Pace International Law Review

Volume 26
Issue 1 *Spring 2014*
Symposium Edition

Article 7

April 2014

Norway's Companies Act: A 10-Year Look at Gender Equality

Kristen Carroll
Pace University School of Law, kcarroll@law.pace.edu

NORWAY'S COMPANIES ACT: A 10-YEAR LOOK AT GENDER-EQUALITY

Kristen Carroll*

ABSTRACT

This analysis assesses the amendment to Norway's Companies Act, in light of the 10-year anniversary of the mandate of female representation on corporate boards. First, I discuss the implementation of the quota, Section 6-11a. Second, I compare three statistical studies that analyze the effects of the quota on corporate profitability, overall firm performance, and the changing dynamics of the managerial positions. Finally, I evaluate the various avenues to fully achieving diversity, such as the successes and failures of a quota-type system and possible initiatives that governments and companies can enact to achieve gender-balance in the workplace. While some hypothesize that the quota negatively affects overall firm capability and value, the statistical data on the effects of the legislation is not dispositive. Ultimately, it is in the best interest of corporations to learn from Norway's example in implementing mandatory female representation, and to explore other avenues to achieving diversity.

I. BACKGROUND ON NORWAY'S COMPANIES ACT

"Power is not something that is given, it is something that you have to take."[1] A Danish economist, Benja Stig-Fagerland,

---

* Kristen Carroll received her J.D. cum laude with an International Law Certificate from Pace Law School in 2014. Upon graduation she was a recipient of the Adolf Homburger Humanitarian Award, and served as Editor-in-Chief of Pace International Law Review and Co-Chair of the Moot Court Honor Board in 2013-2014.

1 Nicola Clark, *The Female Factor: Getting Women into Boardrooms, by*

said this in regards to securing female leaders in Norway during the time the quota was enacted, which mandated female representation on Norway's corporate boards.[2] In 1999, the quota was first recommended as an amendment to the Equal Status Act of 1978.[3] Just before the final vote on the issue, Ansgar Gabrielsen, the Minister of Trade and Industry, expressed that he was "sick and tired of the male dominance of business life."[4] These unequivocal viewpoints sparked the fire needed for the quota to pass into law, and set the precedent for gender-equality in the corporate world of Norway.

Section 6-11(a) defines the quota, which mandates both men and women to be represented on corporate boards[5] in all public limited companies in the private sector.[6] The representation breakdown is as follows:

> (1) In the boards of publically listed…companies, both genders should be represented, as follows:
>
> 1. Where there are two or three board members, both genders should be represented.
> 2. Where there are four or five board members, both genders should be represented with at least two members each.
> 3. Where there are six to eight board members, both genders should be represented with at least three members each.
> 4. Where there are nine or more members of the board, each gender should be represented with at least 40 percent each.
> 5. Rules 1 to 4 also apply to the election of deputy members.[7]

Law, N.Y. TIMES (Jan. 27, 2010), http://www.nytimes.com/2010/01/28/world/europe/28iht-quota.html?pagewanted=all&_r=0.

[2] *Id.*

[3] Knut Nygaard, *Forced Board Changes: Evidence from Norway* 22 (Norwegian Sch. Of Econ., Discussion Paper, 2011), *available at* http://ssrn.com/abstract=1793227.

[4] AAGOTH STORVIK & MARI TEIGEN, FREIDRICH EBERT STIFTUNG, WOMEN ON BOARD: THE NORWEGIAN EXPERIENCE 7 (2010), *available at* http://library.fes.de/pdf-files/id/ipa/07309.pdf.

[5] *Id.* at 4.

[6] *Id.*

[7] *Id.*

In 2003, the Norwegian Parliament approved this amendment to Norway's Companies Act.[8] Beginning in 2006, the quota has been applied to all "newly established public limited companies."[9] Originally, the Norwegian Parliament preferred the adoption of the quota to be voluntary.[10] However, in 2006, a mandatory quota was instituted because firms failed to raise their female representation in compliance with the suggestive quota.[11] In 2008, all public limited companies were required to instate this quota.[12]

To facilitate this change, the Norwegian government created a database of female candidates for corporations to evaluate the qualifications of potential women leaders.[13] Furthermore, the penalties for non-compliance work to assist as another foundational driving force behind the accomplishment of the quotas: "non-compliance with the sanctions, mean the closing down of companies who fail to comply."[14] Additionally, company board registration is prohibited if the requirements of representation are not met.[15]

II. EFFECTS OF SECTION 6-11A

A. Kenneth R. Ahern and Amy K. Dittmar Study

In order to reasonably ascertain the effects of the Norway's Companies Act on corporate firms, it is necessary to simply look at the numbers. First, take Kenneth R. Ahern and Amy K. Dittmar's study, which concentrated on the effects of the quota on board characteristics, profitability, and overall firm value.[16] Their study was composed of a sample size of 1,230

[8] *Id*. at 3.

[9] *Id*. at 5.

[10] SUSAN VINNICOMBE ET AL., WOMEN ON CORPORATE BOARDS OF DIRECTORS: INTERNATIONAL RESEARCH AND PRACTICE 82 (2008).

[11] David A. Matsa & Amalia R. Miller, *A Female Style in Corporate Leadership? Evidence from Quotas* 6 (Inst. for the Stud. of Lab. (IZA), Discussion Paper, 2012).

[12] STORVIK & TEIGEN, *supra* note 4, at 4.

[13] Kenneth R. Ahern & Amy K. Dittmar, *The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation*, 127 Q. J. ECON. 137, 145 (2011).

[14] VINNICOMBE ET AL, *supra* note 8, at 83.

[15] Storvik & Teigen, *supra* note 4, at 9.

[16] *See* Ahern & Dittmar, *supra* note 13.

firm-year observations, covering 248 Norwegian firms.[17]

In regards to their financial status, a firm's value was computed mainly using Tobin's Q.[18] Q is "the sum of the total assets and market equity less common book equity divided by total assets."[19] Financially, the leverage of the firms stayed constant during the study, but the short-term debt rose over time.[20] Tobin's Q ranged from 1.11 to 1.88, with a mean of 1.53.[21]

Board sizes have remained moderately constant over the years, signifying that corporations replaced individuals on the board to observe the quota, rather than adding members to achieve the same result.[22] However, there is negative data that correlates to the quota's effect on firm policies.[23] The theory is that if the management board lacks experience in comparison to a board, which is not mandated by a quota, then the firm's overall value decreases.[24] Firms increased their financial risk as a result of the quota, due to the increase in debt level and leverage.[25] Efficiency decreased as there were less experienced board members handling top-level positions.[26]

Ahern and Dittmar came to several general conclusions as a result of these statistics:

> By the end of the 2000s, the average board has less CEO experience, fewer insiders, and more non-executive managers. The gender differences in these characteristics and the coincidence of timing between these changes and the implementation of the quota suggest that the quota dramatically changed not only the gender but also other characteristics of the board.[27]

Overall, the data is consistent with the concept of the quotas putting a restriction on the freedom of corporations to choose new members based purely on qualifications. This signifies that before, the quota boards were chosen to maximize

17 *Id.* at 149.
18 *Id.* at 148.
19 *Id.*
20 *Id.* at 154.
21 *Id.* at 154.
22 *Id.* at 153.
23 *Id.* at 159-60.
24 *Id.* at 179.
25 *Id.* at 180-81.
26 *Id.*
27 *Id.* at 154-55.

wealth, and after, the constraints due to gender representation negatively impacted their value.

B. Knut Nygaard Study

Compare the above study with one conducted by Knut Nygaard of the Norwegian School of Economics and Business Administration. Nygaard's criticisms of Ahern and Dittmar's study included a failure to "condition their analysis on firm specific information asymmetry," as well as a sample size which over-emphasized new firms.[28] Nygaard's sample size involved a survey of all Norwegian listed firms, done on behalf of the Daily Oslo Stock Exchange (OSO) by the auditing firm PricewaterhouseCoopers (PWC) in 2005.[29]

The survey measured the value and availability of public information, rather than a firm's compliance with the legislation. Additionally, Nygaard specifically addressed Ahern and Dittmar's study in his findings. Nygaard takes the position that their sampling bias, excluding year 2007, creates an emphasis on new firms, which could account for the reduced market value based on Tobin's ***Q***.[30] Furthermore, Ahern and Dittmar's study has less than one third of the firms that are included in Nygaard's statistical analysis.[31] Nygaard seriously questions Ahern and Dittmar's results due to their sampling procedures, and argues several competing conclusions.

First, Nygaard asserts that the firms, which had subpar board construction prior to the quota, benefitted from the increased monitoring from women on the board. Second, a surge of female board members correlates to an increase in outside directors. "With less information asymmetry, it is easier for an outside or female director to transform her general expertise to a specific firm and become an effective director."[32] Most importantly, Nygaard concluded that a negative impact from the legislation is generally inconsequential at "standard levels of statistical significance."[33]

---

[28] Nygaard, *supra* note 3, at 3.
[29] *Id*. at 10.
[30] *Id*. at 18.
[31] *Id.*
[32] *Id.* at 19.
[33] *Id.*

C. David A. Matsa and Amalia R. Miller Study

David A. Matsa and Amalia R. Miller also conducted a study regarding the effect of the mandate on corporate profits.[34] They compared firms in Norway before and after the mandate using data from Bureau Van Dyjk's Orbis database.[35] The sample size was limited to firms "with shares listed on an exchange and with nonmissing information on directors, industry, assets, employees, labor costs, and operating profits in 2006," totaling 104 companies.[36]

An index was created from a certain selection of firms in Norway: "[f]or each public company in Norway, we identify the five closest firms in each of the three comparison groups based on industry, assets, employees, and operating profits in 2006."[37] Overall, there were 1,560 observations corresponding to 1,103 different firms.[38] As a result, female representation increased from 1.1 to 2.3, and male members decreased from 5.0 to 4.1.[39] In comparison to Ahern and Dittmar's study, which showed no change in board size, this study found that board size increased marginally from 6.1 to 6.3 members.[40]

Additionally, in contrast[41] to Ahern's study, the quota's effect on corporate profit was not statistically significant.[42] Matsa and Miller concluded that there was a short-term profit decline.[43] More importantly, it shed light on other aspects of the mandatory representation. For example: employment rose, there were sizable differences in managerial styles between the two sexes, and there is evidence that "female corporate leaders exhibit similar values and preferences outside of Norway as well."[44]

In comparatively assessing these studies, there are definite transformations of corporate boards in Norway due to the

[34] Matsa & Miller, *supra* note 10, at 4-5.
[35] *Id.* at 7.
[36] *Id.*
[37] *Id.* at 8.
[38] *Id.* at 9.
[39] *Id.*at 8.
[40] *Id.* at 9.
[41] *Id.* at 27.
[42] *Id.* at 30.
[43] *Id.*
[44] *Id.* at 34.

mandate of female representation. A common hypothesis that Ahern and Dittmar, as well as Matsa and Miller share, is that changes in profitability could be a result of the dysfunctional transition period of the legislation.[45] They both found that the quota had affected corporate policies.[46] The Matsa and Miller study contrastingly found that there was no decline in average director experience following the quota, making inexperience of new female members ineffectual on the firm's overall performance following the legislation.[47]

III. GENERAL TRENDS AND THEORIES BEHIND FEMALE REPRESENTATION ON CORPORATE BOARDS

There are many contending theories as to which environmental factors are associated with increased female roles in corporations, and what affects this diversity has on performance. For example, according to Terjesen and Singh, historical political elements are disassociated with an increase in female directorships.[48] These authors present two competing theories as to why female political representation correlates negatively with female representation on corporate boards. First, women make a conscious choice to chase jobs in politics over business, in those countries where political power has been developing.[49] Second, countries with high representation of women in politics have become complacent.[50]

Anne Sweigart gives credence to the first, rather than second, theory. She reasons that the complacency theory is unlikely to be applicable to the Norwegian quota, because countless women's groups supported the amendment.[51] The first theory is more plausible because women have pursued careers in politics for the logical reason that prior to the quota, they saw more room for progression in that field as opposed to the

[45] *Id.* at 26.

[46] *Id.* at 33.

[47] *Id.* at 25.

[48] Siri Terjesen & Val Singh, Female Presence on Corporate Boards: A Multi-Country Study of Environmental Context, 83 J. BUS. ETHICS 55, 61 (2008).

[49] *Id.* at 57-58.

[50] *Id.* at 61.

[51] Anne Sweigart, *Women on Board for Change: The Norway Model of Boardroom Quotas as a Tool for Progress in the United States and Canada*, 32 NW. J. INT'L L. & BUS. 81, 86 (2012).

corporate world.[52]

The economic development of a certain country is not dispositive of a country's decision to mandate a gender-equality quota in the workplace. There are examples of nations with low development levels and increased female representation, and also countries with higher development levels that have lower numbers of women in high-level positions.[53] Although economic development has virtually no impact on female representation, research has shown that diversity on corporate boards has improved decision-making and monitoring functions.[54]

First, since women and men have different capabilities and potentials, diversity allows for the demonstration of a wider range of skills.[55] Second, because men and women have different "life experiences," their inclusion gives corporate boards a wider range of solutions to business and management issues.[56] Finally, the simple awareness of diversity on a board tends to positively alter team dynamics.[57] Additionally, there is evidence that diversity "can enhance a firm's reputation with consumers."[58]

Amidst these competing theories, a few solid correlations can be determined. First, female representation correlates negatively with political representation, while the economic status of a country seems to have no effect on gender-equality. Second, there is evidence that such diversity does in fact have an effect on overall workmanship and collaboration. Finally, some authorities hold that there is a positive effect in incorporating female characteristics into boards.

---

[52] *Id.*

[53] Rohini Pande and Deanna Ford, *Gender Quotas and Female Leadership: A Review* 5 (Harv. Univ., Discussion Paper, Apr. 7, 2011), http://www.hks.harvard.edu/fs/rpande/papers/Gender%20Quotas%20-%20April%202011.pdf.

[54] *See* Deborah L. Rhode & Amanda K. Packel, *Diversity on Corporate Boards: How Much Difference Does Difference Make?* (Rock Ctr. for Corp. Governance at Stan. Univ., Working Paper No. 89, 2010), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1685615.

[55] *Id.* at 10.

[56] *Id.* at 11.

[57] *Id.* at 13-14.

[58] *Id.*

IV. EVALUATION OF AVENUES TO FULLY ACHIEVE DIVERSITY IN THE WORKPLACE

The Norwegian quota is certainly groundbreaking legislation, working to achieve diversity on a massive scale. However, there are many critics of this avenue for achieving gender balance, while also enhancing corporate performance. Many feel that instituting a quota produces a less-qualified managerial board.[59] As a result, foreign investors might opt out of companies they feel would be less profitable as a result of inexperienced leaders.[60]

However, Reiersen and Sjafjell dismiss this argument as meritless[61] "Meeting the requirements of Section 6-11a should [therefore] not be difficult, although investors that are used to looking to 'boys' clubs' only for directors will have to take off their blinkers."[62] Furthermore, the Act does not entirely restrict a corporation's freedom in selecting directors.

Despite criticisms in regards to a less-qualified managerial board, many preventative measures can be taken if a country decides to implement such a quota. For example, corporations can institute programs to ensure that female employees possess comparable skills to male directors. A successful quota requires a cooperative environment, and since men have had this experience from already fulfilling such positions, they would only benefit from conducting workshops and seminars to share their knowledge with their upcoming female peers.

Furthermore, it is important to note that the statistical data present here is not indicative of a mandate applied in other countries. A rising number of governments are instituting a similar quota, which will eliminate the inherent shock that Norway experienced with this cutting-edge legislation.[63] Arni Hole, the director general of the Equality Ministry stated that when the quota was first announced: "There were, literally,

---

[59] STORVIK & TEIGEN, *supra* note 4, at 6.

[60] *Id.* at 7.

[61] Beate Sjafjell & Hedvig Bugge Reiersen, *Report from Norway: Gender Equality in the Board Room* 7 (European Co. Law, Working Paper No. 8, 2008).

[62] *Id.*

[63] *See* Clark, *supra* note 1.

screams…it was a real shock treatment."[64]

Spain and the Netherlands have announced legislation similar to Norway.[65] Other countries such as France, Belgium, Germany, and Sweden are also considering a mandate.[66] These countries can not only learn from Norway's example, but also improve their own processes of instituting such altering legislation. "Any negative effect that Section 6-11a may have should be confined to these early days before investors are acquainted with the rule."[67] This logic with foreign investors applies to the entirety of the corporations who choose to learn from Norway's example. The adjustment period should grow shorter as more countries follow the Norwegian example.

Another way to achieve diversity on corporate boards would be to compel companies to release information on retention, recruitment, and the promotion of women, in order to create transparency of large companies.[68] Forcible disclosure would provide an incentive for corporations to be more conscious of the inclusion of women, and prevent possible discrimination in the workplace. The government could also get involved in this endeavor by mandating that companies "disclose whether women and minority candidates were considered or interviewed for open positions."[69]

The Norwegian government's example in the Act shows how influential legislation can be in regulating gender balance. Despite what avenue they decide to take, corporations can expand their horizons and come up with different search techniques for gaining qualified candidates. For example, corporations can utilize professional consultants to search for eligible individuals to fill the firm's needs. Furthermore, companies do not have to limit themselves to CEOs, but can consider other positions, such as corporate executives, academic experts, and nonprofit executives.[70] With a changing dynamic on corporate boards, firms need to adjust and develop different processes for finding and hiring capable and skilled workers.

---

[64] *Id.*
[65] Rhode & Packel, *supra* note 54, at 21.
[66] *Id.*
[67] Reiersen & Sjafjell, *supra* note 62, at 7.
[68] Rhode & Packel, *supra* note 54, at 20.
[69] *Id.*
[70] *Id.* at 22.

V. CONCLUSION

There is no doubt that the example Norway set with Section 6-11a is groundbreaking, shocking, and will set a precedent for female representation on corporate boards and in the workplace in general. European Union Justice Commissioner, Viviane Reding, stated at the beginning of this proposition: "Today we are proposing a legislation to smash the glass ceiling that keeps talented women out of top jobs."[71] However, this change involved a dramatic procedural difference that included specifically singling out women and throwing them into the corporate abyss. "Ironically, achieving gender balance relies on labeling gender."[72]

The different studies on the statistic consequences of Section 6-11a yield different results due to sampling size and procedural methods. There is not much merit to the proposition that Norwegian corporations are suffering economically due to the mandate. The statistical studies, when taken together, do not necessarily speak to the quota's negativity in regards to its effect on the corporations. It is my position that nations can only learn from Norway's implementation process; and there are many different initiatives available to strengthen the female candidate pool to ensure prosperity. Furthermore, quotas are not the end of the possibilities for securing female representation in corporations, and more generally, in the workplace. With innovation, like Norway's law, on the rise, there is no limitation to the goals that could be accomplished regarding gender-equality.

---

[71] *Reding Pushes 40% Female Quota on Corporate Boards*, EURACTIV (Nov. 15, 2012), http://www.euractiv.com/socialeurope/commission-gives-green-light-gen-news-516048.

[72] Darren Rosenblum, *Loving Gender Balance: Reframing Identity-Based Equality Remedies*, 76 FORDHAM L. REV. 2873, 2886 (2008).