’s organizations has been weak throughout the last couple of decades, and this was probably not viewed as an issue with mobilizing potential. Rather gender quotas for corporate boards were viewed as an issue concerning elite levels of the society. After the implementation of gender quotas for corporate boards there has been little public attention in Norway on the reform. The elitist aspects may be important for why the debate suddenly disappeared from the public agenda. As soon as the quota legislation was implemented, and the statistics showed that the requirement of at least 40 percent of each gender represented on the boards were met, the debate more or less disappeared from the public eye.

### *The policy agency context*

The policy process lasted about a decade from the first government motion was sent to the consultative bodies in 1999 until implementation of mandatory gender quotas in 2008. The first initiative to introduce a gender quota regulation for corporate boards<sup>19</sup> came in the consultation audit regarding a major revision of the Gender Equality Act in 1999 by the minority Conservative-Centre government coalition (Bondevik I).<sup>20</sup> The minister in charge was Valgerd Svarstad Haugland in the Ministry of Children and Family Affairs, from the Christian Democratic Party. The gender quota motion was withdrawn however, due to reasons of a need of legal clarification.

A new motion was sent on consultation by the Labour Party government, Stoltenberg I, in 2001.<sup>21</sup> Some important changes can be witnessed in this proposition in comparison to the white paper from 1999. First the gender quota regulation should be regulated through the Company's Act, and not as in the previous round through the Gender Equality Act. Second, the companies subject to the legislation was the public limited companies in addition to the public companies (state and inter-municipal companies), while the 1999 proposition included all companies irrespective of type of registration. Third, the gender target was changed from at least 25 percent of each of the genders to 40 percent. The final adoption of a quota ruling in the Company's Act was based on the motion from 2001 and presented to parliament by a new Conservative-Centre government coalition (Bondevik II)<sup>22</sup> in 2003 (Proposition to parliament, Nr. 97 (2002-2003)).<sup>23</sup> When the new gender quota law was passed in parliament it received broad political support; all parties except for the Progress Party, voted in favour of the ruling.

Paying attention to the temporal context is about sequences and timing, as well as about political actors' ability to seize the moment. In the policy process that led to the adoption of gender quotas for corporate boards, political agency was of crucial importance at two particular points in time. First, two ministers from the Christian Democratic Party replacing each other in the position as ministers of gender equality, played a significant role for preparing the case in the government. Second, for making the gender quota reform to be passed in parliament, the minister from the Conservative Party in position as minister of trade and industry played a crucial role.

In 1999 Minister of Children and Family Affairs, Valgerd Svarstad Haugland (1997-2000), from the Christian Democratic Party, proposed gender quotas on Norwegian corporate boards to be included in the Gender Equality Act. This proposition was part of the preparation of the major revision of the Gender Equality Act.

The most obvious reason for why Minister Haugland proposed such a radical and controversial reform was the fact that gender equality was part of her portfolio as minister of Children and Family Affairs. The issue became salient in connection with the process leading up to the revision of the Gender

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<sup>19</sup> The motion was to expand the functioning sphere of Article 21 in the Gender Equality Act to include also all company boards, however only requiring at least 25% of each gender, and not 40% which was the case for publicly appointed boards, etc. (White paper from the Ministry of Children and Family Affairs, 1999)

<sup>20</sup> A government coalition composed of the three parties in the middle of the party spectrum in Norwegian politics, the Center Party, The Liberal Party and the Christian Democratic Party.

<sup>21</sup> White paper from the Ministry of Children and Family Affairs 2001: Gender representation in public limited companies, state limited companies, and state businesses, etc., proposal to change the Company's Act and some other acts. (Høring: Kjønnsrepresentasjon i styret i allmennaksjeselskaper, statsaksjeselskaper og statsforetak, m.v. – forslag til endringer i allmennaksjeselskapsloven og i enkelte andre lover. (BFD, 2001).

<sup>22</sup> A Conservative-Center government coalition composed of the Conservative Party, the Liberal Party and the Christian Democratic Party.

<sup>23</sup> Proposition to parliament, Nr. 97 (2002-2003). Government proposition on the revision of the Company's Act, Ministry of Trade and Industry. (Ot. prp. nr 97 (2002-2003). Om lov om endringer i lov 13. juni 1997 nr. 44 om aksjeselskaper, lov 13. juni 1997 nr. 45 om allmennaksjeselskaper og i enkelte andre lover (likestilling i styret i statsaksjeselskaper, statsforetak, allmennaksjeselskaper mv.). Oslo: Næringsdepartementet.)

Equality Act. The first record where gender quotas on corporate boards is suggested as a legal possibility is found in an initial letter from the Gender Equality Ombud, Anne Lise Ryel, in connection with the preparation of the revision of the Gender Equality Act. The Gender Equality Ombud, Anne Lise Ryel, and the Director of the Centre for Gender Equality, Ingunn Yssen, was central in launching the possibility of legally regulating the gender composition of corporate boards, in the first place (Sørensen, 2011). Women and management was, as earlier mentioned a hot public issue at that time. Actually one of the few central gender equality issues of the Christian Democratic Party, a party generally more concerned with traditional family values rather than gender equality (Vik, 2011). Another concern relates to Minister Haugland more personal motives at that particular point in time. In many ways, she was badly in need of a powerful gender equality issue to balance her reputation at that time of being anti-gender equality. Her “bad” reputation was due to her central position and responsibility for introducing the cash-for-care reform, a core issue of the Christian Democratic Party, representing their emphasis on traditional family values.<sup>24</sup> There was an intense and heated debate surrounding the cash-for-care initiative, which came into force in 1998. A main argument in the public debate was that the arrangement meant a backlash for the Norwegian gender equality project (Ellingsæter, 2006). An interpretation of Minister Haugland’s innovative endeavours of introducing gender quotas for corporate boards was that she was in need to strengthen and confirm her authority in relation to gender equality policies. However, in retrospect her role has been almost forgotten.<sup>25</sup>

After the possible regulation of gender balance in corporate boards was launched it was supported strongly by important stake-holders. In between the initial phase and the final adoption, the legislation was prepared in silence. The Labour Party continued the political and legal assessment process and left its mark on it by changing the target from at least 25 to 40 percent representation of each gender. By this, it was emphasized that such a reform would be part of the Norwegian gender quota tradition. The placement of the legal ruling was however changed from the Gender Equality Act to the Company Act.

The second and final phase has been hailed as paramount in international press,<sup>26</sup> especially the final acts and moves of the Minister of Trade and Industry, Ansgar Gabrielsen from the Conservative Party. Shortly before the law proposition was to be discussed by the government, Gabrielsen gave an interview to the (then) largest Norwegian newspaper (VG 22.2.2002), where he uttered that he was “sick and tired of the male dominance in business life”.<sup>27</sup> This was an unexpected and vigorous initiative from a male politician from the Conservative Party, who enjoyed high esteem within business. The uncertainty regarding whether the gender quota law would finally be passed in parliament, rested on the rather heavy opposition that was expressed against the gender quota law-proposition, especially from within economic life. The Conservative Party has a strong tradition of being attentive to the opinions within the business sector, although there were internal party controversies on the gender quota issue. Gabrielsen’s sudden initiative in favour of the quota law in the final phase of the political process, and his claim of the problems of male dominance in Norwegian economic life, probably were decisive in the final government round. In the final phase of the political process, this move probably managed to tip a divided government in favour of the quota legislation (see Magma, 2010). His main concern were the human resource/utility argument, that more women were “good for business”, but a speculation have been that he was among the Conservative Party cabinet minister with the closest alliance to the cabinet ministers from the Christian Democratic Party.

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<sup>24</sup> The cash benefit reform provided all families with children between 1 and 3 years with a monthly allowance, similar to the cost of state subsidies per child in state subsidized day care.

<sup>25</sup> The same goes for her successor Laila Dāvøy, Minister of Children and Family Affairs (2001-2005), also from the Christian Democratic Party. Nonetheless, the fact that the first political initiative came from a relatively unexpected source was probably important for the further proceedings.

<sup>26</sup> See i.e. The Economist March 13, 2010, Time Magazine, April 26, 2010, Der Spiegel, July 8, 2010

<sup>27</sup> <http://www.vg.no/nyheter/innenriks/artikkel.php?artid=3024189>

Anyway, for the second time the initiative was pushed forward from where it was not expected. Finally only the Member of Parliament (MP) of the Progress Party voted against it, although some of the Conservative Party's MPs probably felt obligated by the conclusion of Minister Gabrielsen and the government. Nonetheless, a long political process had been in motion before Minister Gabrielsen entered the stage. The importance of his role for the final result, the adoption of mandatory gender quotas on Norwegian corporate boards tends to be exaggerated. Still, no one really knows what would have happened if it were not for his manoeuvres in the final phase of the political process.

## **Discussion**

Women's participation in decision-making assemblies have for long been a vital concern for national and international gender equality policy. The content of the "participation" concept is changing, however, from women's right to vote and hold political office to women's equal participation with men in political decision-making (Krook & True, 2012). This evolution is witnessed through the last couple of decades spread of gender quota arrangements around the world to promote and secure women's representation in politics (see Dahlerup & Freidenvall, 2005; Krook, 2008, 2009; Franceschet & Piscopo, 2013).

Time or the sequencing of events, the Norwegian gender equality policy institution and policy agency are three factors of great importance to understand the national preconditions and processes behind the making of gender quotas for corporate boards in Norway.

The importance of time and sequencing of events in connection with the making of gender quotas for corporate boards in Norway relates mainly to three processes. First, the high profiled and heated media debate on women to management throughout the 1990s constitutes an important background for why policy-makers started to search for policy initiatives to promote gender balance in economic decision making positions. Especially the discrepancy between the country's self-image of being particularly successful in affairs of gender equality and the persistent male dominance in top positions in the economy, created the basis for political awareness about this as a problem and for promoting policy innovations. Second the fact that the Gender Equality Act was to be revised constituted a relevant departure point for innovative thinking about the possibilities and limitations of gender equality legislation. In this initial phase central actors within the gender equality machinery played important roles as participants in the preparation of revision of the Gender Equality Act. Thirdly, deregulation processes fuelled worries about the gender effects of neoliberal policies, and brought to the fore policies to counteract the limited scope of article 21 in the Gender Equality Act.

The adoption of gender quotas for corporate boards can be interpreted as a «natural» prolonging of a Norwegian gender equality policy institution. However, at every step of the political process great uncertainty were connected to what route would be chosen and what would be the result of the political process. To some extent, the adoption of gender quotas for corporate boards can be analysed simultaneously as a continuation and a break with the Norwegian gender equality policy institution. On the one hand, gender quotas for corporate boards builds on a policy legacy of adopting gender quota. On the other hand, the gender quota legislation for corporate boards emerged as a break with an established demarcation line, where state imposed gender equality regulations were reserved to the spheres of the public sector. Most likely, gender quotas, or at least the idea that this kind of legislation was possible, came to the fore as a reaction to the threat deregulation of publicly owned enterprises constituted in regard to gender equality. Thus, gender quotas for corporate boards came as a response to deregulation policies, that otherwise would lead to a diminishing of the scope of the existing quota ruling in the Gender Equality Act.

A third and important factor concerns the role of political agency. Significant reforms are often made possible through deviance from the ideological main path, typically with the consequence that large reforms and new directions of policies are carried through in a smoother manner than otherwise would

have been the case. The ways in which powerful leaders can prepare the ground for significant changes due to sudden and vigorous initiatives are sometimes referred to as a “Nixon goes to China” dynamic.<sup>28</sup> In this case, a progressive gender equality reform was proposed by a centre-conservative government coalition. This constituted a breach with an established “division of labour” within Norwegian politics, where the policies of gender equality has been dominated by the left wing parties, while the interests, rights and self-regulation of business and private owners has been the concern of the right wing parties. Thus, it was sensational that a bold gender quota initiative was first launched by a minister from the Christian Democratic Party. Many of the political actors who are normally sceptical of regulations and gender equality initiatives may have become somewhat confused and more hesitant than they otherwise would have been if the law reform had been issued by the Labour Party, generally acknowledged for being pro-regulations and pro-gender quotas. This bewildering situation continued by the second unexpected move in this political process, staged by Minister Gabrielsen, with a strong reputation for being a solid, conservative Minister of Trade and Industry, with any prior public engagement in matters of gender equality. Many have speculated about his motives. He argues himself that he was convinced that more women would be “good for business” (Magma, 2010). Anyway, his role contributed to create a basis for the broad majority behind the mandatory gender quota on corporate board proposition.

### **Concluding remark**

Women’s participation in decision-making assemblies have for long been a vital concern for national and international gender equality policy. The content of the “participation” concept is changing, however, from women’s right to vote and hold political office to women’s equal participation with men in political decision-making (Krook & True, 2012). This evolvement is witnessed through the last couple of decades spread of gender quota arrangements around the world to promote and secure women’s representation in politics (see Dahlerup & Freidenvall, 2005; Krook, 2008, 2009; Franceschet & Piscopo, 2013). It may however be argued that gender balance in political decision making concerns fundamental issues of justice and democracy, while gender balance in economic decision making primarily concerns issues of anti-discrimination and individuals career opportunities – the right to an interesting job (c.f. Phillips, 1995: 64-65). This distinction builds on the presupposition that it is in fact feasible to operate a clear demarcation between the sphere of politics and the economy. However, it can be argued that ongoing society changes, i.e. related to neoliberalism, and even maybe more acute, interfere and alters the characteristics of different society spheres. New debates are emerging scrutinizing economic decision making and addressing questions about what characterizes those who manages economic power, why are men pervasively dominating – and how did they get access to this kind of power positions – and do they manage these positions in the interest for a sustainable society? These questions relate to the evolving gender equality framework in Europe and other parts of the world, where the ambitions and visions for gender equality may be changing into a paradigm where women’s full citizenship includes gender parity in all spheres of power (Rubio-Marín, 2014).

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<sup>28</sup> “Nixon goes to China” refers to incidents where significant changes occur as the result of the enhanced legitimacy possessed by powerful leaders, as well as the windows of opportunity which may open when politicians foster unexpected initiatives. This is what happened in 1972 when President Nixon went to China and met with Chairman Mao, illustrating a breakthrough for a peace process in the relationship between the two countries.

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