



Discussion Paper



Gender quotas for corporate boards – Why authority does not suffice. A comparative analysis of policy package design

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Harriet Taylor Mill-Institut für Ökonomie und Geschlechterforschung
Discussion Paper 37, 05/2019

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**Discussion Papers des Harriet Taylor Mill-Instituts für Ökonomie und
Geschlechterforschung der Hochschule für Wirtschaft und Recht Berlin**

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Discussion Paper 37, 05/2019

ISSN 1865-9806

Download: <http://harriet-taylor-mill.de/index.php/de/publikationen/discussion-papers>

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Abstract

Societal and scientific debates on gender quotas for corporate boards compel us to reconsider the appropriate design of policy instruments for more gender equality in employment. Obviously, the combination of different modes of governance is the key for effectiveness: Whilst "soft" modes represent crucial components to foster employers' cooperation, coercive elements remain a necessary precondition for policy success. Going beyond this dichotomous conceptualisation, we suggest distinguishing three types of regulation - hierarchical, procedural and evaluative - which can be more or less coercive, differentiated or encompassing. By comparing gender quota regulations for corporate boards in Sweden, Germany and France, we show that substantive progress can be achieved through the design of sound policy packages, that is a smart combination of well-designed rules, accompanying measures and monitoring tools, relying on all three types of regulation.

Index

1. Introduction	1
2. Policy design for equal employment: lessons for corporate board quotas	2
<i>2.1. Tackling gender equality in the economic decision-making sphere through an appropriate instrument design.....</i>	<i>3</i>
<i>2.2. Tackling gender blindness in organizations through reflexive regulation.....</i>	<i>4</i>
<i>2.3. The need to combine different regulatory modes.....</i>	<i>5</i>
3. A typology of regulatory modes for more gender equality in employment.....	7
4. Comparing the policy design of corporate quotas – Evaluating the conditions for effective regulation.....	11
<i>4.1. Sweden: Progress in the shadow of the hierarchy.....</i>	<i>13</i>
<i>4.2. France: A late and symbolic quota regulation for corporate boards.....</i>	<i>15</i>
<i>4.3. Germany: A weak regulation but a strong symbol.....</i>	<i>17</i>
5. Designing effective corporate quotas - A strong political signal	20

1. Introduction

Governance research has highlighted the necessity for public policy makers to adequately address economic actors, i.e. to trigger learning processes through the design and implementation of cooperative and responsive policy instruments. This focus has eventually distracted our attention from the relevance of hierarchical regulation through legal constraint. The “comeback” of gender quota policies on the agendas of almost all European member states in the 2010s, in order to enforce the access of women to leading positions in the economic sphere (Fagan, Menéndez and Ansón 2012; Seierstad et al. 2015; Terjesen, Aguilera and Lorenz 2015), compels us to reconsider the combination of both modes of governance, cooperation and coercion. Recent political debates on gender quotas for corporate boards have specifically addressed the disappointing results of a decade of corporate governance through voluntary codes of conduct (Machold et al. 2013; Teigen 2012). Quota advocates saw legally binding quotas as a way to overcome the proven ineffectiveness of private companies’ self-regulation under the benevolent “shadow of hierarchy” (Fagan, Menéndez and Ansón 2012). This insight is also shared by international organizations: In 2008, the OECD insistently highlighted the usefulness of combining sanctions of employers’ discriminatory practices with positive actions, such as legal guidance and counseling in order to accelerate a change in practice towards more gender equality in employment (OECD 2008: 175–176). In 2012, the European Commission proposed a legal quota regulation for corporate boards, putting member countries under pressure and eventually encouraging them to act at the national level.

Our research focuses on the criteria for an effective policy design of gender quotas for corporate boards, and we claim that the design of multi-pronged policies is the crux for effective social regulation, particularly in the field of gender equality. In such complex or cross-cutting policy domains, where the State addresses the behaviour of different types of corporate actors (listed firms, public administrations, etc.), “soft” or cooperative modes still represent crucial components but, obviously, including coercive elements remains a necessary condition for policy success. To substantiate our argument in theoretical terms we suggest bringing together two fruitful strands of research: feminist sociology of organizations helps us to understand the behavioural logic of policy-takers within their organizational context and policy design research encourages us to analyse the very construction of instruments and to focus on the modes of governance at stake. By opening the “black box” of policy instrument design (section 2), and by suggesting a typology of regulatory modes to be combined in “policy packages” (section 3), we aim at contributing to the current debates on measuring the effectiveness and the “success” of gender policies especially gender quotas (Mazur 2016).

We illustrate our argument by a structured comparison of three national case studies in the field of corporate quota regulation – Sweden, France and Germany. Moreover, we draw on Norway’s regulation to exemplify our typology of governing modes presented in section 3 and to guide our comparison (section 4). Having established the earliest and the strongest hierarchical form of statutory quota regulation for the private economy, Norway set the historical benchmark for national debates on the introduction and design of corporate quotas (Huse 2013, Machold et al. 2013; Teigen 2012). For each case study we adopt a two-strand methodology: we first contextualize current quota regulation within pre-existing national gender equality policies and then outline the key elements of each quota regulation, including all accompanying measures aimed at facilitating and monitoring the implementation process. The assessment of the respective policy design is based on our analysis of secondary literature and complemented by original empirical data on accompanying measures and most recent policy developments, gathered through a longitudinal documentary analysis and a follow-up on legislative procedures, parliamentary debates, governmental press releases and further policy documents, such as evaluation reports. A comparison of our case studies, including Norway as counterpoint, is depicted in table 2. We conclude with a more general discussion on the criteria for an effective policy mix for functioning quotas for corporate boards, based both on the design of single instruments and the careful combination of regulatory logics in a policy package (5).

2. Policy design for equal employment: lessons for corporate board quotas

As the mere existence of electoral quotas does not guarantee the attenuation of gendered segregation patterns in overall politics (Meier and Lombardo 2013), neither do corporate quotas secure the attenuation of gendered segregation patterns in the overall economy. By constraining a recruitment process, both quota forms aim at “breaching the glass ceiling”, so as to bring women to power positions and improve their representation in the political and economic decision spheres. Designing effective quota policies is facilitated by a cultural and societal context that is oriented towards the norm of gender equality and reflected at all levels of society (Wahl 2005; 1999; but also Terjesen, Aguilera and Lorenz 2015, Garabaldon et al. 2017), as exemplified by the abundant feminist research on the implementation of electoral gender quotas (see e.g. Dahlerup 2007; Krook 2007). Therefore, to assess their effectiveness, we need to address not only the very shape of the respective quota regulations but also the specific characteristics of the organizational contexts addressed by corporate quotas as well as those of the broad (national) employment regimes in which such quotas are embedded.

2.1 Tackling gender equality in the economic decision-making sphere through an appropriate instrument design

Although women in both spheres may be confronted with similar obstacles regarding access to leading positions, the field of employment differs from that of politics in three ways at least. First, the behaviour of employers, human resource managers or members of corporate management is – contrary to that of politicians and public policy-makers – not structurally bound by the democratic value of social justice or by the quest for public legitimacy (Francesnet and Pipisco 2013). Their logic of action is primarily oriented towards organizing profit-generating processes that are mostly perceived as gender neutral. Second, human resource management strategies, or recruiting strategies of boards, are by nature less exposed to public scrutiny. Consequently, corporate actors can more easily avoid compliance with democratic social norms. And third, equal employment measures are much more complex than measures that aim at political parity, because they address different problems simultaneously: women’s access to the workplace, horizontal and vertical occupational segregation, and differing working conditions for men and women (Bothfeld, Hübers and Rouault 2010; see also Mazur 2002). Accordingly, working-time arrangements, pay grids or quota regulations address different types of actors inside a firm, e.g. workers, managers or works councils. Hence, a consistent (national) policy regime for employment equality combining measures from different policy domains presupposes knowledge about gendered patterns within a type of organization (or a branch) and about the possible interacting effects between these different domains, as well as a good coordination between them (Wahl 1999).

Policy research has pointed out that consistent policy regimes are rather the exception more than the rule in “real” public policy-making (Howlett and Rayner 2007), particularly in gender policies (Verloo and Lombardo 2007). As a higher degree of consistency promises greater effectiveness, a policy regime can be gauged by how well instruments in the policy sub-areas are coordinated in a meaningful and productive manner. Policy research has pointed out that a lack of coordination may result in windfall effects, produce unintended consequences or even make instruments cancel each other out (Howlett and Rayner 2007) and that particularly gender employment equality policies call for an overarching holistic approach to policy design because of their cross-cutting nature (Halpern and Jacquot 2015).

We argue that the problem of consistency is also relevant at the level of instrument design, since an instrument combines different tools or regulatory modes. We understand an instrument to be a legally defined measure which institutionalizes a relationship between state and policy-taker and as a component of a policy regime designed to achieve a political goal (Lascoumes and Le Galès 2007). Policy research has long been concerned

with the design of policy instruments – a good design being supposed to ensure the effectiveness of a policy and avoid implementation gaps (Lascoumes and LeGalès 2007). While “old” policy design studies focused on the categorization of single instruments along regulatory logics and the observation of shifts in patterns of instrument choices over time (Salamon 2002), more recent policy design studies tend to focus on the complementarities and conflicts arising between instruments within policy mixes or portfolios (Howlett 2014, 192). Such combinations of instruments can be observed in almost all policy domains, since instruments accumulate rather than replace each other over time. However, instrument bundles are also sometimes conceived from the outset to facilitate the implementation of a new policy goal, purposefully combining regulatory and legitimizing logics (Howlett and Rayner 2013, 176). As genuinely integrated policy designs remain an often unresolved challenge (Howlett and Rayner 2007), policy actors mainly hold that coordination and monitoring deficits within policy regimes are responsible for ineffectiveness (Peters 2015) since random “patching” over time tends to dominate thoughtful “packaging” of policy instruments from the start (Howlett and Rayner 2013). A sound choice and combination of instruments in coherent “policy packages” specifically presupposes a good understanding of how policy-takers respond to a plurality of policy incentives.

2.2 Tackling gender blindness in organizations through reflexive regulation

Considering the conditions for organizational change is crucial for an appropriate understanding of the origins of gender inequality in the employment sphere. As feminist research has pointed out, gender relations play a constitutive role in any organization or (business) network: gender relations are continuously (re-)produced through the definition of dividing lines between men and women, the production of gendered symbols, the direct interaction between its members, and the processes of shaping individual identities and social structures (Acker 1990, 146–147). Accordingly, intra-organizational dynamics are not necessarily determined by utilitarian calculus but, above all, by the ignorance of gendered patterns within organizational routines and procedures (Connell, 2006). More recent research confirms that awareness about gendered organizational patterns is not generally there, but has to be made relevant inside the organization: in order to change gender-blind practices from within, it is necessary to gain organisational commitment and “careful doing of reform initiatives by internal policy actors themselves” (Eveline and Bacchi 2010, 307). Standard literature on organizational learning characterizes this kind of (self-)reflection as “double-loop-learning”,¹ while feminist

¹ Double-loop learning (Argyris and Schön 1978) occurs “when error is detected and corrected in ways that involve the modification of an organization’s underlying norms, policies and objectives” (Argyris and Schön 1978).

researchers - interested in discovering inherent normativity - draw on the concept of reflexivity, understood as "an ability and willingness to examine one's own presuppositions and to take on board novel perspectives" (ibid, 263). The importance of including reflexive devices that encourage learning or reflection on implicit norms into policymaking is also discussed in policy research in terms of "responsive policy-making" (see also Baldwin and Black 2008). However, since gendered patterns within organizations rely on gendered power relations, questioning these may disturb existing procedures and therefore meet indifference, resistance or purposeful reinterpretation (Ely and Meyerson 2000; Cavanagh 2016) so that, obviously, mechanisms which initiate gendered organizational learning processes may have to be enforced "from outside" and possibly sanctioned by public action (ibid, 591).

2.3 The need to combine different regulatory modes

What kind of regulatory modes should policy instruments and policy packages for employment equality then entail and combine? Very basically, policy analysis distinguishes between distributive, constituent, regulative and redistributive policies that more or less directly address behaviour and focus on either individuals or groups and organizations (Lowi 1972). More recent typologies identify regulatory modes which are institutionalized through policy instruments: legal prescriptions and financial incentives via programmes, as well as information or persuasion through official reports or media campaigns (Majone 1997; Schneider and Ingram 1990). In situations where the state negotiates with corporate actors, forms of cooperation (i.e. contracts) as well as self-regulation can be favoured (Mayntz and Scharpf 1995) in order to respect the organisational autonomy of corporate actors: relevant in equal employment policies are for instance (voluntary) corporate governance codices that might include rules concerning gender equality (Terjesen, Aguilera and Lorenz 2015). With respect to the binding force of a regulation, political scientists distinguish policies or instruments based on their degree of coercion (Salamon 2002, 25), their "remoteness" (Lowi 1972, 299) or, more recently in international relations, differentiate between soft law and hard law (Pollack and Hafner-Burton 2010). This is done, however, without considering one type of regulation as being more effective than the other. Rather, more egalitarian power relations between policy-makers and policy addressees (or peers) are aimed for in the application of soft law, which might then be combined with more authoritative regulation (Abbott and Snidal 2000) in order to provide a convincing threat ("the shadow of hierarchy") in case of inaction. This combination in turn facilitates and legitimates hierarchical modes of regulation (Scharpf 1997). In a similar manner, the sociology of law underlines how reflexive forms of law may delegate the choice of means and procedures to fulfil a (legally binding) policy objective to the policy addressees. By defining an objective and a deadline, and by

eventually stipulating further aspects, reflexive law determines the degree of coerciveness exercised on policy-takers and draws a line between state and market regulation (Zumbansen 2008). Such mixed regulation acknowledges that private actors are able to choose among implementation strategies according to their specific organizational context.

As a consequence, we argue that the effectiveness of a regulation – particularly of a reflexive regulation – is not solely conditioned by the enforcement of a rule but also by its technical specifications. Hence, we suggest considering three regulatory aspects of policy instruments, namely their *degree of coercion*, their *differentiation* and their *scope*.² The most salient aspect, *coercion*, is characterized by the definition of a (more or less ambitious) objective, flanked ideally by a (short or long) timeline for its implementation and (more or less severe) sanctions in case of non-compliance (Salamon 2002). The binding character of hierarchical measures may be increased by their visibility³, e.g. by drawing on publicity campaigns, voluntary certification audits or other means of publicity (Weiss and Tschirhart 1994) or by hortatory mechanisms like systematic comparison or competition among policy addressees (Schneider and Ingram 1990). When prominent entrepreneurs or politicians speak out in support of a particular instrument – as this is the case when new regulations trigger controversial public debate, legislative quotas may gain a positive symbolic value. This can provide gender inequalities more public visibility (Meier and Lombardo, 2013: 54), or, in the process of political or expert discourse, may even establish new norms, which then become benchmarks for human resource policies. Even in the absence of explicit statutory regulation, visibility can extend the reach of such norms by creating societal attention and pressure.

Moreover instruments also need to comprise *sufficiently specified or differentiated* rules, i.e. mechanisms aimed at reducing non-compliance by offering addressees guidance and orientation. By offering an array of implementation rules detailed enough to take into account the specific needs of each category of addressees, differentiated instruments facilitate implementation and possibly prevent implementation avoidance under the pretext of unintelligibility, unfeasibility or inadequacy.⁴ For example, the regulating authority can support human resource managers by proposing from the outset a row of selection criteria for recruitment processes that guarantee more gender fairness in the

² In his general framework, Salamon suggests a slightly different list of 'key tool dimensions' (2002, 24–38) – degree of coerciveness, directness, automaticity, visibility – which do not appear sufficiently specific for our purpose.

³ We understand visibility as a mechanism that works through the raising of awareness about a certain policy problem in the public debate, rather than, as Salamon puts it, as a dimension of policies defined as a visible share of a government budget (Salamon 2002, 35ff.).

⁴ Very similarly, international relation scholars define 'precision' as one dimension of regulation. Precision denotes when a rule is precisely defined and highly elaborated (Abbott et al. 2000, 404).

comparison and ranking of candidates (Fuchs, Leitner and Rouault 2015). Finally, the *scope* of an instrument precisely defines its field of application, i.e. the categories of persons or firms concerned. For example, a gender reporting duty may apply to a specific type of firm (“500 employees or more”) or to the whole economy (Bothfeld and Kuhl 2007). Ideally, a broader scope will be flanked by more differentiated rules with each category of addressees being provided with specific and tailor made rules and incentives. Small firms could for instance have to provide less ambitious gender reports or public firms could have shorter implementation deadlines.

Regarding coerciveness as one qualitative criterion among others, addresses more specifically the state’s dilemma of, on the one hand, controlling the implementation of political objectives and, allowing leeway for private companies to adjust their specific routines and procedures on the other.

3. A typology of regulatory modes for more gender equality in employment

The analytical dimensions of policy design outlined above are situated within the debate on social regulation (May 2002). Very basically, social regulation - effected through mechanisms such as incentives, rules and sanctions, aims at realizing citizens’ wellbeing or protection through the restriction of the addressees’ behaviour. Accordingly, quota regulations are not neutral but establish “rules that identify permissible and impermissible activity on the part of individuals, firms, or government agencies” (ibid, 157). We suggest mapping three different types of regulatory modes based on the type of adjustment of organizational behaviour they initiate: hierarchical, procedural and evaluative modes of governance (summarized in table 1). We illustrate our typology using elements of the Norwegian quota regulation, which is already quite well researched.

Hierarchical regulation can take the form of prescriptions which define binding, clearly defined and concrete objectives – as e.g. the proportion of seats in a board designated to women, the prohibition of discriminatory practices or an immediate requirement of equal treatment. Depending on the degree of coerciveness, control measures will ensure that goals are achieved and, if necessary, non-compliance will be sanctioned. This comes closest to the prescriptive or prohibitive legal type of regulation earlier typologies referenced (May 2002; Scharpf 1997). In the quota literature, many researchers underline the need for state intervention as a precondition for achieving a more equal representation of women at the top levels of the economy (Fagan et al. 2012; Dhir 2015; Franceschet and Piscopo 2013). Hierarchical modes necessarily constrain management but can also produce adverse effects, such as “exit effects” to avoid the implementation of a given regulation, e. g. through a change of incorporation forms (Bøhren and Staubo 2016).

The Norwegian gender quota law for corporate boards represents a role model of hierarchical rule, but is quite limited in scope: in 2003 it became compulsory for *public limited* companies to appoint at least 40% women as members of their corporate boards by the year 2008. Although the new law applied to less than 10% of the country’s private enterprises, it nevertheless touched the very core of the Norwegian economy (Teigen 2012, 123).⁵ These enterprises were also subject to a two-stage implementation: The 2008 deadline was applied to established firms, while newly formed companies had to comply within a shorter time frame (by 2006), each group of addressees being therefore granted a specific deadline. Furthermore, the Norwegian regulation is well-known for its high degree of coerciveness: it entails severe but differentiated sanctions, starting with repeated warnings, followed by fines and, in the final stage, even forced closure of the company. In Norway the quota draft law received decisive backing from the (male) Christian Democratic Minister of the Economy of the centre-right government (2001–2005).

Table 1: Instruments and regulation types in gender equality policymaking

	Hierarchical regulation	Procedural regulation	Evaluative regulation
Object(s) of pursued change	Actors’ behaviour	Actors’ behavioural logic; organisational routines	Addressees’ self-perception; drawing public attention to policy goals
Goal type	Direct, concrete, and measurable or demonstrable	Indirectly prescribed; appropriation and adaptation by addressees	Indirect; self-perception and problem definition
Control modes	Coercion via (monetary) sanctions or/and publication of results (public visibility)	Coercion via regulation, incentive, information/persuasion, cooperation	Coercion via moral and peer pressure
Type of effect	Direct, individual	Indirect, structural	Latent learning, cultural change
Examples	Prohibition of discrimination, statutory quotas	Equal opportunity plans, Gender Reporting	(national) Evaluation reports, (voluntary) audits

Source: Authors’ own depiction.

⁵ The regulation also applied to state (or inter-municipal) owned enterprises (by 2004) and to cooperative companies (by 2009).

Procedural regulatory modes are not centred on a specific outcome but rather on establishing new organizational routines and modifying the behaviour of policy-takers. Their aim is to initiate processes of (self-)reflection within organizations with reference to a given norm (e.g. gender equality), but without determining concrete objectives (Schneider and Ingram 1990, 521). Procedural mechanisms encourage reflexivity as a precondition for changes in thinking and doing (see above) by institutionalizing practical conditions and thus by binding the *actions* of policy addressees to certain rules.⁶ The Norwegian law, for instance, imposes corporate gender reporting for both private (with more than ten employees) and public employers, obliging them to perform an active analysis of the status of gender equality in their organizations (Machold et al. 2013). This rule lays the groundwork for awareness of vertical gender segregation, but only if such reporting duties are sufficiently differentiated in terms of pay grades and occupational categories. Non-compliance can be sanctioned by more or less severe penalties, for instance when public agencies or employee representatives are able to engage legal action. Yet another form of procedural instrument is a system of voluntary commitments, such as corporate governance codices or audits. In these cases of self-obligation, the addressees can choose between appointing more women to leadership positions and having to justify not doing so. However, in the absence of substantial public sanctions, the binding force of such measures remains low. Therefore, the state, in partnership with employers' or employees' organisations, can concomitantly develop (positive) incentive systems. As in the Norwegian case, they can offer training sessions to female board candidates or take measures to address an alleged lack of appropriate candidates, such as creating a database of female board candidates or establishing mentoring programs for female managers in order to prepare and encourage women to take leadership positions (Seierstad et al. 2011).

Our third type – the *evaluative regulatory mode* aims at providing information that makes it possible to assess the state of compliance to legal or voluntary rules. It is not based on the classic lists of tools and instruments, despite the widely acknowledged importance attributed to official statistical data in public policymaking (Desrosières and Naish 2002). Notably through EU social policy and especially the European Employment Strategy, “governing by numbers” (Mabbett 2007) i.e. the use of statistical techniques to measure and compare policy addressees' performances, has invaded most domestic policy fields. The expansion of policy evaluation and evidence-based policy-making in the last two decades (Shore and Wright 2015) has been met with some scepticism, especially by feminist policy analysts (see Bustelo 2016), although such public policy evaluations

⁶ Lowi has termed this the “environment of conduct” (1972, 300).

contribute to develop a crucial informational feedback and enable a progressive adjustment of the policy instruments at stake.

Ideally evaluative instruments could eventually modify the policy-makers' and policy-takers' perceptions of policy problems by making the outcomes of behavioural adjustments visible and comparable. They are, however, similar to hortatory or learning instruments in having an uncertain outcome (Schneider and Ingram 1990). Equal employment policies could therefore require corporate gender reporting to be made public but also make the achievements of those policy addressees visible and comparable.

By aggregating at the national level the achievement of all addressees of a given policy (measure), evaluative instruments can be the basis of informal public "naming and shaming", allowing for comparisons among or between groups of addressees (private companies v. public agencies), or between similar groups of addressees in different countries. Moral pressure to act arises when the goal of gender equality enjoys a high level of political and societal legitimacy and when the (monetary or non-monetary) costs of non-compliance are seen as substantial. For instance, in Norway, corporate gender reports are not only made public but (national) achievements are also compared in the wider framework of the Nordic countries' annual Gender Equality Barometer.⁷ Although such evaluative measures are indirectly affecting policy addressees, they may initiate latent processes of learning and cultural change in organizations and in societies at large. We therefore posit that evaluative measures for an elaborated statistical assessment of gender inequalities are one essential component of an effective equal employment policy. But to "go beyond numbers", quantitative evaluations should be complemented with mechanisms of gender mainstreaming (Meier and Lombardo 2013).

As policy analysts argue, equal employment policies need a holistic rather than a narrow or parsimonious approach (Halpern and Jacquot 2015). Following this argumentation, we claim that while the combination of different governance modes is a necessary precondition, it is no guarantee for policy success. Rather, the various regulatory modes must be carefully designed, strategically combined and, eventually, embedded into a network of accompanying measures delivered by civil society and corporate actors (Krook and Norris 2014). In the Norwegian case, the implementation of a strongly coercive gender quota law for corporate boards, including differentiated conditions of implementation and staggered sanctions in case of non-compliance, flanked by a large array of procedural and evaluative accompanying measures was a success: all concerned companies complied in

⁷ As the result of an initiative of the Nordic Council of Ministers, the Nordic countries have been cooperating in the area of gender equality since 1974. Among other things, progress is recorded on an annual basis by means of the so-called Gender Equality Barometer (www.norden.org/en/theme/nordisk-samarbejde-om-ligestilling-i-40-aar).

time – a small minority of them (7%) after a first or a second warning. Even the disproportionate accumulation of board positions by a small number of women – denounced as “golden skirts” in the press – disappeared over time.⁸

In the following section we systematically test our hypotheses on gender quota regulations designed for corporate boards in three European countries.

4. Comparing the policy design of corporate quotas – Evaluating the conditions for effective regulation

For this comparative policy review, we chose three contrasting cases: Sweden, Germany and France who are seen as coordinated market economies (Soskice and Hall 2001), whilst Sweden – like Norway - belongs to the social-democratic dual-earner type and is supposed to be more open to equal opportunity policies, France and Germany exemplify a modified version of the corporatist-conservative Welfare State type where effective equal employment policies are expected to be prioritized to a lesser extent than in the Nordic countries. Moreover, in Sweden and Germany - two strongly export-oriented economies - economic actors are historically opposed to quota policies in the private sector, but while Germany adopted a quota regulation in 2015, Sweden is still resisting.

⁸ See Mari Teigen’s intervention on the issue:
www.nordiclabourjournal.org/artikler/forskning/research-2015/article.2015-05-20.3011019632

Table 2: Comparative evaluation of the effectiveness of quota regulation in the private economy

	Hierarchical regulation	Procedural regulation	Evaluative regulation	Outcome
Norway	(40% by 2008) Limited scope High coercion level (staggered sanctions) High visibility	Differentiated instrumental design High level of coercion	Far-reaching and differentiated evaluation	40% quota: fulfilled in time No spill-over effect on management board positions Adverse effect: mandate accumulation (resorbing)
Sweden	<i>No quota regulation</i> Repeated threats of regulation Good visibility	High level of coercion (comprehensive reporting duties) Differentiated instruments Voluntary commitment (2009)	Differentiated and far-reaching monitoring by various institutions	Increase of women's share to 28% No spill-over on chairperson positions Adverse effects: expansion of bodies
France	(40% quota by 2016) High coercion level Broad scope Mild sanctions Good visibility since 2013 (through annual rankings)	Increasing coercion (control of reporting obligations from 2012 onwards)	Discontinuous public monitoring	Sharp increase in "big companies"; slower increase in "smaller companies" No spill-over on executive positions
Germany	(30% quota by 2016) Low degree of coercion (mild "empty chair" sanction) Very limited scope	Coercive regulation by objectives No specific reporting obligations	Limited evaluative instruments: non-state activities with growing visibility	A third of addressees achieved (2017) No spill-over on Management Board positions

Source: Authors' own research.

This comparative strategy provides us with examples of varying and contrasting combinations of regulatory logics and enables us to assess, through the analysis of their instrument design, the relative effectiveness of gender quotas for corporate boards.

4.1 Sweden: Progress in the shadow of the hierarchy

Sweden, in contrast to Norway, has not yet introduced any gender quota regulation for corporate boards, although political and societal debates on this issue run quite parallel to the Norwegian debate (Heidenreich 2012). Threats to implement such measures were nevertheless regularly expressed by the Swedish government, should no progress be made on a voluntary basis. These threats collide with a general reluctance towards legal quotas - in political parties, public panels, boards and committees - and show the country's preference for voluntary measures, which have proven successful in political life and in public bodies (Bergqvist 2004).⁹ The Swedish case therefore exemplifies under which (restrictive) conditions an authoritative quota regulation can be avoided and (limited) social progress towards gender equality in corporate elites achieved.

Notwithstanding its still strongly segregated labour market, Sweden can claim a consistent policy regime in the area of gender equality in employment, based on a wide support for the advancement of women's careers, notably through a comprehensive offer of reconciliation measures (Bergqvist and Njberg 2002). This consistent implementation of consensual and differentiated equal opportunity policies over the years led to a sufficient pool of qualified women available to make voluntary commitments on corporate boards feasible (Bergqvist 2004).

When in 1999 the Social Democratic Minister for Gender Equality threatened to introduce a statutory quota for corporate boards, it was massively rejected by the private economy (Bohman, Bygren and Edling 2012; Heidenreich 2012). As before, Swedish corporatist representation proved highly resistant to women's representation (Bergqvist 2004). In 2002, the threat was repeated in more precise terms: The share of women on corporate boards was to be increased to 25% by 2004, otherwise the government would put legal measures into force. But it was not until 2009 that Swedish employers amended the Swedish Corporate Governance Codex accordingly (Bohman, Bygren and Edling 2012). The following centre-right coalitions (2006–2014) rather insisted on the guiding principles of merit and competence for candidate selection, but took several initiatives to promote women leaders by offering mentoring programmes and a support programme for women entrepreneurs (Freidenwall 2015, 18), thus differentiating further the policy package designed to increase women's presence on corporate boards. Since the Swedish government has a number of information sources at its disposal, it is able to monitor the progress being made by companies in the field of equal employment. For instance, companies are under a legal obligation to compile annual comprehensive gender reports and plans (Bothfeld, Hübers and Rouault 2010, 47–51). In addition to this, each year the

⁹ The academic sector represents an exception (Heidenreich 2012).

Swedish Stock Exchange publishes the composition of the boards of all listed companies. Furthermore, in 2009, when the new Anti-Discrimination Act came into force, the Ombudsman for Gender Equality received additional sanctioning powers (e.g. to impose fines) in the event that reports were not submitted on time.¹⁰ This differentiated set of procedural and evaluative instruments for equal employment – vested not only with a high degree of coerciveness but also with significant public transparency – lent credibility to the threat of issuing a statutory regulation, thereby activating “virtuous dynamics” for private initiatives. Finally, private initiatives complete these differentiated evaluative measures: for instance, since 2002, the AllBright Foundation has been focusing on the statistical monitoring of gender diversity on boards and in management positions of listed companies. Its annual reports provide those companies – through a system of green/yellow/red lists – a shaming or praising feedback in form of regular public rankings.¹¹

Under this multi-pronged strategy the share of women on corporate boards of listed companies has significantly increased – from 2% in the mid-1990s to 25% in 2008 (Bohman, Bygren and Edling 2012). The shadow of hierarchy seems to have caused the Swedish employers to alter their behaviour in the short term. However, by 2014 women’s share had not risen further, so that the Swedish Minister of Finance (of the centre-right governing coalition) repeated the threat to introduce a statutory quota.¹² This threat was renewed by the red-green coalition in power since October 2014 who set out to achieve a proportion of women board members of 40% by 2016 (Freidenwall 2015, 12). As a consequence, the proportion rose to 33% in 2017.¹³

In Sweden, notable progress has been achieved on corporate boards without a statutory quota by relying on a voluntary approach based on coercive and differentiated procedural and evaluative instruments embedded in a strong equal employment policy regime. The close monitoring of companies’ achievements – both by the state and civil society – obviously fosters emulation among employers and makes the threat of enacting a quota law in the absence of visible progress credible. A societal context in which gender equality is seen as an integral part of the Swedish Nordic identity provides a favourable pre-condition by making state pressure on corporate life legitimate and therefore encouraging

¹⁰ (Swedish) Ministry of Integration and Gender Equality – ‘Fact sheet: New Anti-discrimination legislation and a new agency’, The Equality Ombudsman (January 2009): www.government.se/information-material/2009/01/fact-sheet-new-anti-discrimination-legislation-and-a-new-agency-the-equality-ombudsman/.

¹¹ See www.allbright.se/english/ – all annual reports also available in English.

¹² “Sweden threatens businesses with sex quotas as women snubbed” by Johan Carlstrom and Niklas Magnusson (Bloomsberg, 13.02.14): www.bloomberg.com/news/2014-02-12/sweden-threatens-businesses-with-sex-quotas-after-women-snubbed.html.

¹³ Taken from the 2017 AllBright Report, “Women CEOs choose gender equality”, see endnote xi.

private initiatives. However, the traditional autonomy of the Swedish business elites (as opposed to the tradition of state intervention in the Norwegian economy) represents a durable obstacle to a more far-reaching feminization of corporate boards, as the temporary decline in women's representation in corporate boards of listed companies in 2015 demonstrated.¹⁴

4.2 France: A late and symbolic quota regulation for corporate boards

"Once a country allergic to any policy that would look like affirmative action for women (...), France has transformed in less than a decade (2006–2014) into the land of gender quotas" (Lepinard 2015, 11). After the fierce debates on the Parity Law (2000) that introduced quotas in politics, gender quotas extended swiftly to almost all professional spheres. This was possible due to the declining resistance from the French National Constitutional Court, which had seen in these measures a break with the Republican tradition of equality and meritocracy (ibid., 15). The new consensus around gender quotas originates from the deceptive results of authoritative, but poorly monitored, equal employment policies from the 1980s onwards that have been labelled "symbolic politics" (Reuter and Mazur 2003).

The French gender regime combines a social-democratic strategy of labour market regulation with a wide offer of childcare, aimed at supporting women in full-time employment, and conservative elements of a pro-birth taxation policy still favourable to a traditional division of labour within couples (Bothfeld, Hübers and Rouault 2010, 63–64). Until 2010, it offered few institutionalized instruments to combat gender discrimination on the labour market, to monitor the progress of gender equality in economic life or to encourage employers to support female careers (ibid.).

The French Parliament's first attempt to introduce quotas for corporate boards in 2006 failed because the Constitution allowed for positive measures only in the case of political offices. When in 2008 the Constitution was amended accordingly, French public opinion (including that of the conservative parties) became more consensual on this issue (Smith, Srinivasan and Zhuk 2012). Accordingly, the "Copé-Zimmermann Law" (2011) makes it compulsory for all listed companies, all enterprises with more than 500 employees and a turnover of 50 million Euros or more (in the last three years) as well as for state-owned firms to achieve a quota of 20% women on their supervisory boards and boards of directors (but not for their executive committees)¹⁵ within three years, and of 40% within

¹⁴ See the 2015 AllBright Report, "With lean boardrooms – Promote competence": p.6, see endnote xi.

¹⁵ French companies can choose between a one-tier-system or a two-tier system – in each case there is a distinction between (internally recruited) members with executive function and (externally

a six-year period – designing the quota regulation with a very large scope and a staggered implementation timeline. The coercive strength of this hierarchical regulation is nevertheless quite limited - stating the nullity of unlawful appointments and a *temporary* suspension of board members' attendance fees.

New procedural and evaluative incentives – but also a reinforcement of existing coercive procedural regulations – accompanied the new quota law. Since 1983, in all companies with more than 50 employees, employers' and employees' representatives have an obligation to negotiate annually on the progress of equal treatment, based on an annual corporate report on employment equality. Since 2001, non-compliance could be punished by fines or even imprisonment. However, up until 2013, no systematic controls had been implemented and there was not one single case of sanctions imposed. Accordingly, very few firms fulfilled their duty to negotiate and report (28% of all companies concerned in 2007; Bothfeld, Hübers and Rouault 2010, 60–61) so that in December 2012, a (negotiable) fine of non-compliance was introduced instead (up to a maximum of 1% of the wages bill per month), providing less coercive but more practicable sanctions. In 2013, the first companies received warnings and, since then, about a hundred have been sanctioned. Compliance rose in the same year to 30,6% and reached 40% in 2016.¹⁶ Like in Norway, in January 2014 an electronic database of candidates was set up to facilitate the recruitment of female board members, extending the French quota policy package. Furthermore, from 2013 onwards, the Ministry for Women's Rights has published a yearly ranking of the 120 largest listed companies that measures the degree of "feminization of their management bodies", including the women's share of board positions, their share of executive positions and of the 100 most important corporate positions. This instrument is considered the key to creating more positive dynamics through more transparency in gender equality in employment:¹⁷ the increased moral pressure on targeted organisations evidences a differentiation of hierarchical regulations in the quota policy package. The government after the 2017 presidential election went a step further towards this "name and shame" logic of action: the 10 lowest achievers of the above mentioned ranking were invited to take part in a training session dedicated to gender equality – the two companies which did not participate saw their name handed to the press.¹⁸ Despite the growing coercive character of those evaluative measures, a continuous monitoring of the quota legislation, which exists for quotas in politics (Lepinard 2015, 16), is still missing: A single

recruited) members with no executive function. The quota applies to the (undifferentiated) women's share in all bodies, or on the board of directors. The government speaks in general terms of the board of directors (*conseil d'administration*).

¹⁶ See: press article "Égalité professionnelle: 107 entreprises sanctionnées" by Isabelle Germain (Nouvelles News 27.10.16); report of the National Assembly - Délégation aux Droits des Femmes (Rapport d'information N°4525 du 21 février 2017): p 151.

¹⁷ See Ministry for Women's Right 2015 (quoted above).

¹⁸ See "Honte sur les entreprises cancrés en égalité" by Sylvie Germain (Nouvelles News 13.09.17).

evaluation report on the implementation of the Copé-Zimmermann Law, published jointly in 2015 by the High Council for Employment Equality and the High Authority for Gender Equality, admonishes the absence of any dedicated authority to monitor more stringently this implementation.¹⁹

Women's share of positions on the corporate boards of the country's 40 largest listed companies (*CAC 40*) rose from 3.2% to 6.1% between 1997 and 2007, while within the same time period their share of management positions (*cadres*) rose from 7% to 17% (Smith, Srinivasan and Zhuk 2012). In the meantime, there are significant signs of an improvement, with an increase in female board members to 15.3% in 2010, and a doubling to a share of 30.3% in 2014.²⁰ Obviously, a number of the largest French enterprises decided to comply before the law became enforceable (*ibid.*). A closer look, though, reveals that women's shares were much lower in executive positions (10.3% in 2014).²¹ The 2015 evaluation report on the implementation of the quota law showed that only the biggest companies would comply by 2017 (achieving a share of 28% of women in 2015), while the non-listed enterprises stagnated at 14.2%. This indicates an insufficient differentiation of procedural instruments designed to promote the implementation of the quota law, especially in smaller firms. And, finally, almost all chair positions (95%) remained in male hands.

Compared to the Norwegian "lighthouse model", the French quota regulation for corporate boards is much broader in scope, but rather symbolic in its sanctions. As in the Nordic countries, procedural and evaluative instruments have a long tradition, but their coerciveness remains weak after all. The delayed and still very selective feminization of French corporate boards reflects this contradictory character of the French equal employment regime. Accordingly, the 2015 evaluation report also points to the little attention the government pays to the differentiation of the procedural instruments, most importantly the lack of information and guidance for small-and-medium companies. And finally, the stringent and transparent monitoring of the quota law is missing, notably because of the unclear distribution of competencies in the field of equal employment policies.

4.3 Germany: A weak regulation but a strong symbol

¹⁹ Haut Conseil à l'Égalité entre les femmes et les hommes / Conseil Supérieur de l'Égalité professionnelle 2015. *Vers un égal accès des femmes et des hommes aux responsabilités professionnelles : la part des femmes dans les conseils d'administration et de surveillance*. Rapport n°2016-01-15-PAR-019, publié le 10 février 2016.

²⁰ Taken from press releases issued by the Ministry for Women's Rights on 05.06.14.

²¹ *Ibid.* (See previous endnote.)

In Germany, the quota debate was initiated under the Liberal–Christian Democratic coalition (2009–2013) mainly by the opposition (Social Democratic party, Green party) and led to the development of no less than four draft laws. One draft even passed the upper chamber of Parliament (*Bundesrat*) with the support of some conservative-led states in defiance of Chancellor Angela Merkel, who signalled her opposition to any statutory quota law for corporate boards, so that it finally failed. Put under pressure, both by women leaders of the Christian-Democrats and by heated societal debates fuelled by the EU initiative of Commissioner Viviane Reding, Merkel was eventually forced to include a statutory quota proposal in the Christian Democratic Union’s programme platform for the 2013 general election (Lang 2015), which was then integrated into the political agenda of the new “big coalition” (of Christian and Social Democrats: 2013-2017).

The long and laborious birth of a legal gender quota for German corporate boards echoed the historical “shuffling strategy” of German federal governments in the field of gender equality policies, legislating more often than not under the threat of European litigation (MacRae 2006). This normative indecisiveness was supported by continuous pressure from employers’ organizations claiming the private companies’ right to self-organisational autonomy, favouring voluntary agreements over binding legislation. A good example for this is the 2001 Agreement with Employers’ Organizations on Equal Opportunities²² adopted in lieu of statutory regulation (Bothfeld, Hübers and Rouault 2010). As a consequence, the German gender equality regime remained caught between a slow orientation towards the new norm of the dual-earner model and stereotypical concepts of a gender-specific division of roles as reflected by tax or family policies. Despite a well-established use of quotas in political parties, regional public administrations and, to a lesser extent, in the federal administration, the adoption of a quota regulation for corporate (and public) boards was finally made possible by a multi-levelled pressure campaign exerted on Christian Democratic party leaders (Lang 2015), and was legitimated by the disappointing results of a decade of voluntary agreements (Bothfeld, Hübers and Rouault 2010).

Introduced in March 2015, a compulsory quota of 30% women for all new appointments to supervisory boards of “fully co-determined and listed companies” was to be achieved by 2016.²³ The quota applies to both employee and shareholder board members. The so-called “empty chair sanction” represents a rather mild coercion, as the position intended for a new female member on the supervisory board is to remain unoccupied if the quota

²² Official (unabridged) title: *Vereinbarung zwischen der Bundesregierung und den Spitzenverbänden der deutschen Wirtschaft zur Förderung der Chancengleichheit von Frauen und Männern in der Privatwirtschaft.*

²³ Co-determination here describes the equal representation of the employees and of the company’s shareholders. Both characteristics are seen as cumulative rather than alternative (for more information see Pütz and Weckes 2014).

is not reached. Moreover, the regulation has a quite limited scope, as it only covers only about 100 of around 600 listed companies (Pütz and Weckes 2014). However, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ)²⁴ has published implementation guidelines and organized a series of workshops for all addressed companies, fostering a progressive differentiation of the procedural elements.

The quota regulation is, however, flanked by obligatory measures intended to animate a much larger number of companies (3,500 co-determined or listed companies): until September 2015, these firms had to determine own goals and deadlines to increase the share of women in corporate boards and the two highest levels of management. This measure is inspired by the amendment to the German Corporate Governance Codex of 2010, which entails a (voluntary) commitment to achieving "an *adequate* representation of women" in supervisory boards and executive positions and to formulating accordant objectives and publishing information on their implementation in their annual governance reports. While reinforcing the obligations of all listed companies to reflect on gender inequalities, the 2015 quota law does not introduce around these "self-set objectives" any sanctions in case of non-compliance.

The quota law provides for an annual statistical report on the achievements of all addressed companies but only a single issue was published in March 2017. Since there is no regular governmental report on the progress of gender equality in the overall private economy either, the 2015 quota law did not compensate the deficit of governmental monitoring in the field of employment equality. This deficit is nevertheless partially compensated by academic and businesswomen's organisations, which developed, within a decade, a solid monitoring infrastructure to observe the promotion of women to leadership positions. For example, the DIW-Women Executives Barometer (*Managerinnen-Barometer*)²⁵, published since 2006 by the German Institute for Economic Research (DIW Berlin), annually collects relevant data about women's shares in supervisory and management boards of German listed companies. Furthermore, the initiative *Frauen in die Aufsichtsräte e.V.* (FidAR), founded in 2006, relies on its annual 'Women-on-Board Index' to actively lobby and campaign on the issue (Schulz-Strelow 2013).

In Germany's 100 largest listed enterprises (DAX-100), the share of women on supervisory boards rose from 9.6% in 2006 to 18.6% in 2014. In the same period, the share of women on management boards rose from 0.2% to 4.1% (Holst and Kirsch 2015:

²⁴ See the project "*Zielsicher – Mehr Frauen in Führung*" on the website of the ministerial department responsible for gender equality (BMFSFJ):

<https://www.bmfsfj.de/bmfsfj/service/publikationen/zielsicher---mehr-frauen-in-fuehrung/96204>

²⁵ See

https://www.diw.de/de/diw_01.c.100319.de/presse/pressemitteilungen/pressemitteilungen.html?id=diw_01.c.574761.de (accessed on 22.02.2018).

48). The 2017 governmental evaluation report eventually announced that about a third (34,6%) of the companies concerned reached the quota set by the law – but also that a large majority of them took advantage of the weak coercive nature of the regulation: only 62% of the targeted companies set a time goal for the feminization of the directors board, 70% of which chose to define this objective at zero²⁶, thus showing an open resistance to the federal regulation.

Overall, the German gender quota law for corporate boards combines a weak hierarchical regulation with a few procedural measures to support the implementation of the regulation. Flanking measures have a much broader scope and push for a broader feminization of management in larger firms, but their coerciveness remains weak too. The German quota law also entails a rather weak evaluative dimension (public statistical monitoring), which is partially compensated by several private initiatives. Being criticized for its elitist and highly selective character (Berghahn 2012), this quota regulation probably hardly contributes to more gender equality in the overall sphere of employment. Nevertheless, as in France, the society-wide discussion surrounding the quota law has provided a strong political signal for an output-oriented gender equality policy, and, in the meantime, media and public attention for the achievements of gender equality in management positions has increased significantly.

5. Designing effective corporate quotas - A strong political signal

Our comparative analysis of quota regulations suggests three main conclusions on the design of instruments and policy packages in equal employment policymaking.

First, a sound combination of different regulatory modes or coherent “policy packages” are necessary to achieve gender equality with the support of corporate actors. Voluntary agreements may constitute an important step forward because they reflect a commitment to clearly identified objectives. However, in the absence of palpable consequences in the event of non-compliance their effects remain limited – as shown in the German 2001 Agreement and in the Swedish case, where advances in increasing women’s representation in leadership positions in the private economy were only achieved by the reiteration of realistic threats to introduce statutory regulation. Therefore, hierarchical instruments are a necessary condition to an effective equal employment policy: they should enact prohibitions and requirements but should not only entail certain coercive

²⁶ See: „Die meisten Firmen sagen: Frauen, ihr könnt uns mal“ by Constanze von Bullion (Süddeutsche Zeitung, 16.08.17).

elements (moral or financial sanctions) but also have to be as differentiated as possible (reflecting the specificities of each group of addressees).

However, despite its apparent necessity, hierarchical regulation it is not a sufficient strategy as it is not bringing about relevant changes in the daily routines and logics of corporate behaviour. Procedural instruments such as legal reporting obligations have proven effective in coercing companies to reflect on their routine behaviours. Nevertheless, as the French case illustrates, the plausible threat of sanctions is needed to exert pressure on firms to implement such procedural rules. The Norwegian example also shows how important it is to achieve a sound coordination of procedural instruments with accompanying and facilitating measures e.g. to generate a pool of women suitably qualified for corporate board positions.

Systematic evaluation constitutes an additional necessary condition for an effective design of instrument and policy packages for equal employment. Also the regular publication of addressees' performances in aggregated statistics or in nominative rankings like in the two Nordic countries pressures employers to act. Such non-monetary mechanisms of "shaming and blaming" – e.g. the publication of policy outcomes or the need to justify insufficient compliance – may well, to a certain extent, substitute formal statutory regulation, as in the Swedish case. Nevertheless, the binding force of such an evaluative strategy will depend on how much public interest they arouse. Non-governmental monitoring initiatives may fuel public attention. Nevertheless, relying solely on (self-)evaluation rules constitutes a potential weakness. Only a coercive but differentiated instrument portfolio resorting to all three regulatory logics can guarantee progressive and durable effects.

The *second* conclusion of our analysis can be drawn from the Swedish example: significant effects can, in specific cases, be achieved by means of procedural and evaluative instruments alone, i.e. without resorting to hierarchical regulation. The analysis shows that, on the one hand, Swedish politics are characterised by a high degree of political commitment to gender equality, sustained over a long time span, that provided a solid normative framework for equal opportunity policies. On the other hand, the Swedish reporting obligations are backed up by decisive elements of coercion. But even under such favourable conditions, progress was only made "in the shadow of hierarchy", i.e. under the plausible and palpable threat of legal regulation and remained of limited effects.

Third, in many cases, it is the strong symbolic character (here in a positive sense: see Rouault 2017) of quota regulations that is of paramount importance for this gender policy instrument: even though it only addresses the representation of women in economic decision-making, a statutory quota regulation sets an important signal for the overall

employment system. It defines gender equality at the top levels of management as a political and public issue and thus establishes a political norm in a core area of society – the decision centres of the private economy.

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