

PERSPECTIVES

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IS A PROGRESSIVE LAW ACCELERATING THE LONGSTANDING SNAIL'S PACE? WOMEN ON CORPORATE BOARDS IN PORTUGAL

This paper looks at the impact of the new regulatory framework in Portugal that came into force in January 2018, the so-called gender quota law that relates to the gender composition of the boardrooms of companies listed on the Euronext Lisbon Stock Exchange and in the public sector. It begins by contextualising the debate about the underrepresentation of women on boards and the new binding policy framework that has been introduced in the European Union (EU) and Portugal. The paper then examines the data relating to the representation of men and women on the boards of public listed companies (PLCs). It is concluded that the introduction of binding legal targets in Portugal has accelerated the movement towards a greater representation of women on the boards of PLCs, giving an added impulse to the longstanding, but slow progress generated by the incentives that were designed to encourage voluntary action on the part of the companies themselves, and to promote self-regulatory measures. One of the fundamental challenges lying ahead is to move from a greater numerical gender balance to substantive gender equality in the boardroom, while also increasing the representation of women in positions of power and with influence over decision-making.

INTRODUCTION

This paper seeks to examine the impact of the new regulatory framework in Portugal designed to elicit a greater gender balance in economic decision-making bodies, particularly in companies listed on the Euronext Lisbon Stock Exchange (the only segment that we are considering in this current research), state-owned companies, and local government companies. The research questions underlying the study are: to what extent has the gender quota law been effective in delivering the expected greater gender balance on the boards of publicly listed companies (PLCs)? If it has been successful, then what are the challenges ahead?

We begin by briefly contextualising the debate about the underrepresentation of women on boards (WoB), and the new binding policy framework (the so-called gender quota law) that has been introduced in the European Union (EU) and Portugal. Following this, we examine the data relating to the representation of men and women on the boards of public listed companies. It is concluded that the introduction of binding legal targets in Portugal has accelerated the movement towards a greater representation of women on the boards of PLCs, giving an added spur to the longstanding, but slow progress generated by the incentives designed to encourage voluntary action on the part of the companies themselves and to promote self-regulatory measures. One of the fundamental challenges lying ahead is to move from a greater numerical gender balance to substantive gender equality

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in the boardroom, while also increasing the representation of women in positions of power and expanding their influence over decision-making.

Our research is in line with a growing number of studies that analyse the impact of regulatory frameworks intended to elicit a greater gender balance in political and economic decision-making bodies. The research presented here has been developed under the scope of a wider national project about *Women on Boards: An Integrative Approach*.¹

THE UNDERREPRESENTATION OF WOMEN ON CORPORATE BOARDS: BRIEFING THE THEORETICAL EXPLANATIONS

Although there are some variations to be found among different societies, vertical sex segregation is one of the most persistent patterns of gender inequality (Terjesen & Sealy, 2016), as women face career progression barriers worldwide (International Labour Organization [ILO], 2015). Explanations for the underrepresentation of women on corporate boards are to be found in individual, organisational and societal/institutional factors (Iannotta, Gatti, & Huse, 2016; Menéndez, Fagan, & Ansón, 2012). Individual-based explanations highlight the fact that women face greater difficulties in reaching the highest ranks in organisations because they lack the required human capital (skills and managerial experience), social networking and the right attitudinal predisposition (lack of career ambition) (Coleman, 1988; Hakim, 2000).

Organisation-level explanations, on the contrary, lay emphasis on gendered organisational structures, processes and practices (Acker, 1990; Connell, 2006), and on the tendency for the under-representation of women, combined with tokenism (Kanter, 1977), to exacerbate the gender stereotypes, in-group favoritism and exclusionary mechanisms that reproduce homophily and further confirm women's status as outsiders (Konrad, Kramer, & Erkut, 2008; Lewis & Simpson, 2012).

In a complementary vein, society-level arguments stress the role of the national context, including the influence of cultural norms and of the gender order. Drawing upon insights from institutional and stakeholder theories, one particular focus of analysis has been the normative and regulatory framework

and the role that national institutions and key social actors play in advancing gender equality (Grosvold & Brammer, 2011; Seierstad, Gabaldon, & Mensi-Klarbach, 2017; Terjesen, Aguilera, & Lorenz, 2015). A growing number of studies, including ours, have therefore examined the different regulatory frameworks intended to elicit a greater gender balance in political and economic decision-making bodies, as well as the respective impacts and outcomes.

THE CORE GROUND FOR AFFIRMATIVE ACTION IN THE EU AND PORTUGAL: GENDER REPRESENTATION REGULATION IN LISTED COMPANIES

The United Nations Convention on the Elimination of All Forms of Discrimination against Women², considered to be the *magnum* convention on women's rights, and approved at the UN General Assembly in 1979, exhorted all members to ensure substantive equality between men and women by warranting equal participation in decision-making in all areas of life. Stimulated by the Beijing Declaration and Platform for Action, which was signed at the United Nations Fourth World Conference on Women, in 1995, women's under-representation in decision-making has been addressed by the EU policy since the mid-1990s and, consequently, incorporated in key strategic documents (Humbert, Kelan, & Clayton-Hathway, 2019).

In line with the view that affirmative action may contribute towards ensuring substantive and *de facto* gender equality by providing women with access to decision-making, and reinforcing social justice and democracy (Lépinard & Rubio-Marín, 2018), in 2003 the Council of Europe recommended that all governments of member states should consider "setting targets linked to a time scale with a view to reaching balanced participation of women and men in political and public decision making" (Council of Europe, 2003). Implementing national legislative changes, including affirmative action measures, is backed by the core policy of the EU. Article 23 of the Charter of Fundamental Rights of the EU states that "The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favor of the under-represented sex" (European Union, 2000). The principle of affirmative action is also incorporated in Article 157(4) of

¹ The project is funded by the Foundation for Science and Technology (PTDC/SOC-ASO/29895/2017). Webpage: <https://womenonboards.pt/en/>

² Ratified by Portugal in 1980.

the European Union – “With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers” (European Union, 2012).

Such a framework worked as the legal basis for the 2012 proposal of an EU directive on improving the gender balance among non-executive directors of companies listed on stock exchanges, and related measures. One of the main arguments for the need for a directive at the European level was the lack of transparency of the selection procedures and the qualification criteria for board positions. Contrary to the focus on the link between the equal representation of men and women in a full democracy – the prevailing EU narrative in the 1990s -, the 2012 proposal mostly relied on an instrumentally-driven approach by stating that “the underutilization of the skills of highly qualified women constitutes a loss of economic growth potential (Elomaki, 2017). Fully mobilizing all available human resources will be a key element to addressing the EU's demographic challenges, competing successfully in a globalized economy and ensuring a comparative advantage vis-à-vis third countries. Moreover, gender imbalance on the boards of publicly listed companies in the EU can be a missed opportunity at the company level in terms of both corporate governance and financial company performance” (European Commission, 2012).

It is worthwhile noting that this proposal is still pending due to internal resistance expressed by some member states (European Parliament, 2021). Following the snowball effect generated by the Norwegian quota regulation designed in 2003 and aimed at advancing gender balance on boards (Machold, Huse, Hansen, & Brogi, 2013), many European and EU countries have nonetheless passed legislation on gender board quotas (Humbert *et al.*, 2019; Senden, Kruisinga, Burri, & Timmer, 2018).

Portugal: setting the context

Following the institutionalist comparative approach proposed by Terjesen *et al.* (2015), it was previously suggested that Portugal is equipped with favorable institutional conditions for adopting a gender quota for boards of directors in the business sector, including: 1) a relatively high female employment rate and,

despite the financial weaknesses of a semi-peripheral economy, a welfare state whose policies are steeped in the principle of gender equality; 2) a left-leaning government coalition at the time when the parliamentary bill for the law was formulated and proposed; 3) and a legacy of path-dependent gender equality initiatives in the public policy area (Casaca, 2017).

Portugal has displayed a high employment rate for women (15-64 years old) within the EU (67.6%, in 2019, above the EU28 average of 64.1%) (Eurostat, 2020). This has been a long-established pattern in the country and is described as one of its singularities (Casaca, 2012; Ferreira, 1999; Torres, Silva, Monteiro, & Cabrita, 2005), since women's employment behavior has been closer to that of the Nordic countries than to the Southern European ones, where employment rates have been among the lowest in the European Union (Casaca, 2012). This has been combined with the higher investment in education made by women relative to men (61.6% of the active population with a tertiary degree are women) (Pordata, 2019). Vertical segregation on the grounds of gender, however, is one of the core challenges that needs to be addressed in advancing gender equality: women account for 27% of those serving as heads of department, while only 10% hold the position of director (Informa D&B, 2019). According to the Gender Equality Index (European Institute for Gender Equality [EIGE], 2020a), the score for Portugal is still weak when it comes to the distribution of power in the economic domain (measured by the proportion of women serving on the boards of the largest companies listed on the national stock exchanges and on the boards of national Central Banks), as the score in 2018 was still only 44.9%. Nonetheless, the improvement rate has been quite remarkable, since, in 2015, for instance, the proportion of women serving on boards was only 16.4%. The next section provides the explanation for this accelerated progress.

From the slow voluntary progress to the regulatory accelerator

In order to answer the key research question – *To what extent has the gender quota law been effective in delivering the expected greater gender balance on boards?* – data were retrieved from the EIGE's Gender Statistics Database (EIGE, 2020b), which provides statistics on the representation of men and women on the boards of the EU's largest public listed companies. When the quota law came into force in 2018, 18 companies were listed in the PSI-20 Index, and now (in October 2020) there are 17 companies forming part of this same universe.

These data allow for a comparison between the progress made in relation to the question of WoB in Portugal and the advances made in the other EU countries, although only for the specific segment of the largest PLCs. For the whole universe of PLCs in the country (40 and 38 in total, in 2018 and 2020, respectively), data were collected from the publicly available annual financial and corporate governance reports.

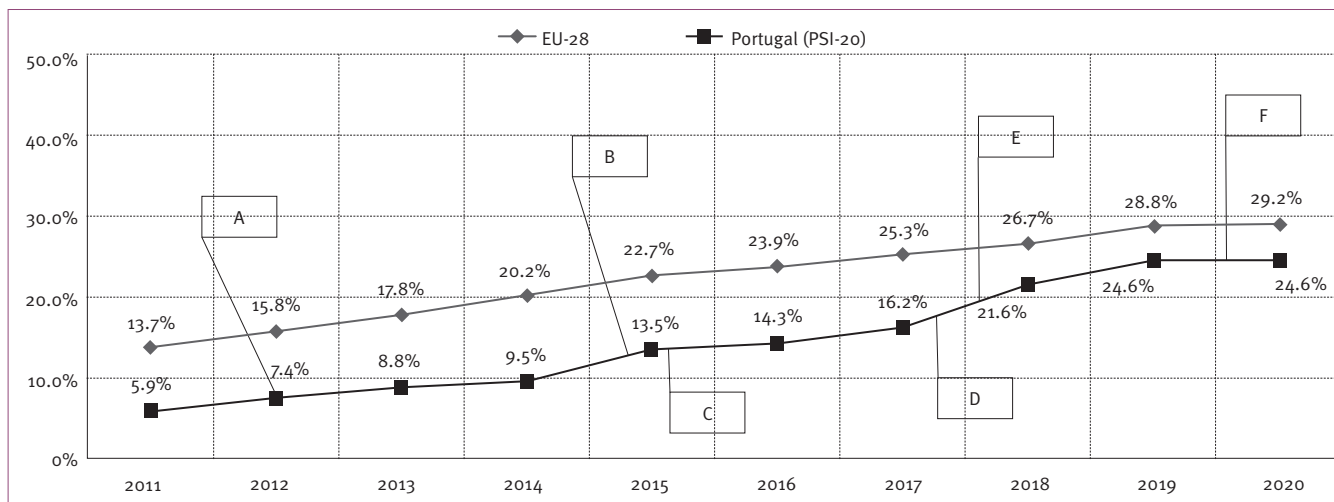
Before the introduction of the new regulatory framework in the country, policies to promote gender balance on boards relied on a combination of awareness-raising initiatives and soft measures, such as policy recommendations and incentives for self-regulation, which had only a limited impact on the numerical representation of women (Casaca, 2017). In 2012, when women accounted for only 7.4% of the board members of the largest PLCs, the government, which was led by a center-right coalition (2011-2015), passed a resolution explicitly recommending that PLCs adopt self-regulatory measures to achieve a plural presence of women and men in managerial and supervisory positions (no specific target was specified) (Figure 1, A).

Changes turned out to be very slow and, in March 2015, the same government invited all the PLCs to sign an agreement

expressing their commitment to achieving a minimum representation of 30% for each sex (Figure 1, B). In June 2015, 13 out of 43 PLCs signed the respective agreement, with the proportion of women on boards reaching almost 14% (Figure 1, C). A new government, supported by left-leaning parties, which has been in power since November 2015, announced its plans to introduce legislation containing mandatory quotas – a promise that it fulfilled two years later.

The targets established by the gender quota law (Law No. 62/2017) published in August 2017 (Figure 1, D) are well below the minimum parity threshold of 40% (Council of Europe, 2003), which is also the quantitative objective established in the proposal for the EU Directive, drafted in 2012 (European Commission, 2012). The enforcement of this law consists of two stages: in the first stage, the proportion of members of each sex appointed to each managerial and supervisory body shall not be less than 20% after the first elective general meeting held after January 1, 2018 (Figure 1, E). In the second stage, such proportion shall not be less than 33.3% after the first elective general meeting held after January 1, 2020 (Figure 1, F). The Law provides for the application of both financial and reputational sanctions in the event of non-compliance

Figure 1. Women’s representation as board members in the largest PLCs (2011-2020)



Source: EIGE (2020b), Largest listed companies: board members, available at: https://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_bus_bus_wmid_comp_compbm/line [consulted on 25/06/2020]

Figure 1 shows that, after the rather slow and inconsistent progress of the previous decade, the quantitative ambition of the Portuguese law is gradually producing the expected results in the composition of the boards of the targeted companies, and has generated an increase in women’s representation in the boardroom. In 2020, the percentage of women represented in the decision-making bodies of the largest PLCs (PSI-20 Index) and the gap in relation to the EU-28 average is the lowest of the past decade (2011-2020) (approximately 4 percentage points below). Analysing the progress made since 2011 (the year before explicit incentives were introduced by the government for the adoption of self-regulatory measures), it can be seen that the most notable increase occurred in 2018, the first year in which the law was applied.

As far as the whole group of PLCs is concerned, when the law came into force, in 2018, the vast majority of effective board members were men (82%), with women representing less than 20% (18%) – below the percentage of WoB in the group of companies listed in the PSI-20 Index. Regarding the number of companies already covered by these legal requirements, in 2018, after their elective general meetings under the new legal framework had been held (N=15), women accounted for 21% of all board members. In October 2020, not all of this group of companies were complying with the legal requirements: in three out of 32 companies, the percentage

of WoB is below the targets required by law. The percentage of women on boards at companies complying with the law increased to 28% in 2020 (Table 1). In terms of their actual positions, however, only 14% of women are executive board members. When it comes to non-executive positions in the same group of companies, women's level of representation is higher, accounting for 37% of the total number of board members filling such positions, in PLCs and the PSI-20. Furthermore, for the same group of companies, only one woman was found to be serving as a CEO, while two more were serving as the chair of the board of directors.

Table 1. Percentage of WoB on PLCs in October 2020

	WoB (%)		
	Executive positions	Non-Executive positions	Total
Total PLCs (N=38)	14 %	35 %	26 %
Companies legally bound by the quota law (N=32)	14 %	37 %	28 %
Companies legally bound by the 20% target (N=22)	16%	34%	27%
Companies legally bound by the 33.3% target (N=10)	11%	49%	31%

CONCLUDING REMARKS AND THE CHALLENGES AHEAD

The introduction of binding legal targets in Portugal has acted as an accelerator leading to a greater representation of women on the boards of PLCs, thereby giving an added spur to the longstanding, but slow progress generated by the incentives designed to encourage voluntary action on the part of the companies themselves and to promote self-regulatory measures. However, not all the companies that are legally bound by the quota law are actually fulfilling the legal targets, and sanctions are due to be imposed in the months ahead. This will be an occasion for deciding whether the law is actually being enforced by the official mechanisms responsible for the application of penalties. A fundamental topic in our research is to identify whether a greater numerical gender balance is, in fact, prompting more substantive gender equality in the boardroom. As has been demonstrated, an evident challenge is to increase the representation of women in

positions of power and influence over decision-making (executive roles), as the gender gap is still remarkably large. The next stage in our study will be to look into the social dynamics of the boardroom (*intra board processes*) and the *outcomes* of a greater gender balance on boards. As the gender quota law also makes the adoption of gender equality action plans mandatory, the focus for the outcomes is on the extent to which an increasing share of WoB is stimulating a review of internal corporate policies, practices and processes, eliciting more gender-inclusive work organisation models and work cultures. The current project also seeks to integrate theory, research, policy and practice, and has institutionalised a think tank, involving key stakeholders in evidence-based reflections on gender balance on boards (such as the current findings), and its impact on sustaining gender-equality values in society. A fundamental challenge ahead is to move from a greater numerical gender balance to substantive gender equality in the boardroom, while also increasing the representation of women in positions of power and influence over decision-making.

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AUTHOR CONTRIBUTIONS

The authors declare that they participated in all stages of development of the manuscript. Sara Falcão Casaca worked on the conceptualization and theoretical-methodological approach. The theoretical review was conducted by Sara Falcão Casaca. Data collection was coordinated by Sara Falcão Casaca and Maria João Guedes. Data analysis included Susana Ramalho Marques and Nuno Paço. All authors worked together in the writing and final revision of the manuscript.