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Issues

Democratic Deficits and Gender Quotas: The evolution of the proposed EU Directive on gender balance on corporate boards

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Policy Brief

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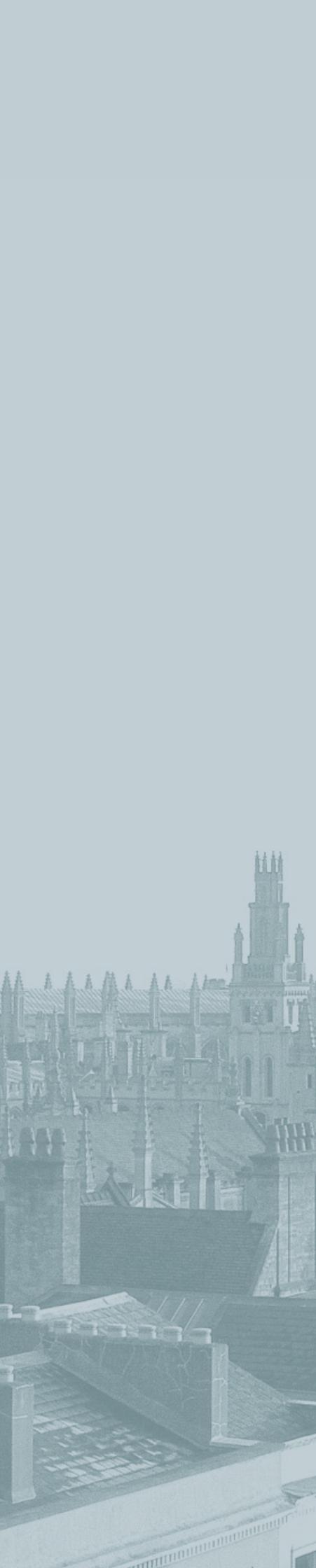
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Executive Summary

- When the European Commission launched its public consultation on gender imbalance on corporate boards, the predominant rhetoric was that improving gender balance in corporate leadership would be good for business.
- The impetus for European action to encourage or require gender balance on corporate boards came, in part, as a reaction to the global economic crisis of 2008 and its aftermath. Many European countries, such as France, Spain, Italy, Belgium, and the Netherlands, had passed national legislation requiring publicly traded companies to take steps to put more women on their boards of directors. They followed Norway's 2003 law, which prohibited publicly listed companies from exceeding 60% of one gender on their boards, under threat of dissolution of the company.
- The rhetoric around all the national laws, including Norway's, also focused on the proposition that the presence of women in company leadership would be good for business and good for the national economies.
- This policy brief traces the evolution of the EU proposal, and argues that it has become increasingly concerned with a more comprehensive gender equality agenda as a means of promoting democratic legitimacy of governance in the European Union.

Democratic Deficits and Gender Quotas: The evolution of the proposed EU Directive on gender balance on corporate boards

The economic importance of gender balance?

In November 2012, the European Commission proposed a European Union Directive on 'Improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures'.¹ The proposal requires publicly listed companies in the European Union to reach the objective of 40% representation by the under-represented sex on these companies' non-executive boards of directors. The Commission's proposal leaves most aspects of enforcement and implementation to the member states. At the same time, it requires every member state to enable unsuccessful candidates to take legal action against companies that fall short of the quotas, and empowers rejected candidates to force the companies to disclose the selection criteria used.

The Commission's proposal arrived after dynamic debates, both on the European level and within member states, about why more women were needed in corporate decision-making positions, and whether mandating gender balance was desirable. In 2011, the EU Justice Commissioner encouraged companies to take voluntary steps towards improving gender balance in leadership, by signing a 'Women on the Board Pledge for Europe'. The Pledge read, 'I pledge to reach the target of 30% female board members by 2015 and 40% by 2020 by actively recruiting female board members to replace outgoing male board members'.² In a meeting with European business leaders and social partners in March 2011, she threatened to propose legislation by 2012 if no significant steps were taken voluntarily.³ In May 2011, the European Parliament passed a resolution on corporate governance, supporting measures to improve gender balance on boards.⁴

The European Commission's 2012 proposal followed legislation passed in various European countries over the last decade. A few months before the European Parliament's resolution urging the Commission to adopt legislation imposing a 40% gender quota on corporate boards, France had adopted such a law. The French Parliament adopted the statute in January 2011 after a long constitutional struggle over the compatibility of the French Constitution's equality provisions and various gender quotas — from elected office to corporate boards and other positions of power. The French law, which prohibits the proportion of directors of each sex from being less than 40% in publicly traded companies, echoes the provisions of a Norwegian statute adopted in 2003. Spain had adopted a similar statute in 2007, imposing a minimum of 40% for candidates of each sex for party lists in legislative elections, as well as on corporate boards of directors for public companies. Belgium, Italy, and the Netherlands adopted laws in June and July 2011 adopting a 30% quota for each sex on corporate boards.

In connection with the proposed Directive, the European Commission issued several public statements raising awareness about gender imbalance in economic decision-making and justifying the need for legislated quotas. The predominant argument in favour of quotas is that gender balance improves companies' economic performance. The public consultation was launched based on the report by the European Commission, titled 'Women in Economic Decision-making in the EU: Progress Report'. The first chapter of the report is titled, 'The economic importance of gender diversity in corporate boards.' It argues, from both the micro-economic and macro-economic perspectives, that increasing the proportion of women on boards will improve each company's governance and economic performance, which will in turn strengthen economies and pension systems.⁵ The Commission also issued 'Factsheet 1: The Economic Arguments',

which focused on the claim that gender diversity would boost economic performance. The argument that gender-balanced leadership was good for business was frequently made in Norway as well.

The economic argument has been met with much scepticism by economists, particularly in the United States. Since the adoption of the Norwegian law, there have been several empirical studies examining the correlation between gender-balanced boards and corporate performance. A study by University of Michigan economists specifically examines the effect of the Norwegian gender parity law on the value of Norwegian firms.⁶ This study demonstrates that, because the legal imposition of the 40% gender quota on corporate boards required approximately 30% of the members of an average board to change very quickly, Norwegian firms experienced an 'exogenous shock', which had a substantially negative impact on the value of these firms. Another empirical study by economists shows that the Norwegian quota has led to increased labour costs and reduced short-term profits in the affected firms.⁷ Another study of the Norwegian experience suggests that having a critical mass of women on boards enhances the level of firm innovation.⁸ The empirical data on the economic consequences of gender quotas, for firms and for economic growth more generally, is inconclusive. Therefore, corporate board quotas cannot be strongly defended on the economic arguments alone.

Equal treatment in employment as the legal basis of the proposed Directive

When the Commission's proposal was unveiled in November 2012, there was a noticeable absence of provisions imposing sanctions such as fines, or requiring member states to impose sanctions. There was strong vocal opposition to sanctions expressed in a letter by nine member states to the Commission in September 2012, shortly before the proposed Directive was scheduled to be made public. The United Kingdom spearheaded the opposition letter, which primarily challenged the legitimacy of EU-level action on gender quotas. The succinct letter affirmed the signatories' commitment to gender equality, but noted, 'In line with the subsidiarity principle, it is first and foremost up to the member states to find their own national approaches to

achieving this goal!⁹ By invoking subsidiarity, the opponents are not objecting to quotas as such, but rather, to the intrusions of EU action on the democratic sovereignty of each member state. In fact, the opposition letter was joined by the Netherlands, which had just passed its own national legislation mandating gender quotas of 30% on corporate boards.

Although no German official signed the letter, Germany, too, opposed EU-level action. German corporate law scholars have taken the view that the EU lacks competence to legislate gender quotas on corporate boards. The Commission relied on article 157 TFEU as the legal basis for its competence to require gender-balanced boards. That treaty provision guarantees equal pay for equal work, and Article 157(3) explicitly authorizes the use of ordinary legislative procedure to adopt 'measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal work or work of equal value'. German scholars have suggested that this provision only authorizes EU legislative action to promote equality in employment, which would not extend to gender balance on corporate boards of directors.¹⁰ Indeed, the legal basis for the Directive appears to turn on whether a non-executive director on a company board should be considered an employee simply because she receives remuneration. Even if such a person is considered an employee, the proposed Directive would affect the employment opportunities of very few people. It only requires publicly listed companies to have at least 40% of each gender for its non-executive director positions, and explicitly excludes small and medium-sized enterprises. Given that executive directors tend to play a more direct role in managing employees within a firm, and that small and medium-sized enterprises make up 99% of businesses in the EU, the link between equal opportunities in employment and this particular gender balance rule is by no means obvious.

Another complication arising from framing the quota in terms of TFEU Article 157(3) is the conflict between gender quotas and the equal treatment jurisprudence of the European Court of Justice (ECJ). It is clearly in response to such concerns that the

Commission included enforcement provisions that echo key decisions of the Court of Justice of the European Union interpreting the Equal Treatment Directive. Article 4(1) of the proposed Directive requires member states to 'ensure that listed companies in whose boards members of the under-represented sex hold less than 40 percent of the non-executive director positions make the appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying pre-established, clear, neutrally formulated and unambiguous criteria, in order to attain the said percentage at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of listed companies which are public undertakings'.¹¹ Instead of providing for fines or other sanctions in the event of a company's failure to reach this percentage, the proposed Directive requires transparency rules in selection criteria.

Furthermore, the main enforcement mechanism directly reflects the ECJ's case law addressing the compatibility of affirmative action for female candidates with the equal treatment guarantees. The proposed Directive provides:

*In order to attain the objective laid down in paragraph 1, Member States shall ensure that, in the selection of non-executive directors, priority shall be given to the candidate of the under-represented sex if that candidate is equally qualified as a candidate of the other sex in terms of suitability, competence, and professional performance, unless an objective assessment taking account of all criteria specific to the individual candidates tilts the balance in favour of the candidate of the other sex.*¹²

This provision effectively renders the quota non-mandatory under many circumstances. First, companies are required to favour female candidates only when the female candidate is 'equally qualified' as the male candidate. If qualifications are unequal, under this provision, no priority is to be given to the candidate of the under-represented sex. This raises the question of what makes any board candidate 'equally qualified' to another. For example, consider the possibility of a male candidate with ten years' experience on another company's board of directors, compared with a female candidate with five years'

experience. Even though both candidates are *minimally* qualified to serve on the board of Company X, one would not say that they are 'equally' qualified, as the additional years' experience would make the male candidate more qualified. Under such circumstances, priority is not to be given to the minimally qualified female candidate, and the male candidate can be selected. Furthermore, even if there are two candidates, one male and one female, of equal qualifications, which would require giving priority to the female candidate, this provision then permits the male candidate to be selected if there are special circumstances that 'tilt the balance' in his favour. Under such circumstances, it appears that the gender balance rule could easily be bypassed, given the difficulty of defining 'equal qualifications' for board positions as well as the subjectivity of the unique circumstances that could make any particular individual the best candidate for a board position.

Nevertheless, the Commission believed this framework to be necessitated by the principles laid down by the Court of Justice of the European Union interpreting the Equal Treatment Directive. In the 1990s some private and public entities within the European Union had employment policies that could be described as gender quotas. Male litigants challenged these policies by alleging that gender quotas violated the Equal Treatment Directive of 1976.¹³ In *Kalanke v. Bremen* the ECJ invalidated an employment policy that gave preference to female candidates for jobs in which women were under-represented (defined as under 50%) when choosing between equally qualified candidates.¹⁴ The ECJ referred to this policy as a 'quota system'.¹⁵ While acknowledging that the Directive permitted different treatment of men and women through 'measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities',¹⁶ the ECJ held that this exception must be construed narrowly, such that giving automatic priority to female candidates under these circumstances violated the equal treatment requirement.¹⁷

After *Kalanke*, however, the ECJ upheld a similar policy in 1997 in *Marschall v. Nordrhein-Westfalen*.¹⁸ The rule gave priority to women in promotions for any sector in which there were fewer women than men in the particular higher-grade post, provided

the male and female candidates had equal qualifications.¹⁹ The ECJ distinguished this case from *Kalanke* because the policy at issue in *Marschall* explicitly stated that women were not to be given priority if there were ‘reasons specific to an individual [male] candidate [that] tilt[ed] the balance in his favour.’²⁰ In elaborating its decision, the Court pointed out that national measures that ‘give a specific advantage to women with a view to improving their ability to compete on the labour market and to pursue a career on equal footing with men’ came within the positive action provision of the Directive.²¹

In 2000 the ECJ upheld a German regional government’s ‘women’s advancement plan’, which had set binding targets for women’s appointments and promotions to increase the proportion of women in sectors in which women were under-represented.²² In so doing the court noted that qualified female candidates were less likely to be promoted ‘particularly because of prejudices and stereotypes concerning the role and capacities of women in working life, so that the mere fact that a male candidate and a female candidate are equally qualified does not mean they have the same chances.’²³ It held that the Equal Treatment Directive of 1976, particularly the positive action provision, ‘does not preclude a national rule which, in so far as its objective is to eliminate underrepresentation of women in trained occupations in which women are underrepresented and for which the State does not have a monopoly of training, allocates at least half the training places to women.’²⁴ Quotas are a departure from the fundamental norm of equal treatment, and they are justified only if they remove barriers to women’s opportunities. The exception in the Equal Treatment Directive of 1976 was framed in gender-specific terms, by which positive action to remove women’s disadvantage is justified while positive action to remove men’s disadvantage remains an open question. Furthermore, the ECJ made clear in another case decided in 2000 that the Directive’s positive action provision did not permit a preference for female candidates — whether achieved through a quota or a soft affirmative action scheme — whose qualifications were significantly and objectively inferior to those of a male candidate.²⁵

By linking gender balance for non-executive directorships of publicly listed companies to equal employment in the workplace, the Commission has brought the gender quota within an existing legal framework for both limiting and permitting gender-based affirmative action. To the opponents of quotas, the equal treatment jurisprudence responds to any fears or anxieties about the ascent of underqualified women to these leadership positions: priority can only be given to an equally qualified female. For the proponents of quotas, the equal treatment jurisprudence clearly and unambiguously permits positive action to enable the under-represented sex to achieve equal employment opportunities in the labour market. Indeed, the ECJ’s gender equality jurisprudence helps legitimize the proposal, both by authorizing it and limiting its potential scope.

The European Parliament’s amendments: corporate boards and the larger EU gender equality agenda

In November 2013, the European Parliament amended and adopted the Commission’s proposed Directive.²⁶ The Parliament’s amendments reflect a shift in orientation, from the Commission’s emphasis on the economic advantages of gender balance, towards a comprehensive vision of gender equality. The European Parliament’s amendments approach gender balance on corporate boards as an extension of various EU initiatives to promote gender equality outside of corporate boards. Four changes introduced by Parliament are noteworthy in this respect: (1) Recitals affirming the importance of gender equality in decision-making in EU institutions; (2) Recitals encouraging member states to promote work–family balance through various policy suggestions; (3) Revisions facilitating plaintiffs’ suits to establish the liability of companies that fail to achieve gender balance; (4) Deletion of the exemption for companies in which the under-represented sex make up less than 10% of the workforce.

The link between gender equality on corporate boards and gender equality in European institutions is explicitly made in the addition of the following Recital: ‘The Union institutions, bodies, offices and agencies and the European Central Bank should lead

by example as regards gender equality in decision-making, inter alia by setting objectives for a gender-balanced representation at all levels.²⁷ Amendment 13 adds an additional Recital which specifically highlights the under-representation of women in European institutions as a problematic indication of a 'democratic deficit'. The amended Recital now reads:

Despite the existing Union legislation aimed at preventing and combating sex discrimination, the Council recommendations aimed specifically at increasing the presence of women in economic decision-making and Union-level actions encouraging self-regulation, women continue to be strongly under-represented in the highest decision-making bodies of companies throughout the Union.... Among non-executive directors only 15 per cent were women, which is a clear indication of a democratic deficit and of unfair and discriminatory representation of women, in violation of Union principles of equal opportunities and equal treatment of both sexes in the fields of employment and occupation.²⁸

This Recital uses the language of 'democratic deficit', which has been so frequently deployed to criticize policymaking and governance within the European Union, while maintaining ambiguity as to whether the 'democratic deficit' applies to the corporations or the Union.

Another Amendment explicitly suggests that the absence of women in leadership positions indicates a process by which an institution's legitimacy is called into question, which in turn undermines its effectiveness in achieving its objectives: 'If half the talent pool is not even considered for leadership positions, the process and quality of appointments itself may be compromised, leading to increased distrust of the business power structures and possibly to a reduction in the efficient realisation of available human capital.'²⁹

In addition to framing gender imbalance as an indicator of a democratic deficit, the European Parliament's amendments also add language to the Directive suggesting a comprehensive vision of gender equality, one which reaches far beyond corporate boards. For example, the very first

Amendment adds a Recital that precedes all the others: 'In order to achieve gender equality in the workplace there must be a gender-balanced model of decision-making at all levels within the company while also ensuring the elimination of the gender pay gap, which contributes significantly to the feminisation of poverty'.³⁰

Finally, the European Parliament's revisions to the proposed Directive strengthens the enforcement provisions, requiring companies to do more to avoid liability. Whereas the Commission merely required the companies to appoint on the basis of comparative analysis of the qualifications of each candidate, applying pre-established, clear, neutrally formulated, and unambiguous criteria,³¹ the Parliament's Amendment requires companies to 'adjust their recruitment, including vacancy announcements, calling for applications, pre-selection, selection and appointment procedures in such a way that they effectively contribute to the attainment of the said percentage'.³² Most importantly, it requires the selection of the shortlist of 'the most qualified candidates' from a 'gender-balanced selection pool'. If there is an election, 'Member States shall ensure that companies guarantee gender diversity in the composition of the shortlist of candidates while ensuring that the sex of the non-executive director elected in this procedure is not in any way predetermined'.³³

The Parliament's version thus enlarges the class of potential plaintiffs to challenge any company's failure to reach the 40% quota. In the Commission's version, only the unsuccessful candidate for the board position could bring suit, and would have the burden of establishing facts 'from which it may be presumed that that candidate was equally qualified as the appointed candidate of the other sex'. Once this burden is met, the company would have the burden of proving that it had undertaken an objective assessment, taking account of all criteria specific to the individual candidates that tilted the balance in favour of the candidate of the other sex. Under the Parliament's version, any unsuccessful candidate 'who considers him- or herself wronged because the provisions of paragraph 1 have not been applied to him or her' could bring suit. Since the amended provisions of paragraph 1 require gender balance in shortlists and applicant pools, this

enlarges the group of people who would have standing to sue. Furthermore, although the Commission's proposal left sanctions entirely to the member states, the Parliament's version requires member states to impose minimum sanctions for failure to implement the transparent and open procedures described in its revised Article 4(1). These sanctions 'shall at least include' exclusion from public calls for tenders, and partial exclusion from the award of funding from the Union's Structural Funds.³⁴ Thus, while the proposed Directive still stops short of imposing sanctions on any company for failure to achieve gender balance on its board, the Parliament version requires sanctions for failure to adopt specified transparent procedures, as well as a civil liability regime in which non-compliant companies would have the burden of proving compliance with the transparency rules as well as objective justifications for choosing a candidate of the over-represented sex.

Policy implications: The importance of gender equality as a legitimizing discourse

As the Council considers the proposed Directive, the symbolic importance of the legislation for European governance should be fully appreciated. The changes proposed by the European Parliament to the proposed Directive links gender under-representation in decision-making to the 'democratic deficit' of European institutions. The Parliament draws attention to the economic and social responsibilities of corporations within the space of European governance, regardless of the gender composition of their particular workforces. Furthermore, the Parliament's revised proposed Directive makes declarations and references to other social policies that are not being addressed in the Directive, such as work-family balance, adequate parental leaves, flexible work schedules, and the availability of daycare.

Two observations emerge. First, the Directive should be understood as promoting equal employment under TFEU 157(3) in an indirect and complex manner. The exclusive application of the Directive to non-executive directors in publicly listed companies creates a gap between the Directive and its purported legal basis of equal opportunities in employment. In real terms, only a small number of

women will benefit from increased employment opportunities in the form of non-executive directorships because of this legislation. Rather than promoting women's employment directly, the Directive enacts a symbolically significant step towards democratizing large private institutions that interact with the public, and largely undemocratic institutions of the European Union. It does so by transforming gender equality into a principle of democratic governance. Particularly in response to the Eurozone crisis, the power of the European Central Bank and the Commission have come into sharper focus. What principles of democratic accountability, if any, will legitimize their exercises of power, particularly as these institutions shape policies that affect men and women at work? The Commission is required, before proposing social policies, to consult labour and management on the future direction of Union action.³⁵ Article 152 TFEU provides, 'The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy'. The European Commission maintains a list of social partner organizations that it views as requiring consultation under Article 154 TFEU. The general cross-industry organizations at the top of the Commission's list are BusinessEurope, the European Centre of Employers and Enterprises Providing Public Services (CEEP), and the European Trade Union Confederation (ETUC). While European trade unions have had women's committees and other mechanisms to improve gender representation since the 1970s, none of the cross-sectoral European employers' federations have specific committees or programmes dealing with gender representation issues.³⁶

Thus, improving the representativeness of the corporations represented on the management side of social partner organizations can help legitimize the EU's policymaking process, particularly as it affects employment. The social partners have reached framework agreements undertaken under Article 155 TFEU in areas of policymaking that the European Parliament alludes to in the corporate boards proposal: parental leave, part-time work, and telework. As the social partners continue to influence Commission proposals and arrive at framework agreements that are blessed by the Council of

Europe, effectively shaping policies that affect so many aspects of working life in Europe, questions about the legitimacy of these policies will remain. If women play a greater role in shaping those policies, by having more voice in the corporations that participate in influencing those policies, such policies might be regarded as more representative than they would otherwise be.

Second, given the limited legal scope of the Directive, the more comprehensive gender agenda articulated by the European Parliament in its Recitals may be more significant than the legally enforceable requirements of the Directive. The legally enforceable requirements of the Directive are narrow in scope, but they are embedded in an ambitious political discourse about the gender relations to which Europe aspires. The Commission, in various documents, has embraced equality between men and women as a founding value of the European Union. Its 2010–2015 strategy for equality between men and women includes goals with regard to equal

pay for equal work and the reconciliation of work and family life.³⁷ A recent Commission report considers policy at the EU level to increase access to childcare and flexible working hours.³⁸ Policies that tend to facilitate women's participation in the public sphere through employment have, over the last fifty years, helped to legitimize the European Union. As the ECJ recognized in 1976, the principle of equal pay for equal work without discrimination on the basis of sex was 'part of the foundations of the Community' because without it, some member states could gain a competitive advantage over others by paying women less, which would in turn hinder the formation of a single market.³⁹ In short, gender equality became a principle that justified and legitimized action on the European level. Today, the EU's role in promoting gender equality serves as an important implicit rejoinder to accusations that the EU lacks democratic legitimacy. Thus, if European institutions, and the corporations that influence them, lack gender equality, they lose their hold on an important discourse of democratic legitimacy.

Notes

- ¹ See 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, 2012/0299 (COD), Nov. 14, 2012, art. 4.
- ² See European Commission, Women on the Board Pledge for Europe, available at <http://ec.europa.eu/commission_2010-2014/reading/pdf/p_en.pdf>.
- ³ European Commission, Press Release, 'EU Justice Commissioner meets European business leaders to push for more women in boardrooms', 1 March 2011.
- ⁴ European Parliament Resolution 11 May 2011 on corporate governance in financial institutions, paragraphs 32–33.
- ⁵ See <http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf>.
- ⁶ See Kenneth R. Ahern and Amy Dittmar (2012) 'The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation', *Quarterly Journal of Economics*, 127, 137.
- ⁷ David A. Matsa and Amalia R. Miller (2013) 'A Female Style in Corporate Leadership? Evidence from Quotas', *American Economic Journal*, 5, 136.
- ⁸ Mariateresa Torchia et al. (2011) 'Women Directors on Corporate Boards: From Tokenism to Critical Mass', *Journal of Business Ethics*, 299–317.
- ⁹ Letter of 14 September 2012 to José Manuel Barroso and Viviane Reding from officials of Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Netherlands, and the UK.
- ¹⁰ See Katja Langenbuecher (2013) 'Legal Aspects of gender balance on corporate boards in Germany', European Parliament Policy Department Note, at 35.
- ¹¹ Commission version of Proposed Directive, art. 4(1).
- ¹² *Ibid.*, art. 4(3).
- ¹³ See Council Directive 76/207/EEC, art. 1, 1976 O.J. (L 39) 40, 40. This Directive implemented the principle of equal treatment between men and women in employment. Since then, the Directive has been amended and consolidated with other Directives addressing equal pay and occupational social security schemes. See Directive 2006/54/EC of the European Parliament and of the Council, 2006 O.J. (L 204) 23 (popularly known as the Equal Treatment Directive of 2006).
- ¹⁴ Case C-450/93, *Kalanke v. Bremen*, 1995 E.C.R. I-3069, ¶¶ 3, 24 (quoting Landesgleichstellungsgesetz [Law on Equal Treatment for Men and Women in the Public Service] § 4, Nov. 20, 1990, BREMISCHES GESETZBLATT 433 (Bremen) (Ger.)).
- ¹⁵ *Ibid.* ¶ 9.
- ¹⁶ *Ibid.* ¶ 17 (citing Council Directive 76/207/EEC, supra note 24, art. 2(4)).
- ¹⁷ *Ibid.* ¶¶ 21, 22.
- ¹⁸ Case C-409/95, *Marschall v. Nordrhein-Westfalen*, 1997 E.C.R. I-6383, ¶¶ 3, 33, 35.
- ¹⁹ *Ibid.* ¶ 3.
- ²⁰ *Ibid.*
- ²¹ *Ibid.* ¶ 27.
- ²² Case C-158/97, *In re Badeck*, 2000 E.C.R. I-1902, ¶¶ 7-9, 38, 44, 55.
- ²³ *Ibid.* ¶ 21.
- ²⁴ *Ibid.* ¶ 55.
- ²⁵ See Case C-407/98, *Abrahamsson v. Fogelqvist*, 2000 E.C.R. I-5562, ¶¶ 55-56, 62.
- ²⁶ See European Parliament legislative resolution of 20 November 2013 on the 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)0614 – C7-0382/2012 – 2012/0299(COD)).
- ²⁷ *Ibid.*, Amendment 5.
- ²⁸ *Ibid.*, Amendment 13.
- ²⁹ *Ibid.*, Amendment 19.
- ³⁰ *Ibid.*, Amendment 1.
- ³¹ See Commission Proposed Directive, art. 4(1).
- ³² Parliament Amendments, Amendment 48.
- ³³ *Ibid.*
- ³⁴ *Ibid.*, Amendment 60–61.
- ³⁵ TFEU art. 154.
- ³⁶ See Anni Weiler (2013) 'Social dialogue and gender equality in the European Union', International Labour Office Working Paper No. 44, April 2013.
- ³⁷ European Commission (2010) 'Strategy for equality between women and men 2010–2015', available at <http://ec.europa.eu/justice/gender-equality/files/strategy_equality_women_men_en.pdf>.
- ³⁸ European Commission (2014) 'Gender equality in the workforce: Reconciling work, private, and family life in Europe', Contract ref. no. JUST/2011/GEND/PR?1971/A4, April 2014.
- ³⁹ See *Defrenne v. Société Anonyme Belge de Navigation Aérienne Sabena*, Case 43/75, [1976] ECR 455.
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