

The European Union's Gender Quota Proposal: Evidence of Shifting Forms of Governance

Travis Southin

Abstract: On November 14 2012, the European Union (EU) issued a proposal to implement a directive obligating publicly listed companies to meet a 40 percent quota for female representation on their boards of directors by 2020. This proposal is evidence of a break with historically dominant forms of governance employed in the policy areas of employment equality and corporate composition. Accordingly, this paper elucidates the proposed gender quota's impact on the dominance of three forms of governance employed in the policy areas of employment equality and corporate composition, namely: regulatory, coordination, and Gender Mainstreaming forms of governance. This analysis yields the conclusion that the success of Gender Mainstreaming as the driving force of the proposal also facilitated a shift from coordination towards regulatory forms of governance in the two policy areas. The true significance of these findings has yet to be determined as this proposal may mark either a permanent shift or an historical anomaly in EU governance in the policy areas of employment equality and corporate composition.

On November 14th 2012, the European Commission announced a proposal to implement a directive obligating publicly listed companies to meet a 40 percent quota for female representation on their boards of directors by 2020 (hereinafter 'the proposal'). The proposal's intersection of employment equality and corporate composition policy areas presents a unique opportunity to explore the macro-level policy-making implications for the European Union (EU), as opposed to a specific evaluation of the merits of the proposal itself. To accomplish this macro-level policy-making analysis, this article relies on James Caporaso's notions of forms of governance. 'Governance' is differentiated from 'government' because it "refers to collective problem-solving in the public realm. It directs attention to the problems to be solved and to the processes associated with solving them, rather than to the relevant agents or to the nature of the political institutions associated with these processes."³¹¹ An analysis section will follow brief summaries of the current proposal and of historical EU policy-making initiatives in the relevant policy areas of employment equality and corporate composition. This analysis will assess the proposal's impact on existing patterns of forms of governance employed by the EU in the policy areas of employment equality and corporate composition, namely: regulatory, coordination, and Gender Mainstreaming forms of governance. Regulatory governance involves the Commission issuing binding directives whereas the coordination form of governance involves developing soft-law best practices. Gender Mainstreaming is a form of governance in which policies are actively measured against considerations of differential impact based on gender. The proposed gender quota suggests a break with historically dominant forms of governance as the success of Gender Mainstreaming as the driving force of the proposal also facilitated a shift from coordination towards regulatory forms of governance in the policy areas of employment equality and corporate governance.

Gender Quota Proposal

On November 14th 2012, the European Commission announced an ambitious proposal to raise female representation on the boards of directors of publically listed European companies. The proposal opted for a more interventionist approach in the form of a mandatory quota. The details of the proposal were succinctly outlined in the following press release:

- The Directive sets a minimum objective of 40 percent by 2020 for members of the under-represented sex for non-executive members of the boards of publicly listed companies in Europe, or 2018 for listed public undertakings.

Travis Southin obtained his Bachelor of Arts (Honours) in Law, with a concentration in Business Law and a minor in Political Science, from Carleton University in 2013. During his undergraduate program, he represented Carleton at national tournaments as a member of both the Carleton University Debating Society and the Carleton Law Society's Mooting Team. His areas of interest include law, international affairs and public policy.

³¹¹ James Caporaso, "The European Union and Forms of State: Westphalian, Regulatory or Post-Modern," *JCMS: Journal of Common Market Studies*, vol. 34, no.1, (March, 1996): 29-52, 32.

- The proposal also includes, as a complementary measure, a "flexi quota": an obligation for listed companies to set themselves individual, self-regulatory targets regarding the representation of both sexes among executive directors to be met by 2020 (or 2018 in case of public undertakings). Companies will have to report annually on the progress made.
- Qualification and merit will remain the key criteria for a job on the board. The directive establishes a minimum harmonization of corporate governance requirements, as appointment decisions will have to be based on objective qualifications criteria. Inbuilt safeguards will make sure that there is no unconditional, automatic promotion of the under-represented sex. In line with the European Court of Justice's case law on positive action, preference shall be given to the equally qualified under-represented sex, unless an objective assessment taking into account all criteria specific to the individual candidates tilts the balance in favour of the candidate of the other sex. Member States that already have an effective system in place will be able to keep it provided it is equally efficient as the proposed system in attaining the objective of a presence of 40 percent of the under-represented sex among non-executive directors by 2020. And Member States remain free to introduce measures that go beyond the proposed system.
- Member States will have to lay down appropriate and dissuasive sanctions for companies in breach of the Directive.
- Subsidiarity and Proportionality of the proposal: The 40 percent objective applies to publicly listed companies, due to their economic importance and high visibility. The proposal does not apply to small and medium enterprises. The 40 percent objective is focused on non-executive director posts. In line with better regulation principles, the Directive is a temporary measure and is set to expire in 2028.³¹²

The 'background' section of the proposal outlines the following events which acted as catalysts for the proposal. They first point to the findings of the Commission's March 2012 progress report titled "Women in economic decision-making in the EU" which found that corporate boards in the EU are characterised by persistent gender imbalances, as evidenced by the fact that only 13.7 percent of corporate seats in the largest listed companies are currently held by women (15 percent among non-executive directors).³¹³ In response to the reports' bleak findings, the Commission organized a public consultation to gather stakeholders' views from March 5 to May 28, 2012. Of the total number of 485 replies, 161 were sent by individual citizens and 324 were sent by organizations. These included thirteen Member States, three regional governments, six cities or municipalities, seventy-nine companies (both large listed companies and Small and Medium Enterprises [SMEs]), fifty-six business associations at EU and national level, fifty-three Non-Governmental Organizations (NGOs) (most of them women's organizations), trade unions, professional associations, political parties, associations of investors and shareholders, actors involved in corporate governance and others.³¹⁴ While some, predominantly the business stakeholders, favoured continued self-regulation, other stakeholders, including trade unions, women's organisations, other NGOs and a number of regional and municipal authorities, advocated a more ambitious approach mirroring the binding objectives in the proposal.³¹⁵ The Commission also cites institutional support as another catalyst. For example, the European Parliament's 6 July 2011 Resolution on women and business leadership (2010/2115(INI)) called for companies and Member States to increase female representation of women in decision-making bodies and invited the Commission to propose legislative quotas to attain the critical threshold of 30 per cent female membership of management bodies by 2015 and 40 percent by 2020.³¹⁶ Additionally, the Commission justifies taking the binding directive route in light of the failure of EU Justice Commissioner Viviane Reding's March 2011 challenge to publicly-listed companies in Europe to voluntarily increase the number of women in their boardrooms by signing the "Women on the Board Pledge for Europe." The pledge called on companies to commit to raising female representation on their boards to 30 percent by 2015 and 40 percent by 2020. However, after a year, only twenty-four companies across Europe had signed the

³¹² European Commission, *Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*, COM(2012) 614 final, (Brussels: December 14, 2012), retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF>.

³¹³ *Ibid.*, "Women On Boards: Commission Proposes 40% Objective," (November 14, 2012), retrieved from http://europa.eu/rapid/press-release_IP-12-1205_en.htm.

³¹⁴ *Ibid.*, *Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*, 5.

³¹⁵ *Ibid.*, 7

³¹⁶ *Ibid.*, 5

Pledge.³¹⁷ Finally, the Commission pointed to the fact that eleven Member States (Belgium, France, Italy, the Netherlands, Spain, Portugal, Denmark, Finland, Greece, Austria and Slovenia) have introduced legal instruments to promote gender equality on company boards, with eight of these countries' legislation covering public undertakings. Meanwhile, a further eleven EU countries have neither self-regulation measures nor legislation in place. The Commission stressed that, "this legally fragmented approach risks hampering the functioning of Europe's Single Market, as different company law rules and sanctions for not complying with gender balance laws can lead to complications for businesses and have a deterrent effect on companies' cross-border investments".³¹⁸

Employment Equality

Gender equality in employment within the European Union is based on the equal treatment and equal opportunities principles addressed through anti-discrimination laws and regulations issued as directives Article 226 of European Commission Treaty gives the Commission the right to start an infringement procedure if it considers that a Member State has failed to fulfill a legal obligation. After the Commission sends a reasoned opinion on the matter after giving the infringing Member State the opportunity to submit its observations, it can bring the matter before the European Court of Justice if the Member State does not comply with the opinion within the period laid down by the Commission.³¹⁹ The EU's first foray into employment equality policy-making (and gender equality policy-making in general) was the equal pay provision in article 119 of the Treaty of Rome (1957). This provision came as a largely unintended side effect of the negotiations to establish the European Economic Community. France, who demanded its inclusion, was concerned that being the only nation with equal pay policies would create a potential barrier to fair and equal competition among member states.³²⁰ This guarantee of equal pay for equal work was used to support national equal pay campaigns and was the precursor to subsequent EU directives in the 1970s and 1980s which expanded women's rights policies in areas beyond employment, including: tax and social security measures, child care facilities, education, and training opportunities.³²¹ Recent policy developments involve proposals to support a better work-life balance. On average, women spend 25.5 hours per week in domestic and family work and 38 hours per week in paid employment, while men spend only 8 hours a week in domestic and family work and 45.5 in paid employment.³²² To improve the work-family balance for women, the EU has proposed that Member States increase the minimum maternity leave from fourteen to eighteen weeks without loss of earnings. The European Commission has also stressed the importance of directing structural funds to the development of quality care services for children.³²³ While these are significant initiatives, the key words are 'proposed' and 'stressed'. As will be discussed in the section on Coordination policy-making, the EU's initiatives in employment have shifted towards soft law cooperation rather than regulatory directives.

Corporate Composition

This area of policy-making comprises regulation regarding the structure, responsibilities, and agents of the internal organs of European publically listed companies. The legal basis for EU initiatives to harmonize company law was provided by Article 54(3)(g) of the Treaty of Rome (now Article 44) which allows the EU to regulate, 'to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms...with a view to making such safeguards equivalent throughout the Community.'³²⁴ Since then, various initiatives to harmonize company laws have been proposed with mixed success. The successes have taken the form of providing options to companies such as the European Community Statute's

³¹⁷ Ibid, "Women On Boards."

³¹⁸ Ibid.

³¹⁹ Cecilia Lavina, and Norma M. Riccucci, "Exploring Gender Mainstreaming in the European Union," *International Journal of Public Administration*, vol. 35, no. 2 (January, 2012): 122-36, 128.

³²⁰ Rachel A. Cichowski, "No Discrimination Whatsoever: Women's Transnational Activism and the Evolution of EU Sex Equality Policy," in ed. Nancy A. Naples and Manisha Delai, *Women's Activism and Globalization: Linking Local Struggles and Transnational Politics*, (London: Routledge, 2002): 222

³²¹ Silke Roth, *Gender Politics in the Expanding European Union: Mobilization, Inclusion, Exclusion* (New York: Berghahn Books, 2008), 3.

³²² European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, *Report on equality between women and men*, (Brussels: January, 2008), retrieved from, <https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC4QFjAA&url=http%3A%2F%2Fec.europa.eu%2Fsocial%2FblobServlet%3FdocId%3D2033%26langId%3Den&ei=EdcZUuaK-MTW2QXlGgBg&usq=AFQJCNFtEvmAK-BoN6Eegp175YYntqEog&sig2=hjOdq-kST6-n8DfKx13fBg&bvm=bv.51156542,d.b2l>, 33.

³²³ Lavina & Riccucci, 127.

³²⁴ Dermot McCann, *The Political Economy of the European Union* (Cambridge: Polity Press, 2010), 82.

framework for the European company that allows a company to adopt a structure to operate according to a single set of corporate laws across the EU. This enabled companies to cut costs by no longer needing to maintain separate boards of directors and accounting practices across the countries in which they operate.³²⁵ However, these successes, “cannot disguise the fact that many of the EU’s more ambitious efforts at legal harmonization have met with failure.”³²⁶ This is particularly so for efforts to impose specific standards regarding corporate composition. The proposed Fifth Directive on company law sought to lay down a European standard concerning the structure, powers and obligations of the organs of the public company including the board of directors. First introduced in 1971, intense political conflict led to its amendment on several occasions and eventually to its withdrawal by the Commission in 2001.³²⁷ The major disagreements reflected the multiplicity of national regulatory approaches and were unable to reach consensus in regards to the structure of the boards of directors and employee rights.³²⁸

Regulatory Form of Governance

The Development of the Regulatory Form of Governance

The regulatory mode of governance has been a hallmark of the European Union, prompting one leading scholar, Giandomenico Majone, to identify the EU as primarily a regulatory state. He argued that the EU has achieved the most successful integration thanks to the issuing of harmonization directives to remove barriers to the single market.³²⁹ Flowing from the Commission’s near complete jurisdiction on Competition policy, the Commission, “specializes in that which it is permitted to do: the elaboration of its regulatory powers and the policies and structures that go along with these powers.”³³⁰ This ability to widely regulate the harmonization of standards pertaining to the single market despite having a limited budget is facilitated by one of the key strengths of the regulatory mode of governance: “. . . [that] the costs of regulation are borne directly by the firms and individuals who have to comply with them . . . compared with these costs, the resources needed to produce the regulations are negligible.”³³¹ For example, the 1986 Single European Act (SEA) commitment to realizing the single market by 1992 allowed for Regulatory policies of mutual recognition of product standards to overcome national purity laws.

Regulatory Form of Governance in the Policy Areas of Employment Equality and Corporate Composition

The Commission’s regulatory mode of policy-making has always played a key role in the framing of European employment equality directives, particularly through the Commission’s emphasis on facilitating the single market. France’s insistence on the inclusion of equal pay provisions in the Treaty of Rome out of fear of unequal business conditions was an early indication of the politically charged economic backdrop that has accompanied EU employment equality policy-making initiatives to this day. The form of governance regarding employment equality particularly with regards to implementation, has taken a decidedly more soft law approach. Regarding implementation, it is generally accepted that since the Treaty of Rome, EU employment equality policies have, “moved from hard law (directives and regulations) to a clear level of coercion to soft law and policy learning.”³³² As Majone notes, this trend is empirically evident in the fact that the EU shows little progress in some areas such as social policy, labour policy, energy policy and foreign security policy, while substantial advances in others such as the single market, competition, technical standards and the environment.³³³ Employment equality policy’s shift towards the coordination form’s soft law approach to governance is will be discussed in the following section on the coordination form of governance.

For the policy area of corporate composition, the regulatory form of governance has not been particularly effective. The early successes of Commission directives setting standards for takeover bids, reporting of accounts, and mergers symbolize the regulatory form’s ability to govern the external functioning of firms rather than the internal composition of corporate organs such as the board of directors. Indeed, the failure of the Fifth Directive on

³²⁵ Ibid., 83.

³²⁶ Ibid.

³²⁷ Ibid., 84.

³²⁸ Christiaan Timmermans, “Harmonization in the Future of Company Law in Europe,” in eds. Klaus J. Hopt and Eddy Wymeersch, *Capital Markets and Company Law*, (Oxford: Oxford University Press, 2003): 623-39, 626.

³²⁹ Caporaso, 39.

³³⁰ Ibid.

³³¹ Giandomenico Majone, “Independence vs. Accountability? Non-majoritarian Institutions and Democratic Government in Europe,” *Social and Political Science Working Paper*, (European University Institute, 1994): 1-29, 8.

³³² Angelika von Wahl, “The EU and Enlargement Beyond ‘East’ and ‘West’,” in ed. Roth, 22.

³³³ Majone, 8.

company law illustrates the limits of the regulatory form in regulating the powers and composition of different structures of the corporation. This limit has been noted by scholars: “the coverage of harmonization directives in substantive areas of company law has been restricted and much of importance remains entirely a matter of national legal provision.”³³⁴

What Does the Proposal Mean for the Regulatory Form of Governance?

The proposal suggests an effort by the Commission to re-establish regulatory governance over the policy areas of employment equality and corporate composition. The specific 40 percent quota for female directors, backed by binding sanctions for firms who fail to meet it, mirrors the regulatory form of governance which has dominated other policy areas related to the harmonization of the single market. Indeed, the same regulatory mode economic argument for harmonization in the Treaty of Rome is once again echoed by the Commission’s current proposal. As one of the main supporting arguments in its November 4 press release, the proposal asserts that the failure to harmonize national corporate composition laws, “risks hampering the functioning of Europe’s Single Market, as different company law rules and sanctions for not complying with gender balance laws can lead to complications for businesses and have a deterrent effect on companies’ cross-border investments”.³³⁵ Compared to the Open Method of Coordination for employment and the soft laws issued for corporate composition, the proposal’s use of a binding directive connotes a renewed initiative by the Commission to assert its Regulatory mode of governance.

Coordination Form of Governance

The Development of the Coordination Form of Governance

The 1960s ‘OECD technique’ of providing a forum for discussion and sharing of best practices between members was the precursor to the adoption of the coordination mode of governance by the EU. In the early years, this technique was used as a method to transition from nationally rooted policy-making to the EU level as exemplified by the consultations that led to the SEA’s declaration of formal EU legislative powers.³³⁶ Coordination in this early form was more of a ‘justification’ step in the Community’s development towards a regulatory form of governance rather than a standalone form of governance. As Wallace notes however, “latterly we can see this coordination approach being developed not as a transitional mechanism, but as a policy mode in its own right”.³³⁷ The Lisbon Strategy adopted in March 2000 cemented the coordination mode of governance by devising the Open Method of Coordination (OMC). The OMC used soft policy incentives to shape behaviour rather than hard, legally binding methods of compliance in policy areas where EU hard laws could not penetrate. Thus, the engaging of member governments, relevant stakeholders, and civil society in comparing, benchmarking, and continuous voluntary coordination of best practices became valid policy ends in themselves.³³⁸

Coordination Form of Governance in the Policy Areas of Employment Equality and Corporate Composition

The OMC was particularly targeted as a policy-making mode for employment policy. The EU’s involvement in this area of policy has been characterized by providing a forum for stakeholders to compare national, local, and sectoral experiences of labour market adaptation.³³⁹ Contrary to the early EU coordination as a mechanism for developing hard law, the OMC process for employment policy was aimed at developing voluntary best practices from which national governments could shape their own employment policy. This soft law approach has been present in the policy area of employment equality as well. For example, to improve the work-family balance for women, the EU proposed that Member States increase the minimum maternity leave from fourteen to eighteen weeks without loss of earnings. The European Commission also stressed the importance of directing structural funds to the development of quality care services for children.³⁴⁰ As previously noted, while these are significant initiatives, the key words are ‘proposed’ and ‘stressed’. Some feminist theorists argue the heavy reliance on “soft”

³³⁴ McCann, 84.

³³⁵ European Commission, “Women On Boards.”

³³⁶ Helen Wallace, Mark A. Pollack and Alasdair R. Young, *Policy-Making in the European Union*, (Oxford: Oxford University Press, 2010), 99.

³³⁷ *Ibid.*

³³⁸ *Ibid.*, 100.

³³⁹ *Ibid.*

³⁴⁰ Lavina & Riccucci, 127.

policy instruments and voluntary cooperation entail the risk of gender equality becoming everybody's and nobody's responsibility at the same time.³⁴¹

Corporate composition policy has followed the same soft law pattern. One example is the European Community Statute's framework for the European company which allows a company to adopt a European corporate structure to operate according to a single set of corporate laws across the EU. The structure allowed companies to voluntarily adopt the structure to reduce costs of operating across Europe. The specifics of this European company model were devised in consultation with national and corporate stakeholders. Beyond voluntary soft laws designed to give flexibility to corporate composition, there has been little success in the Commission's attempts to create hard laws (as evidenced by the failure of the Fifth Directive).

What Does the Proposal Mean for the Coordination Form of Governance?

While there are aspects of coordination in the proposal, the directive mainly symbolizes a recognition that soft law voluntary coordination may not be able to break through the glass ceiling. The findings of the Commission's report confirm this. Additionally, the failure of Redding's voluntary commitment for companies to reach the 40 percent quota points to the weakness of the 'best practices' approach. Companies are simply not willing to give up control over internal firm composition and promotion decisions. Although the Commission's invitation for stakeholder proposals to shape regulation may signal attempt to strike balance between regulatory and coordination modes of governance, this better matches the early form of coordination as a mechanism for leading to hard law rather than an independent policy-making form of governance to produce soft laws.

Gender Mainstreaming Form of Governance

The Development of the Gender Mainstreaming Form of Governance

Gender Mainstreaming is a form of governance because it, "directs attention to the problems to be solved and to the processes associated with solving them."³⁴² Lavena and Riccucci define the Gender Mainstreaming mode of governance by noting that, "as a policy strategy, gender mainstreaming is concerned with assessing how policies impact the life and position of women and men, and with taking the necessary steps to redress any inequalities that may exist."³⁴³ With gender inequalities as the problem with which policy-making is aimed to address, the authors further note that, "in this sense gender mainstreaming comprises a frame of reference for defining gender equality and a policy tool through which gender issues will be systematically incorporated throughout all government institutions and policies."³⁴⁴ Gender Mainstreaming can be understood as a governance form which attempts to inject gender considerations into other policy-making modes. It has been argued that a gender mainstreaming strategy must be concentrated on the regulatory and economic aspects of redressing gender inequality.³⁴⁵ In 1995, the UN formally adopted Gender Mainstreaming at the Fourth World Conference of Women in Beijing and the same year saw the relatively progressive nations of Sweden, Austria, and Finland join the EU.³⁴⁶ The Treaty of Amsterdam in 1999 aimed at eliminating inequalities through the enforcement of Gender Mainstreaming policies adopted by the Community and the Member States.

Gender Mainstreaming Form of Governance in the Policy Areas of Employment Equality and Corporate Composition

Lavena & Riccucci warn that, "the implementation of an equal opportunity policy across individual Member States is crucial for the success of the mainstreaming strategy across the EU."³⁴⁷ The European Council's European Pact for Gender Equality 2011-2020, adopted on March 7, 2011, acknowledged that, "gender equality policies are vital to economic growth, prosperity and competitiveness and urged action to promote the equal participation of

³⁴¹ Sonia Mazey, "Gender mainstreaming strategies in the E.U.: Delivering on an agenda?", *Feminist Legal Studies*, vol. 10, no. 3 (October, 2002): 227-240, 228.

³⁴² Caporaso, "The European Union and Forms of State: Westphalian, Regulatory or Post-Modern," 32.

³⁴³ Lavena and Riccucci, 122.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Roth, 3.

³⁴⁷ Lavena & Riccucci, 131.

women and men in decision-making at all levels and in all fields, in order to make full use of all the talents.”³⁴⁸ This reaffirmed that each member state has the responsibility of undertaking a gender mainstreaming strategy at the national level through National Action Programs for employment and other areas, in accordance with the legal framework agreed upon in the EU.³⁴⁹ One example of Gender Mainstreaming entering the employment policy-making process can be seen in the Commission’s claim that, “having more women in the workforce will help achieve the target set by the Europe 2020 Strategy—the EU’s growth strategy—to raise the employment rate for women and men aged 20-64 to 75% [sic] by 2020.”³⁵⁰ Despite these EU targets, Lavena & Riccucci point to the slow statistical pace of employment equality improvements as evidence that the Gender Mainstreaming mode of governance has thus far been unsuccessful in the policy area of employment equality. According to Eurostat, women across Europe earned on average 16.2 percent less in 2011 than men, and in some countries the gender pay gap is widening.³⁵¹ This persistent pay gap fifty-two years after inclusion of pay equity provisions in the Treaty of Rome, in addition to the 13.7 percent female representation on boards of directors lends credibility to Lavena & Riccucci’s claim.³⁵²

The policy area of corporate composition has seen relatively little use of Gender Mainstreaming policy-making at the European level. This stands in contrast to several EU Member States who have introduced different types of gender equality laws for company boards (Belgium, France, Italy, the Netherlands, Spain, Portugal, Denmark, Finland, Greece, Austria and Slovenia). Meanwhile, a further eleven EU countries have neither self-regulation measures nor legislation in place.³⁵³ The closest the EU has come to applying Gender Mainstreaming to corporate composition before the current proposal was seen in the European Council’s European Pact for Gender Equality 2011-2020. This pact by member states to try to, “urge action to promote the equal participation of women and men in decision-making at all levels and in all fields,” was a general level commitment, largely aimed at employment equality.³⁵⁴ The top-level positions in firms that fall under the jurisdiction of corporate governance policy seem to be outside the purview of this pact.

What does the Proposal mean for Gender Mainstreaming as an EU Form of Governance?

Lavena and Riccucci’s bleak diagnosis of Gender Mainstreaming’s impact concluded with the charge that the EU has not realized the requirements of successful gender Mainstreaming provided by the United Nations Development Program in their Report on Women’s Political Participation.³⁵⁵ According to the UN, gender mainstreaming’s success requires, “more than just an additional number of women in visible and responsible positions . . . it requires strengthened capacities of both male and female policymakers to implement policies that promote gender equality.”³⁵⁶ The UNDP Report goes beyond an analysis of unequal representation of women in decision-making positions to recommend the following strategies: promotion and strengthening of temporary special measures to promote gender equality; promotions of gender equality in governmental bodies; building on capacities and knowledge available within the women’s movement; advocacy and awareness raising; provision of adequate financial resources and conducting research to support promotion/implementation of mechanisms and strategies.³⁵⁷ The development of this latest proposal has embodied many of these criteria. For example, the 2020 target is a “temporary special measure” and the focus on boards of directors amounts to promoting gender equality in a

³⁴⁸ European Commission, *Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*, 3.

³⁴⁹ Lavena & Riccucci, 131.

³⁵⁰ European Commission, “Women On Boards.”

³⁵¹ Eurostat, “Gender pay gap in unadjusted form,” (June 6, 2013) retrieved from <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tsdsc340>.

³⁵² *Ibid.*

³⁵³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*.

³⁵⁴ Council of the European Union, *Council conclusions on the European Pact for gender equality for the period 2011-2020*, (Brussels: March 7, 2011), retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/119628.pdf, 4.

³⁵⁵ Lavena & Riccucci, 134.

³⁵⁶ United Nations Development Programme, Regional Bureau for Europe and the Commonwealth of Independent States, *Enhancing women’s political participation: A Policy Note for Europe and the Commonwealth of Independent States*, (Bratislava: 2009), retrieved from http://issuu.com/undp_in_europe_cis/docs/enhancing_womens_political_participation, 53-54.

³⁵⁷ *Ibid.*

governmental body with regards to corporate governance. Therefore the proposal is evidence of the ascendancy of the Gender Mainstreaming form of governance.

Conclusion

Helen Wallace asserts that EU policy-making occurs, “in a context of multiple locations for addressing policy issues, ranging across levels from the local to the global and with formal and informal processes . . . European policy-makers have to . . . make choices (‘forum shopping’) as to which [form of governance] they prefer for addressing a particular issue”.³⁵⁸ The current proposal illustrates this “forum shopping” with regard to the policy areas of employment equality and corporate governance with implications for the use of the three governance forms: regulatory, coordination, and Gender Mainstreaming. This is particularly clear in light of Wallace’s claim that, “most individual policy areas do not fall neatly within a single policy mode and there is strong variation over time, both within policy sectors and in response to events and contexts.”³⁵⁹ For both policy areas of employment equality and corporate composition, the current proposal represents shifting trends in which form of governance is employed. For Employment equality, Gender Mainstreaming has been the catalyst for a reversal of the shift from regulatory to coordination, embodied by the binding directive chosen by the Commission in the proposal. Gender Mainstreaming has employed the regulatory mode’s single-market facilitation logics towards the problem of the glass ceiling, effectively bridging the historical gap between the coordination mode’s focus on employment equality and the regulatory mode’s ability to issue hard law. For the policy area of corporate composition, the regulatory mode’s inability to pierce the internal structure of corporate firms (evidenced through the failure of the Fifth Directive) has historically been justified on grounds of facilitating the freedom of firms operating in the free market. Instead, the EU’s approach to corporate composition has largely followed the soft law flexibility approach of coordination governance, evidenced through the establishment of the European corporate structure. The current proposal has employed Gender Mainstreaming to forward the argument that imposing regulatory gender quota obligations on firms will actually improve competitiveness, thus warranting the extension of regulatory power into the realm of corporate composition. If the proposal passes the co-decision process with common agreement between the European Parliament and the Council of the European Union, these shifts in forms of governance will be solidified. This would mark the proposal as a break with history, rather than a temporary aberration, in regards to EU forms of governance employed in employment equality and corporate composition policy areas. The EU governance repercussions may even develop to extend beyond the policy areas of employment equality and corporate composition. This will be an important area for further study once the fate of the proposal is determined.

Bibliography

- Burri, Susanne and Sacha Prechal, S. *EU Gender Equality Law*. Luxembourg: Office for Official Publications of the European Communities, 2009.
- Caporaso, James. “The European Union and Forms of State: Westphalian, Regulatory or Post-Modern.” *JCMS: Journal of Common Market Studies*, vol. 34, no. 1: 29-52 (March, 1996).
- Cichowski, Rachel A. “No Discrimination Whatsoever: Women’s Transnational Activism and the Evolution of EU Sex Equality Policy.” In ed. Nancy A. Naples and Manisha Delai, *Women’s Activism and Globalization: Linking Local Struggles and Transnational Politics*. London: Routledge, 2002.
- Council of the European Union. *Council conclusions on the European Pact for gender equality for the period 2011-2020*. Brussels: March 7, 2011). Retrieved from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/119628.pdf

³⁵⁸ Wallace, 91.

³⁵⁹ Ibid.

- European Commission. *Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*. COM(2012) 614 final. Brussels: December 14, 2012. Retrieved from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF>.
- “Women On Boards: Commission Proposes 40% Objective.” November 14, 2012. Retrieved from http://europa.eu/rapid/press-release_IP-12-1205_en.htm.
- European Commission. Directorate-General for Employment, Social Affairs and Equal Opportunities. *Report on equality between women and men*. Brussels: January, 2008. Retrieved from https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC4QFjAA&url=http%3A%2F%2Fec.europa.eu%2Fsocial%2FblobServlet%3FdocId%3D2033%26langId%3Den&ei=EDcZUuaKM-TW2QXloIGgBg&usg=AFQjCNftEv_mAK-BoN6Eegp175YYntqEog&sig2=hjOdq-k5T6-n8DfKx13fBg&bvm=bv.51156542,d.b2I.
- Eurostat. “Gender pay gap in unadjusted form.” (June 14, 2013). Retrieved from <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home/>.
- Lavena, Cecilia & Norma M. Riccucci. “Exploring Gender Mainstreaming in the European Union.” *International Journal of Public Administration*, vol. 35, no. 2 (January, 2012): 122–136.
- Majone, Giandomenico. (1994). “Independence vs. Accountability? Non-majoritarian Institutions and Democratic Government in Europe.” Social and Political Science Working Paper. European University Institute, 1994.
- Mazey, Sonia. “Gender mainstreaming strategies in the E.U.: Delivering on an agenda?” *Feminist Legal Studies*, vol. 10, no. 3 (October, 2002): 227–240.
- McCann, Dermot. *The Political Economy of the European Union*. Cambridge: Polity Press, 2010.
- Roth, Silke (ed.). *Gender Politics in the Expanding European Union: Mobilization, Inclusion, Exclusion*. New York: Berghahn Books, 2008.
- Timmermans, Christiaan. “Harmonization in the Future of Company Law in Europe.” In eds. Klaus J. Hopt and Eddy Wymeersch, *Capital Markets and Company Law*. Oxford: Oxford University Press, 2003.
- United Nations Development Programme. Regional Bureau for Europe and the Commonwealth of Independent States. *Enhancing Women’s Political Participation: A Policy Note for Europe and the Commonwealth of Independent States*. (Bratislava: 2009), 53-54. Retrieved from http://issuu.com/undp_in_europe_cis/docs/enhancing_womens_political_participation.
- Von Wahl, Angelika. “The EU and Enlargement Beyond ‘East’ and ‘West,’” In ed. Roth.
- Wallace, Helen, Mark A. Pollack and Alasdair R. Young. *Policy-Making in the European Union*. Oxford: Oxford University Press, 2010.