

**Addressing Gender Imbalance on Boards of
State-Owned Enterprises in Ireland through
Regulatory Intervention: A Hard and Soft Law
Perspective**

**A THESIS SUBMITTED TO THE UNIVERSITY OF DUBLIN
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY BY
OBIANUJU CHIKE-ANAMDI**

TRINITY COLLEGE DUBLIN, JUNE 2016

SCHOOL OF LAW

TRINITY COLLEGE DUBLIN

Table of Contents

Acknowledgement	<i>i</i>
Abstract	<i>iii</i>
Chapter 1: Introduction	1
A. A Regulation Perspective	5
i. Hard and Soft Law Regulatory Options	8
B. State-owned Ent. (SOEs) in Ireland – In Perspective	9
i. Definition / Classification of SOEs in Ireland	10
ii. SOEs in Ireland - Instruments of Public Value	12
iii. Gender Balance on Boards of SOEs in Ireland.....	14
C. Central Research Question	22
D. Research Methodology	24
i. A State-Owned Enterprise Dimension	25
ii. A ‘Critical Mass’ Approach	26
iii. Choice of Case Studies	27
(a.) Norway	27
(b.) Finland	28
(c.) The United Kingdom	30
(d.) Australia	31
E. Literature Review	32
i. Academic Contribution	35
F. Thesis Contextual Background and Definitions	35
i. Why Boards of State-Owned Enterprises	35
(a.) A Stakeholder Perspective	36
(b.) A Governance Perspective.....	38

(c.) A Performance Perspective.....	39
ii. Regulation as a Solution- A Broader Perspective.....	41
iii. Barriers Preventing the Appointment of Female Directors.....	42
iv. Policy Initiatives to Date in Ireland	44
G. Chapter Structure of Thesis	48
Conclusion	50

Chapter 2: Nature, Role and Corporate Governance of State-Owned Enterprises (SOEs) in Ireland..... 52

A. Introduction	52
B. Background	53
C. SOE Sector in Ireland.....	57
i. Evolution of the SOE Sector in Ireland.....	57
(a.) An Economic Objective	59
ii. Size of SOE Sector in Ireland	62
iii. Implications of the Role of SOEs in Ireland.....	64
iv. Ownership/Control of SOEs in Ireland	67
D. SOEs in Ireland and Corporate Governance	70
i. Definition	70
ii. The Role of the Board of SOEs in Ireland.....	71
(a.) A Resource Dependency Perspective for SOE Boards.....	74
iii. Impact of Board Composition on Decision-Making.....	77
E. Stepping Up Globally	82
Part II: International Regulatory Developments.....	84
F. Regulatory Responses Targeting State-Owned Ent.....	86
i. Non-binding Quotas	86
ii. Legislative/Binding Quotas	90

G. Regulatory Responses Targeting Listed Companies.....	91
i. Legislative/Binding Quotas	91
ii. Corporate Governance Code Principles/Recommendations	95
Conclusion	99
Chapter 3: Theoretical Background.....	100
A. Introduction	100
B. Hard Law Versus Soft Law	102
C. Legislative Gender Quotas as a Tool to Improve Gender Balance on Ireland’s SOE Boards.....	107
i. Gender Quotas and Pace of Progress	111
ii. Gender Quotas and Culture/Stereotypes	112
iii. Gender Quotas and Accompanying Sanctions	114
iv. Gender Quotas and Boardroom Quality.....	116
v. Gender Quotas and Distributive Justice	117
vi. Undue Burden under Gender Quota Regimes	119
vii. Gender Quotas as Positive Action	120
(a.) Existing Framework for Positive Action	121
viii. Court of Justice of the EU (CJEU) and Gender Quotas.....	123
D. Corporate Governance Codes as a Tool to Address Gender Imbalance on Boards of Ireland’s SOEs	126
i. Corporate Governance Codes and ‘Comply or Explain’ Principle (Flexibility).....	128
ii. Monitoring Compliance, Deviations and Explanations under Corporate Governance Codes.....	131
(a.) Monitoring Agents	132
iii. Corporate Governance Codes and Acceptance.....	135
iv. Corporate Governance Codes and Sanctions.....	136
E. Quotas, Corporate Governance Codes and Institutional	

Context.....	139
i. Legal/Regulatory Framework.....	140
ii. Culture and Society.....	141
iii. Political Ideologies/Actors	144
(a.) Path Dependence Theory.....	147
iv. Impact of the EU on Government Action in Ireland	149
F. Regulatory Enforcement and Regulatory Effectiveness ...	154
i. Responsive Regulation.....	155
(a.) Enforcement Pyramid	156
(b.) Proportionality Principle	159
ii. Smart Regulation	160
(a.) Enforcement.....	161
Conclusion	163

Chapter 4 : The Use of Legislative Gender Quotas to Improve Gender Balance on Boards: The Case of Norway	165
A. Introduction	165
B. Norway and Gender Gaps.....	167
C. The Norwegian Gender Quota Law for Corp. Boards.....	171
i. The Political Process	173
(a.) Arguments against the Norwegian Quota Law.....	175
D. Why Did the Norwegian Quota Law Succeed?	176
i. Path Dependency	177
ii. Penalty/Sanctions for Non-compliance with the Law	180
iii. Ownership/Control Shareholding of the State	181
iv. Transparency /Openness Culture	182
(a.) Availability of Databases.....	183

(b.) Employee Representation on Boards	186
E. Searching For a Background for Legislative Gender Quota in Ireland	188
i. Ireland and Gender Gaps	189
(a.) Accessibility to Childcare in Ireland	194
(b.) Parental Leave Policies in Ireland.....	195
ii. Transparent and Open Culture in Ireland	198
(a.) Employee Representation on SOE Boards	198
(b.) Availability of Databases.....	202
(c.) Appointment to SOE Boards.....	204
iii. Regulatory/Legal Framework of Gender Quota	204
F. Implications of the Quota for Corporate Governance in Norwegian Companies	206
i. Impact of Norway’s Gender Quota	207
(a.) Impact on level of Gender Balance	208
(b.) Impact on Quality of Board	210
(c.) Emergence of ‘Golden-Skirts’	214
(d.) Impact on Board Tasks and Spill Over	218
G. Monitoring under the Norwegian Quota Law Regime	224
Conclusion	225

Chapter 5: The Potential for Soft Law to Impact on Gender Balance on Boards.....	229
A. Introduction	229
PART I: Impact of Corporate Governance Code on Gender Balance on Corporate Boards	233
B. Evolution of Gender Related Recommendations in Corporate Governance Codes in Case Studies	233
i. The United Kingdom	233

ii.	Finland	234
iii.	Australia.....	236
C.	Overview.....	238

PART II: Analysis of Corporate Governance Code Provisions in Relation to Gender Balance241

D. How Are Corporate Governance Codes Used to Advance Gender Balance on Boards?241

i.	Appointments to the Board	242
ii.	Diversity and Gender Reporting and Disclosure Recommendations/Principles	250
	(a.) Recommendations/Principles for Diversity Policies.....	251
	(b.) Setting Measurable Objectives	255
	(c.) Disclosure of Gender Metrics.....	258
iii.	Board Evaluation	260

E. Board Engagement with Gender Balance Under Corporate Governance Code Regimes.....261

i.	Female Directors in Board Chair Positions.....	263
ii.	Women in the Pipeline	264

PART III: Impacting Incidental Factors.....266

F. Influential Measures under Corporate Governance Code Regimes266

i.	Lord Davies Review/Recommendations.....	266
ii.	The Narrative Reporting Regulation.....	268
iii.	Workplace Gender Equality Act (2012) (WGEA 2012).....	269
iv.	Act on Equality between Men and Women.....	271
v.	Threat of Gender Quota.....	272

G. Impact of Director Tenure and Board Size on Gender Balance under Soft Law Regimes.....	275
i. Director Tenure.....	275
ii. Board Size.....	281
PART IV: Ireland’s Code of Practice for the Governance of State Bodies in Perspective	284
H. As a Means to Improving Gender Balance on Ireland’s SOE Boards.....	284
i. Flexibility in the Code of Practice for the Governance of State Bodies 2009	286
ii. Appointments to Boards of Ireland’s SOEs	287
iii. Director Tenure on SOE Boards.....	288
iv. Gender Diversity Related Disclosure and Reporting and the Code of Practice 2009	290
(a.) Disclosure of Numerical Targets and Measurable Objectives	294
(b.) Timeline for Numerical Targets and Measurable Objectives.....	295
v. Monitoring of Compliance and the Code of Practice for the Governance of State Bodies 2009.....	296
Conclusion.....	298

Chapter 6: Harnessing Regulation towards Improving Gender Balance on Ireland's SOE Boards: Irish Context.....	303
A. Introduction.....	303
B. An Ideal Terrain for Regulation in Ireland.....	305
i. Patriarchal Culture in Ireland.....	305

ii. Political Reluctance.....	306
iii. Political Culture and EU Influence.....	309
iv. A Closed Corporate Upper Echelon.....	310
(a.) A 'Network' System in Board Appointments.....	312
v. Low Availability of Women with the Requisite Experience.....	315
vi. The Process of Appointment to State Boards.....	320
(a.) Necessary 'Force' in the Appointment System.....	323
Part II: Making Systemic Changes.....	325
A. An Accountable and Suitable Process of Board Appointments.....	325
B. Balancing Work-Life Demands.....	328
i. Making Childcare More Accessible.....	329
(a.) A Changing Childcare System for Ireland?.....	331
ii. Provision of Adequate Leave Policies.....	332
(a.) Shared Parental Leave.....	333
(b.) Paternity Leave.....	334
Conclusion.....	336
Chapter 7: Conclusion and Recommendations.....	339
A. Concluding Remarks	339
B. A Regulatory Framework To Promote Gender Balance On Boards Of SOEs in Ireland	343

I.	A Conducive Environment.....	343
	(a.) Appointment System to Boards of SOEs	345
	(b.) Sharing the Responsibility	347
	(c.) Political Commitment/Will.....	349
II.	A Legislative Gender Quota for SOEs in Ireland	349
	(a.) Useful Parameters for a Legislative Gender Quota.....	353
	i. Sanctions.....	353
	ii. Target Date for Achievement.....	356
	iii. Limitation of Board Membership.....	360
III.	An Approach through the Code of Practice for the Governance of State Bodies (Code of Practice)	361
	(a.) Disclosure and Reporting Requirements.....	365
IV.	An Approach through a Modified Non-binding Quota	367
V.	A Co-existing Regulatory Environment.....	368
C.	Addressing Non-Compliance with Regulatory Requirements.....	369
D.	Independent Monitoring and Enforcement	370
E.	Aiding and Supporting a Regulatory Framework.....	372
	i. Extensive Advertisement of Board Vacancies.....	372
	ii. Development and Consultation of Women’s Databases.....	373
	iii. Reliance on Executive Search Firms	374
	iv. Provision of Mentoring and Training Opportunities for Women.....	375
	v. Monitoring Progress	377
	vi. Collaborative Participation: Getting the Men Involved	378
F.	Final Remarks	380
	Appendix.....	382
	Bibliography.....	387

Acknowledgement

I am ultimately thankful to God Almighty for his grace that was sufficient for me to complete this research.

I am also grateful to several people who have been supportive throughout my research and therefore instrumental to the completion of this thesis.

My sincere thanks go to my supervisor Professor Deidre Ahern for her invaluable constructive criticisms and encouragement throughout the process.

I am particularly grateful to Paul Turpin and Siobhán Bradley of the Institute of Public Administration Dublin (IPA) for the time they always willingly gave to meet with me and lend their insight to my area of research. Thank you for not getting tired of my calls and emails.

I also wish to extend my gratitude to the Staff of IPA library Patricia, Trudy, and Rosemary, for their assistance whenever I needed it.

I would also like to thank Dr Emmanuel Okigbo of University College Dublin who mentored and encouraged me from start to finish of my research period, proactively offering advice and guidance at every step of the way.

My thanks and gratitude also goes to a number of Irish women who were willing to share their experiences with me in relation to the subject of my research: Orlaith Carmody, Linda O'Shea Farren, Anne Marie-Taylor, Mari Hurley, Helen Keelan, Karen Erwin and Jane Williams. Despite, their very busy schedule they made out time to meet with me and did so with much enthusiasm.

I would like to thank Eoin Murray of National Women's Council of Ireland whose suggestions and insight at the start of my research was very helpful.

I would also like to thank Pauline Moreau and Patrick O'Leary of the Department of Justice and Equality Dublin, for giving their time and contributions towards this research.

Dr. Nat O'Connor of the School of Criminology, Politics and Social Policy, University of Ulster and Sigourney O'Connor of the Department of Communications, Energy and Natural Resources for their assistance towards my research.

Finally, my utmost thanks go to my entire family: My parents, John and Ekwui Okafor, my husband, Dr. Chike Anamdi, my three daughters, Chisom, Kamdilichi and Somtochukwu and my ever dependable siblings. Their support, understanding and encouragement was my mainstay throughout my research process, particularly when I had to make compromises in my role at the home front.

Abstract

Addressing Gender Imbalance on Boards of State-Owned Enterprises in Ireland through Regulatory Intervention: A Hard and Soft Law Perspective by Obianuju Chike-Anamdi

This thesis aims to analyse different regulatory approaches and identify how regulation can be effectively used to address gender imbalance on boards of Ireland's SOEs. The research is conducted through a theoretical and comparative method, using case studies to better understand how theoretical underpinnings translated in the practical experience of certain countries under regulatory regimes. The research starts by introducing and highlighting a relationship between the three major themes of this thesis which are gender balance on boards, regulation and SOEs. An Irish context of the SOE is then developed showing the relevance of improved gender balance to decision-making and corporate governance structure generally for Ireland's SOEs. The thesis is then set within the context of global developments in relation to the growing reliance on regulatory intervention to address gender imbalance in economic decision-making, including SOEs, across several jurisdictions. A theoretical background is discussed and provides a foundation against which the practical experience of certain countries are analysed critically and comparatively from an Irish perspective. The case studies presented in this thesis afford a basis to propose a suitable regulatory approach for Ireland. They also provide a basis against which regulatory, political and cultural factors within the Irish environment/society are identified as potential drawbacks in harnessing regulatory benefits for Ireland. These factors that are strongly embedded in the Irish system and have historically contributed to the gender imbalance situation is discussed from a perspective for possible reforms. Finally, the thesis identifies how Ireland can align not only with international development and practice through suitably designed regulatory framework but also leverage on best practice in the corporate governance of SOEs by improving gender balance on their boards.

Chapter 1: Introduction

Focus on gender balance in decision-making has gained momentum over recent decades. Expanding globalisation and commercialisation play a contributory role in the increasing demand for more women to participate in making decisions that affect them. As was emphasised in The Beijing Platform for Action (BPA) in 1995,

“Women’s equal participation in decision-making is not only a demand for justice or democracy, but can also be seen as a necessary condition for women’s interest to be taken into account. Without the perspective of women at all levels of decision-making, the goals of equality, development and peace cannot be achieved”.¹

This conclusion from the BPA was predicated on a number of reasons which included, firstly, that women account for about half the population and therefore have the right to be represented (the justice argument), secondly, the equal representation of women enhances democratisation of governance (the democracy argument), and lastly, that women’s experiences are different from men’s and need to be represented in discussions that result in decision-making that affect them (the experience argument).² Subsequently, scholarly arguments for improving the gender balance in decision-making have relied on the social justice, democracy and experience perspectives as justification to make their case.³

¹ United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995*, (BPA). Available at: <http://www.refworld.org/docid/3dde04324.html>. Accessed 12/01/2016.

² *ibid.*

³ See Bantel K and Jackson S, ‘Top Management and Innovations in Banking: Does the composition of the top team make a difference?’ (1989) 10 *Strategic Management Journal* 107; Cassell C, ‘Managing Diversity in the New Millenium’ (2000) 29(3) *Personnel Review* 268, Carpenter M and Westphal J, ‘The Strategic Context of External Network Ties: Examining the impact of director appointments on board involvement in strategic decision-making’ (2001) 44 *Academy of Management Journal* 639; Hillman A, Cannella A and Harris I, ‘Women and Racial Minorities in the Boardroom: How do directors differ?’

On the corporate/economic scene, gender balance in decision-making has been linked to enhanced corporate governance.⁴ While it has been difficult to provide concrete (practical) evidence on the benefits of gender balance in real-life boardroom practice,⁵ it is believed that a board with a balance of both genders is more likely to have more qualitative board deliberations thus leading to better decision-making. With such a board, directors would have access to more relevant information and diverse views that encourage greater debates before decisions are taken.⁶ Extensive consideration of issues ensures that decisions made are robust having considered different perspectives. Female directors have

(2002) 28(6) *Journal of Management* 747; Hillman A and Dalziel T, 'Boards of Directors and Firm Performance: Integrating Agency and Resource Dependency Perspectives' (2003) 28 *Academy of Management Review* 383; Brammer S, Milinton A and Pavelin S, 'Gender and Ethnic Diversity among UK Corporate Boards' (2007) 15(2) *Corporate Governance* 393; Singh V, Vinnicombe S and Terjesen S, 'Human and Social Capital of Female Directors' In Burke R, Singh V, Bilimoria D, Huse M and Vinnicombe S, (Eds) *Women on Corporate Boards of Directors: International research and practice*(Cheltenham: Edward Elgar,2008); Joshi A and Roh H, 'The Role of Context in Work Team Diversity Research: A meta-analytical review' (2009) 52 *Academy of Management Journal* 599 and Terjesen S, Sealy K and Singh V, 'Women Directors on Corporate Boards: A Review and Research Agenda' (2009) 17(3) *Corporate Governance: An International Review* 320.

⁴See Singh V and Vinnicombe S, 'Why So Few Women Directors in Top UK Boardrooms? Evidence and Theoretical Explanations' (2004) 12(4) *Corporate Governance: An International Review* 479, where it was found that new good governance practices had been adopted by boards of FTSE 100 companies with women on them when compared to those boards without women; finding also that board diversity was associated with good corporate governance, See Brown D., Brown D., and Anastasopoulos V., 'Women on Boards, Not Just the Right Thing but the 'Bright' Thing' (2002) *The Conference Board of Canada* Available at: http://www.europeanpwn.net/files/women_on_boards_canada.pdf. Accessed 01/05/2016; Fondas N and Salsalos S, 'A Different Voice in the Boardroom: How the Presence of Women Directors Affects Board Influence Over Management' (2000) 12 *Global Focus* 13; Diversity is seen as part of exemplary corporate governance which also enhances shareholder value. See Robinson G and Dechant K, 'Building A Business Case For Diversity' (1997) 11 (3) *Academy of Management Executive* 21.

⁵ Broome L, Conley J and Krawiec K, 'Dangerous Categories: Narratives of Corporate Board Diversity' (2011) 89 *North Carolina Law Review* 759; Langevoort D, 'Puzzles about Corporate Boards and Board Diversity' (2011) 89 *North Carolina Law Review* 841.

⁶ Zelechowski D and Bilimoria D, 'Characteristics of Women and Men Corporate Inside Directors in the US' (2004) 12(3) *Corporate Governance: An International Review* 337; Daily C and Dalton D, 'Women in the Boardroom: A business imperative' (2003) 24(5) *Journal of Business Strategy* 8-9.; Hitt M and Tyler B, ' Strategic Decision Models: Integrating Different Perspectives ' (1991) 12(5) *Strategic Management Journal* 327; Bantel and Jackson (note 3 above).

been found to allocate more effort to monitoring of management⁷ which is a crucial role of the board and a basic tenet of good corporate governance. Arguments for increased female representation on boards also state that a gender diverse board is more likely to encourage the consideration of other stakeholder interests before decisions are made,⁸ as female directors are found to show a greater commitment to the development of stakeholder relationships.⁹ This attribute of female directors is particularly a relevant resource for State-owned Enterprises given their stakeholder/public oriented objective.¹⁰ A gender balanced board will also illustrate the values of a democratic and equality based society.¹¹ While the social justice, democracy and equality rationales provide normative justification for gender balance in economic decision-making generally, it can be argued that the arguments resonate more with SOEs where a much wider 'public interest' is at stake.¹² The adoption of best practice in the corporate governance of SOEs is crucial to their performance and sustainability in the interest of their public service obligation/objective.

⁷ Adams R and Ferrera D, 'Women in the Boardroom and Their Impact on Governance and Performance' (2009) 94 *Journal of Financial Economics* 292.

⁸ Post C, Rahman N and Rubow E, 'Diversity in the Composition of Board of Directors and Environmental Corporate Social Responsibility (ECSR)' (2011) 50 *Business & Society* 189; Brown, Brown and Anastasopoulos (2002) (note 4 above); Daily C, Certo T and Dalton D, 'A Decade of Corporate Women: Some Progress in the Boardroom, More in the Executive Suite' (1999) 20 (1) *Strategic Management Journal* 93.

⁹ See more discussion on this below at p. 37. See also discussion in Chapter Two. Rosener J, *America's Competitive Secret: Utilizing Women as a Management Strategy* (New York: Oxford University Press, 1995) p. 130; Galbreath J, 'Are There Gender-Related Influences on Corporate Sustainability? A Study of Women on Boards of Directors' (2011) 17(1) *Journal of Management and Organization* 22.

¹⁰ See further discussion below in p.37

¹¹ For example, the Norwegian government's resolve to tackle the gender imbalance on company boards was justified on the basis that achieving balanced participation on boards was reflective of democracy and the Government's view that legislation on women in boards was an important step towards securing equality between men and women, and a more just society. See Huse M, 'The Political Process Behind the Gender Balance Law' in Machold S, Huse M, Hansen K and Brogi M, (Eds.) *Getting Women on to Corporate Boards: A Snowball Starting in Norway* (Cheltenham, UK: Edward Elgar, 2013) p.13; Senden L, 'The Multiplicity of Regulatory Responses to Remedy the Gender Imbalance on Company Boards' (2014) 10(5) *Utrecht Law Review* 59.

¹² Christiansen H, 'Balancing Commercial and Non-Commercial Priorities of State-Owned Enterprises' (2013) *OECD Corporate Governance Working Papers*, No. 6 . Available at: <http://www.oecd.org/daf/ca/OECDCorporateGovernanceWorkingPaper6.pdf>. Accessed 30/04/16.

'Groupthink' is a major drawback to good corporate governance. It is said to occur when decisions are made or conclusions reached by consensus within a group, without consideration of alternative or contrary thoughts or ideas.¹³ A 'male-only' or male dominated board affords an ideal setting in which unchallenged decision-making may occur.¹⁴ Following the 2008 Global Financial Crisis and particularly Ireland's 2008/2009 Financial Crisis, proponents for gender balanced boards argue that such boards will act to prevent the occurrence of 'groupthink' on boards, as the phenomena was identified as a significant contributor in the failure of corporate governance that ultimately resulted in the collapse of financial and non-financial institutions.¹⁵ Diverse boards are more likely to undermine the homogeneity that breeds 'groupthink'.¹⁶ An element of 'challenge' if present in boardroom deliberations suggests that decisions reached are not the outcome of a 'groupthink' situation. The presence of women in the board room has been linked to providing the necessary challenge as women are less likely to concur with decisions without suggesting that divergent views or scenarios should be considered.¹⁷

Globally, including in Ireland, the under-representation of women in decision-making positions suggests an under-utilisation of available talent and quality

¹³ See Irving J, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes* (2nd edn.) (Boston: Houghton Millin, 1983) p.8; Sir David Walker in his *Review of Corporate Governance in UK Banks and Other Financial Industry Entities* (2009) (Para 3.5) (Walker Review) also highlighted the dangers of 'groupthink' and how more diverse boards would avoid such pitfalls. Available at: http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/d/walker_review_261109.pdf. Accessed 12/04/2016.

¹⁴ Williams K and O'Reilly C, 'Demography and Diversity in Organisations: A review of 40 years of research' (1998) 20 *Research in Organizational Behaviour* 77.

¹⁵ Clancy P, O'Connor N and Dillon k, *Mapping the Golden Circle* (Dublin: TASC/New Island, 2010) p. 24 (3.13). Available at: www.tasc.ie. Accessed 30/04/2016; See also Langevoort (2011) (note 5 above) p.846-848.

¹⁶ Cohesiveness encourages groupthink. See Irving, (note 13 above) p. 8.

¹⁷ See Walker Review, para 4 (4.2 and 4.3) (note 13 above). In the opinion of Kathleen Lynch, former Junior Minister for equality in Ireland, women can possess that necessary challenge in decision-making by asking the awkward questions in the boardroom that makes others stop and think before they make a particular decision. See Mary Regan, 'State boards need more 'awkward' women', according to Lynch'. *The Irish Examiner* 9 January 2014. Huse M and Solberg A, 'Gender-related Boardroom Dynamics' (2006) 21(2) *Women in Management Review* 121.

appointments in vital decision-making positions being compromised.¹⁸ The economic /business benefits of adequate gender balance on boards have been extensively investigated although there is yet to be a consensus regarding its correlation with a company's financial performance.¹⁹ It is however safe to suggest that where corporate governance improves financial performance is also likely to be impacted positively.²⁰

A. A Regulation Perspective

Following increased recognition, the discussion on gender balance on boards of directors has expanded to include regulation. The link between gender balance on boards and regulation has arisen because of the slow progress observed in increasing female representation on boards globally. However while there is consensus on the need for more women to occupy leadership positions in companies, the availability of a variety of regulatory options in addressing the issue, has made the discussion laden with divergence of opinions.²¹ Nevertheless, the significant success recorded in Norway through the use of legislative gender quotas to increase gender balance on boards of directors in listed companies and SOEs, has served to attract more attention to the option of regulatory

¹⁸ See Skjeie H and Teigen M, 'Political Constructions of Gender Equality: Travelling Towardsa Gender Balanced Society?' (2005) 13(3) *Nordic Journal of Feminist and Gender Research* 191. See also Burke R and Davidson M, *Women in Management Worldwide: Progress and prospects* (Surrey: Gower Publishing Limited, 2011) p.3.

¹⁹ See a more detailed discussion on this in p.39 below, on the business benefit projections for having more women participate on boards. Terjesen, Sealy and Singh, (note 3 above) p. 329.

²⁰ Peni E and Vahaama S 'Did Good Corporate Governance Improve Bank Performance during the Financial Crisis?' (2012) 41(1-2) *Journal of Financial Service Research* 31.

²¹ See Special Eurobarometer 376 on Women in decision-making positions held in 2011 in the EU. p. 32. Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_376_en.pdf . Accessed 18/04/16. Showing that 88% of respondents agreed that more women were required in leadership positions.

intervention, hence regulation has gained more popularity and is increasingly being utilised.²²

The option of regulating on gender representation on boards has also received strong consideration at European Union (EU) level in recent years. In upholding its commitment to gender equality, in 2012 the European Commission sought to address the issue of gender imbalance in decision-making by proposing a Directive aimed at attaining a 40% representation of the under-represented sex in non-executive positions on boards of listed large public and State-owned companies in Member States.²³ In 2013, the European Parliament voted by a majority (459 to 148 with 81 absent) adopting the proposal.²⁴ However, to become legislation, the proposed Directive requires a similar adoption by the Council of Member States which is still pending as at the time of writing.²⁵

Equality between women and men is one of the founding values of the EU, and is enshrined in the EU Treaties and the EU Charter of Fundamental Rights as a fundamental principle.²⁶ The involvement at EU level also stems from the conviction that gender equality across different aspects of life in the EU will serve

²² See Adams and Ferrera (2009) (note 7 above)p.292; see also Deloitte, *Women in the Boardroom: A Global Perspective*, Fourth Edition (2015), giving update statistics on regulatory measures being employed by different countries and progress so far achieved (or not). See also, The Economist explains, 'The spread of gender quotas for company boards' *The Economist* 25 March 2014. Available at: <http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-14> . Accessed 04/05/16.

²³ European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (2012). (Proposed EU Directive). Available at: http://ec.europa.eu/justice/newsroom/gender-equality/news/121114_en.htm. Accessed 12/04/2016.

²⁴ European Commission, *Cracking Europe's Glass Ceiling: European Parliament Backs Commission's Women on Boards Proposal* (IP/13/118) Brussels, 20 November 2013.

²⁵ See http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14527_en.htm;
http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/ai0016_en.htm. Accessed 23/4/16.

²⁶ The EU is obligated under Article 8 of the *Treaty on the Functioning of the EU* (TFEU) and Article 23 of the *Charter of Fundamental Rights of the European Union* (the Charter), to eliminate inequalities and promote equality between men and women in all its activities.

towards achieving the EU's '2020 Growth Strategy'²⁷. The Strategy relies on the utilisation of all available knowledge, competencies and innovation within the EU.²⁸ Equality between women and men has therefore been stipulated as a necessary objective to be attained, in fulfilling the '2020 Growth Strategy'.²⁹ Prior to seeking regulatory intervention, the European Commission had introduced several non-regulatory initiatives also aimed at increasing the presence of women in decision-making positions in Member States. *Women's Charter* adopted by the European Commission in 2010³⁰ and the *EU Strategy for Equality between Women and Men (2010-2015)*, adopted in 2010,³¹ both reaffirmed the EU's commitment towards this objective. In 2014, a Directive on disclosures of non-financial and diversity information on boards of directors was adopted.³² The Directive, which came into force in October 2014, is aimed at enhancing business transparency through disclosure of social and environmental matters including board diversity. It applies to certain companies including SOEs, with more than 500 employees and requires companies to provide diversity information in the management

²⁷ European Commission, COMMUNICATION FROM THE COMMISSION EUROPE 2020, A strategy for smart, sustainable and inclusive growth, COM (2010) 2020 final, Brussels, 3.3.2010.

²⁸ *ibid*, p.10.

²⁹ European Commission, *Women and Men in Leadership Positions in the European Union*, (2013) Luxembourg: Publications Office of the European Union (Leadership Report 2013). Available at: http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/131011_women_men_leadership_en.pdf. Accessed 04/05/16.

³⁰ European Commission, *COMMUNICATION FROM THE COMMISSION, A Strengthened Commitment to Equality between Women and Men-A Women's Charter: Declaration by the European Commission on the occasion of the 2010 International Women's Day in commemoration of the 15th anniversary of the adoption of a Declaration and Platform for Action at the Beijing UN World Conference on Women and of the 30th anniversary of the UN Convention on the Elimination of All Forms of Discrimination against Women*. (COM (2010) 78 final). (*Women's Charter*). Available at: http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/em0033_en.htm. Accessed 01/05/16.

³¹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 21 September 2010- Strategy for equality between women and men 2010-2015* (COM(2010) 491 final). (*The Strategy 2010-2015*). Available at: http://ec.europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/em0033_en.htm. Accessed 01/05/16.

³² *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups*, OJ L 330, 15.11.2014.

report relating to their diversity policy on issues of age, gender, educational and professional background of board members.³³

Following Norway's success and the EU's increased attention to gender balance in economic decision-making, a growing number of Member States such as France, Finland, the UK, the Netherlands, Italy, Belgium, Germany and Spain have developed regulatory frameworks for promoting female representation on company boards. Listed companies and SOEs have been the two common targets of regulatory attempts in countries where they have been adopted.³⁴ In Ireland, a policy discussion on adopting a regulatory framework for the same purpose is yet to begin, at the time of writing this thesis.

i. Hard and Soft Law Regulatory Options

Regulatory options commonly adopted in addressing gender imbalance on boards of directors' fall into the two broad categories of hard law and soft law.³⁵ While the hard law option is typically implemented through legislative gender quota laws, the soft law approach is commonly utilised by incorporating gender diversity related Recommendations/Principles in Corporate Governance Codes. Characteristically, soft law instruments are not binding and seek to persuade/encourage compliance and in contrast, hard law instruments are usually binding and 'mandatory' with non-compliance likely to attract sanctions with varying degrees of severity.³⁶ The non-binding nature of Corporate Governance Codes, which is illustrated through 'comply or explain' principle could detract from their effectiveness as it encourages companies to avoid an

³³ *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EC and 83/349/EEC, Article. 20(g) (as amended by Directive 2014/95/EU).*

³⁴ See discussion on international developments in Chapter Two.

³⁵ See Chapter Three for more detailed discussion on these approaches.

³⁶ *ibid.*

application of Recommendations/Principles of Codes.³⁷ Both approaches however do possess attributes that tend to make the choice of either one challenging and thus require careful consideration. It is this difficulty in making a choice that fuels the divergence in the regulation discussion.³⁸

B. State-owned Enterprises (SOEs) in Ireland – In Perspective

Attempts to improve gender balance on boards of Ireland's SOEs have so far been limited to informal government policies and voluntary initiatives. Moreover, these policies have a broad target of State boards, which include SOEs, State agencies and other State departments. While the corporate governance arrangements/practices of SOEs in Ireland are governed under the *Code of Practice for the Governance of State Bodies 2009*, the Code is silent on the issue of gender diversity as a requirement on the board.³⁹ The issue of gender balance on SOE boards has therefore not received appropriate attention policy wise, in line with their relevance and contribution to the Irish society. More direct attention through regulation would reflect that the important role SOEs play in the Irish society is not being overlooked.

³⁷ See Chapter Three for more discussion on both forms of regulatory instruments.

³⁸ The Eurobarometer poll (note 21 above) p.40, showed a divergence among respondents on what regulatory means to get more women into company leadership positions: 8% felt that no action was required as no balance was required on boards; 15% were undecided as to what action to be taken; 31% were in support of self-regulation; 20% called for voluntary approaches such as Corporate Governance Codes and 26% felt that binding legal measures such as quotas were needed to effect the balance.

³⁹ Department of Finance, *Code of Practice for the Governance of State Bodies 2009 (Code of Practice)*. The Code of Practice 2009 is discussed in more detail in relation to board composition, in Chapter Two and Chapter Five.

i. Definition / Classification of SOEs in Ireland

A prevalent issue with State-owned enterprises (SOEs) and public sector organisations generally, is the difficulty in classifying and defining them.⁴⁰ One source of the difficulty in classification of SOEs arises from the variety of terminologies by which they are referred to across countries thereby making them difficult to identify. In Ireland, SOEs are referred to using different terminologies such as ‘State-sponsored bodies’, ‘Commercial State-sponsored bodies’, ‘Semi-state agencies’, ‘State-owned enterprises’, ‘Commercial semi-state’, ‘Semi-state companies’, ‘State commercial companies’ and ‘Trading agencies’. The term ‘State-sponsored bodies’ is commonly used in reference to State-owned companies, State-run departments and commercial and non-commercial agencies.⁴¹ The term ‘State-owned enterprise’ (SOE) which is a more commonly used term globally, is adopted in this thesis to refer to Ireland’s commercial State-sponsored bodies which are the focus of this research.

The major difference between Ireland’s commercial and non-commercial State-sponsored bodies lies in the source of their revenue.⁴² Commercial State-sponsored bodies (SOEs) in Ireland have been defined as “a company in which the State has a majority or complete shareholding, and which is principally involved in commercial activity in a normally competitive market environment”.⁴³ SOEs have also been defined as companies where the State exercises control for various

⁴⁰ Scott C, ‘Understanding Variety in Public Agencies’ (2008) *Geary Working Paper* (University College Dublin: Geary Institute Working Paper Series). Available at: <http://researchrepository.ucd.ie/bitstream/handle/10197/1824/gearywp200804.pdf?sequence=1>. Accessed 02/05/2016; see also ‘Hardiman N, ‘The Changing Boundaries of the Irish State’ (2008) *Geary Working Paper* (University College Dublin: Geary Institute Working Paper Series). Available at: https://www.researchgate.net/publication/252380710_The_Changing_Boundaries_of_the_Irish_State. Accessed 30/04/16.

⁴¹ IPA, *Administration Yearbook & Diary 2015* (Dublin: IPA, 2015).

⁴² Devlin L, *Report of the Public Service Organization Review Group* (Dublin: Stationery Office, 1969) p. 30-31.

⁴³ MacCarthaigh M, ‘Managing State-owned Enterprises in An Age of Crisis’ (2010) *The ‘Mapping of the Irish State’ Project Series* (University College Dublin: Geary Institute Working Paper Series) p. 9.

reasons and to varying extents.⁴⁴ For example, the financial crisis of 2007/2008 created a reason for the State to acquire shareholdings in the country's major banks i.e. AIB, Irish Banking Resolution Corporation (IBRC)⁴⁵ and Bank of Ireland. The State may own a minority share in the company whereby the company still retains relative organisational and managerial autonomy, as was the case with the Irish airline company Aer Lingus before the State sold its 25% shareholding in 2016. SOEs could also be fully owned whereby they are under the direct control and supervision of a Minister. Although operating in a similar terrain with private sector commercial companies, commercial SOEs also differ significantly from private sector companies as they have the objective to also serve the community/public interest irrespective of any financial objectives. Given that the State's ownership in the banks could be a temporary measure, this thesis only considers the existing non-financial SOEs. At the time of writing this thesis, all existing non-financial SOEs fall into the category of SOEs fully owned by the State and have a commercial ambit. This definition has therefore been adopted for the purpose of this thesis.

Based on the above definition, 31 SOEs are currently in operation in Ireland (see Table 1 below). The SOE sector in Ireland has transformed over the years since the first SOE, The Electricity Supply Board (ESB) was created in 1924, two years after the creation of the Irish State.⁴⁶ Over the ninety-one year period since the first SOE came into existence in Ireland, the sector has undergone several notable changes in relation to the size of the sector and the corporate governance arrangements within SOEs. For instance, in the early period of the Irish State, SOE boards had full-time directors as they were dominated by civil servants unlike

⁴⁴ European Commission, *State-owned Enterprises in the EU: Lessons Learnt and Ways Forward in a Post Crisis Context* (Institutional Paper 031 (Luxembourg: Publications Office of the European Union, 2016)p.6.

⁴⁵ An entity formed in 2011 by the merger of State-owned Anglo Irish Bank and Irish Nationwide Building Society. Both financial institutions became State-owned following bailouts during the crisis.

⁴⁶ Palcic D, and Reeves E, 'State-owned Enterprise Policy and the Loss of Economic Sovereignty: The Case of Ireland' (2013) 13 *Public Organization Review* 119.

today where the boards are dominated by people from the business society.⁴⁷ Certain SOEs at the time also had CEOs playing the dual role of Chairperson of the board, a practice that is now the exception rather than a regular practice.⁴⁸

SOEs in Ireland operate in a wide variety of markets, although they are traditionally more active in the energy (e.g. ESB, Ervia), transport (e.g. CIÉ, (comprising of Dublin bus, Bus Éireann, and Irish Rail), Dublin Port Company), and communication sectors (e.g. An Post, RTÉ,)), operating like private companies in the marketplace as they are expected to make profits, pay dividends and have the capacity to finance new investments.⁴⁹ Apart from fulfilling these communal service obligations, over the years, Management of SOEs became increasingly attuned to also fulfilling environmental and corporate social responsibility (CSR) objectives.⁵⁰

ii. SOEs in Ireland - Instruments of Public Value

In line with global trend, SOEs in Ireland are traditionally created and designed to fill gaps in the provision of goods and services in certain industries, mainly in the area of natural monopolies and critical infrastructure that have been neglected by the private sector companies. SOEs in Ireland may be statutorily created, i.e. established under a statute e.g. ESB⁵¹ and Ervia⁵², or incorporated as either a public limited liability company e.g. Eirgrid Plc and Bord na Mona Plc, or a private

⁴⁷ Evident from biographies of directors as contained in 2014 annual reports of SOEs studied. See Table 1 below.

⁴⁸ Examples include, Christopher .S Andrews who played the dual role in Turf Development Board (now Board Na Mona) and Thomas McLaughlin played a similar position when ESB was established. The Code of Practice 2009 (note 39 above) provision 2.16, now makes such a practice only practicable with the consent of the sponsoring Minister.

⁴⁹ MacCarthaigh M, *Government in Modern Ireland* (Dublin: IPA, 2008) p. 95. See also, Coakley J and Gallagher M, *Politics in the Republic of Ireland* Fifth Edition (New York: Routledge, 2010) p. 369.

⁵⁰ MacCarthaigh M, 'The Corporate Governance of Commercial State-owned Enterprises in Ireland' *Committee for Public Management Research Report (CPMR)* No.9 (Dublin: IPA, 2009) p.39-40.

⁵¹ Electricity (Supply) Act, 1927, s.2.

⁵² Gas Act, 1976, s. 7.

limited liability company e.g. An Post and Dublin Port Company. Regardless of the early introduction of SOEs into the Irish society, the government's approach to the creation and closure of SOEs over the years have been more haphazard than structured, being described as 'pragmatic' and responsive rather than proactive.⁵³ This approach is however said to be in line with the Government's general perception of SOEs, seeing them as an instrument for public value as opposed to perceiving them as a source for national growth through consolidation.⁵⁴ Notably, many decades ago, this pragmatic approach to the creation of SOEs was observed by the then Taoiseach, Sean Lemass. Lemass argued that State-sponsored bodies (including SOEs) emerged in Ireland in a haphazard way to meet particular needs and opportunities as they arose, when no other course appeared to be practicable.⁵⁵ The creation of Irish Water in 2013 illustrates the State's responsive attitude in creating SOEs. Irish Water was established by the State in response to the weaknesses of the public water supply system in Ireland.⁵⁶ The State's attitude to the SOE sector is also captured in the words of MacCarthaigh who identified that ".....there has never been a definitive articulation of government policy on State enterprises over the past two decades".⁵⁷ This lack of more definitive attention of the State towards SOEs could suggest why the issue of gender balance on their boards has not been addressed with a more definitive and result-oriented approach.

Notwithstanding the pragmatic approach toward SOEs, a perception of SOEs from a 'public value' perspective affords a platform on which regulating to increase female representation on SOE boards so as to be representative of the public can be promoted. The significant role SOEs play in the Irish economy in the provision of universal social goods and services and employment provides a justification for

⁵³ Barrington, T. 'Public Enterprise in Ireland' (1985) 56(3) *Annal of Public and Co-operative Economy* 287; Chubb, B. *The Government and Politics of Ireland* Third Edition. (Harlow: Longman, 1992) p.246; MacCarthaigh (2010) (note 43 above) p. 12.

⁵⁴ MacCarthaigh (2010) (note 43 above) p.12.

⁵⁵ Lemass, S. *The Role of State-sponsored Bodies in the Economy* (Dublin: IPA, 1959) p.278. Available at: http://ipa.ie/pdf/the_role_of_the_state_sponsored_bodies_in_the_economy_Lemass.pdf. Accessed 15/04/16.

⁵⁶ See, *Why Are We Changing the Way We Supply Water in Ireland* Available at: <http://www.water.ie/about-us/about-irish-water/>. Accessed 04/04/14.

⁵⁷ MacCarthaigh (2009) (note 50 above) p. 15.

the governance arrangements within the sector to be given more consideration. In 2014/2015, over 40,000 of the working population in Ireland were employed by the SOE sector.⁵⁸

iii. Gender Balance on Boards of SOEs in Ireland

Gender representation on Ireland’s SOE Boards is not representative of the Irish society. Members of SOE boards are predominantly male. As at 2015, female directors occupied only 24.8% of positions on SOE boards.⁵⁹ The figure however is not truly representative of the situation as female representation is uneven across boards with some boards, e.g. Bus Éireann, Bord na Gcon (Irish Greyhound Board) and Port of Cork Company having a single female director and others, e.g. Shannon Foynes Port Company and New Ross Port Company, still operating all male boards. With an average SOE board size of 8.5, a token representation of female directors can be observed in Ireland’s SOE sector. A low representation of female directors in leadership positions i.e. Chair positions, on boards is also indicative of their marginalisation on these boards with female directors occupying only eight (25.8%) of 31 Chair positions (Table 1).

Table 1. Female Directors on Boards of Ireland’s SOEs 2015

S.No	Name of SOE	No. of Directors	Female Directors	% of Female Directors	Board Committee Membership (Female Directors)	Chairperson
1	An Post	14	Jennifer Loftus,	21.4	2	M

⁵⁸ Based on Author’s calculation. Calculation was based on number of employees as reported in 2014/2015 Annual reports of SOEs (Table 1).

⁵⁹ Figure based on Author’s calculation on information from websites of SOEs and 2014 Annual Reports of SOEs in operation in Ireland as at December 2014 (Table 1).

			Martina O'Connell , Lorraine Tormey			
2	Irish Greyhound Board (Bord na gCon)	7	Riona Heffernan	14.3	N/A	M
3	Bord na Mona	11	Denise Cronin, Elaine Treacy	18.2	2	M
4	Bus Éireann	9	Deirdre Ashe, Anne Bradley	14.3	2	M
5	Córas Iompair Éireann (CIÉ)	11	Vivienne Jupp, Christine Moran, Niamh Walsh	27.3	3	Vivienne Jupp
6	Coillte	6	Roisin Brennan, Julie Murphy O'Connor	33.3	1	M
7	Dublin Airport Authority (DAA)	13	Patricia King, Anne-Marie O'Sullivan	15.4	1	M
8	Dublin Bus	9	Kathleen Barrington, Patricia Barker , Gary Joyce, Marian	44.4	4	M

			McGennis			
9	Drogheda Ports Company	8	Claudia Carr, Gail McEvoy, Deirdre Moran	37.5	N/A	M
10	Dublin Port Company	8	Lucy McCaffrey, Helen Collins, Emer Finnan	37.5	3	Lucy McCaffrey
11	Dun Laoghaire Harbour Company	6	Eithne Scott-Lennon	16.7	1	Eithne Scott-Lennon
12	EirGrid	9	Joan Smith, Regina Moran, Bride Rosney, Doireann Barry	44.4	4	M
13	Ervia	7	Mari Hurley, Celine Fitzgerald	28.6	2	M
14	Electricity Supply Board (ESB)	11	Anne Butler, Ellvena Graham, Noreen O'Kelly, Noreen Wright	36.4	4	Ellvena Graham

15	Galway Harbour Company	7	Natasha Evers	14.3	N/A	M
16	Horse Racing Ireland	14	Mary O'Connor, Meta Osborne, Eimear Mulhern	21.4	3	M
17	Iarnród Éireann (Irish Rail)	8	Patricia Golden, Tracy McGee	25	1	M
18	Irish National Stud Company	7	Jessica Harrington, Kate Horgan	28.6	N/A	M
19	Irish Water	9	Regina Finn, Margaret Rae, Rose Hynes, Jacqueline Hall	44.4	N/A	Rose Hynes
20	National Lottery Company*	7	Caroline Murphy	14.3	1	M
21	National Oil Reserves Agency	5	N/A		N/A	M
22	New Ross Port Company	4	N/A		N/A	M
23	Ordnance Survey	10	Marion Coy,	20	1	M

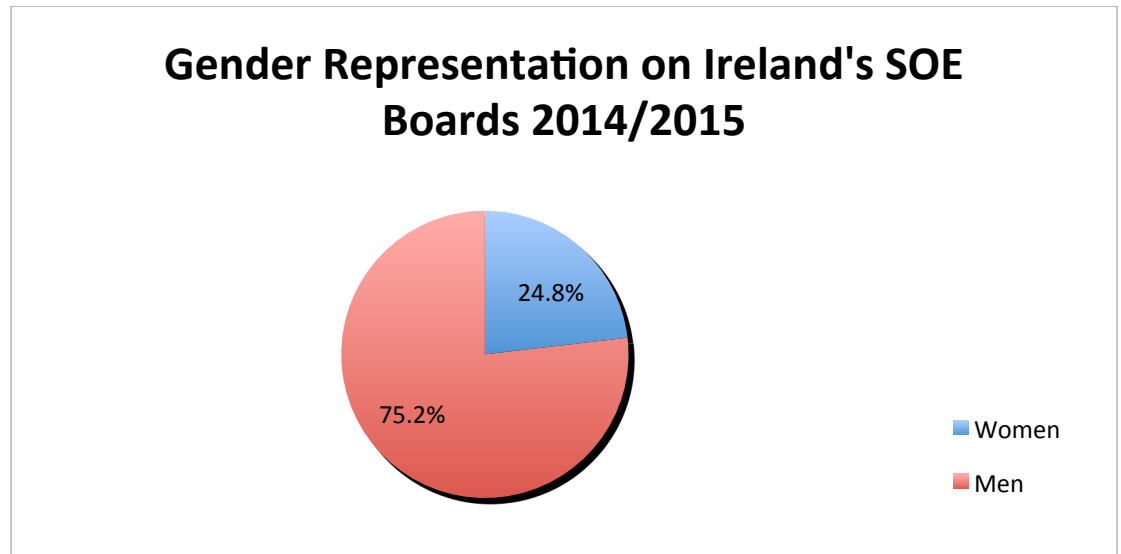
	Ireland		Sandra Ryan			
24	Port of Cork Company	8	Helen Boyle	12.5	1	M
25	Port of Waterford Company	8	Louise Grubb, Mary Mosse, Helen Noble	37.5	3	M
26	Raidió Telefís Éireann (RTÉ)	12	Moya Doherty, Deborah Kelleher , Anne O'Leary, Fionnuala Sheehan, Margaret Ward	41.7	3	Moya Doherty
27	Shannon Foynes port Company	6	N/A		N/A	M
28	Shannon Group Plc	10	Rose Hynes , Kathryn O'Leary Higgins	20	2	Rose Hynes
29	TG4	10	Siún Ní Raghallaigh , Andréa Ní Ealaithe , Mairéad Ní Cheóinín,	50	5	Siún Ní Raghallaigh

			Mairead Nic Suibhne , Michelle Ní Chróinín			
30	VHI Healthcare	12	Ruth Barrington, Celine Fitzgerald, Joyce Brennan	25	2	M
31	Wicklow Port Company	4	Martina Robinson	25	N/A	M

** In the fourth quarter of 2014, National Lottery Company's licence of operation was leased to a private operator, Premier Lotteries Ireland, for 20 years. The company has therefore undergone significant restructuring including in relation to its board of directors. It was however included as a SOE in this data because it operated as an SOE for most of 2014 and the data used to calculate female representation was based on 2014 Annual reports. The table above shows a high level of engagement of female directors with board committees with majority of female directors being board committee members on their boards. A number of SOEs such as Wicklow Port Company, Bord na gCon and Irish National Stud did not indicate board committee membership/activities in their reports.*

The above data shows that only five (16.1%) SOEs had attained a 40% and above female representation on their boards and 15 (48.3%) SOEs were still far below the target with women occupying 25% or less of positions on these boards. Notably, the data reveals that only two female directors, Rose Hynes and Celine Fitzgerald, occupy two board positions on SOE boards during the period, thus the issue of multi-directorships (at least within the SOE sector) is not significant. The absence of more multi-directorships could be seen as an indication that there is an availability of women in Ireland to take up more director positions.

Figure 1.



Given that SOEs operate for the benefit of the public, a board that does not represent that public indicates an anomaly from a corporate governance and justice perspective. Women in Ireland account for more than half of the population and more specifically, represent more than half of the Irish working age population. In 2014, females made up 50.05% of Ireland's population.⁶⁰ Female representation in the labour force is almost equal with their male counterparts: in 2014, women in Ireland accounted for 55.9 % of the total labour workforce.⁶¹ Women are also more educationally qualified than the men in Ireland. In 2013, Irish women accounted for 55.3% of third level education holders.⁶² Expert projection of the next 30 years (2016-2046) also shows a continuous high representation of females in the population, higher education

⁶⁰ Index Mundi, Ireland Demographics Profile 2014. Available at: http://www.indexmundi.com/ireland/demographics_profile.html. Accessed 20/04/16. See also, European Commission, Eurostat Database *Population- Women per 100 Men*. Available at: http://ec.europa.eu/eurostat/data/database?node_code=tps00011. Accessed 20/04/16.

⁶¹ *ibid*, Ireland and EU: Employment Rate (figure reflects situation as at 1st quarter of 2014). Available at: <http://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013/employmentlist/employment/#d.en.65815>. Accessed 02/05/16.

⁶² Central Statistics Office Ireland, *Women and Men in Ireland 2013, Ireland: Persons Aged 25-34 with a Third Level Qualification*. This figure is made up mainly of women aged 18-34.

attainment and labour force participation.⁶³ Given this data that highlights women's strong presence in the Irish society, their qualification and active participation in the State, the gender imbalance on boards of Irish SOEs raises concerns particularly regarding how decisions affecting all genders in society are being made and depicts injustice and inequity. To address this imbalance, the experience of other countries in addressing gender imbalance through regulation suggests that Ireland could benefit from adopting a similar approach.⁶⁴

The low level of female representation on SOE boards exists in spite of a subsisting 1993 State policy of a target 40% minimum representation of both genders on State boards.⁶⁵ Prior to the policy, the participation of women directors on State boards was low and attracted concern. Early reports of the First and Second Commission on the Status of Women in Ireland in 1970 and 1990, noted the lack of adequate female representation on boards of Ireland's State-sponsored bodies, which included SOEs.⁶⁶ Series of other reports published by the National Women Council of Ireland (NWC, previously known as Council for the Status of Women), also highlighted the extent to which women were excluded on these boards.⁶⁷ At the time of the First Commission in 1972, there was only one woman among the 69 board members of the ten leading State-sponsored bodies at the time, by 1975, the number of women directors increased to three.⁶⁸ In 1981, female directors accounted for less than nine percent of board positions in 90 State-sponsored bodies.⁶⁹ Evidently, the imbalance in gender representation

⁶³ Central Statistics Office, *Population and Labour Force Projections 2016-2046* (Dublin: Stationery Office, 2013) p.38-46 (Tables). Available at: http://www.cso.ie/en/media/csoie/releasespublications/documents/population/2013/poplabfor2016_2046.pdf. Accessed 02/05/16.

⁶⁴ See discussion on international developments in other countries in Chapter Two.

⁶⁵ See more discussion on this policy below in this chapter.

⁶⁶ See Commission on the Status of Women, *Report to the Minister for Finance* (December 1972) (PrI.2760) (Dublin: Stationery Office) (First Report); Second Commission on the Status of Women *Report to Government* (Dublin: Government Publication Sales office, 1993) (Second Report); Beere T, 'Commission on the Status of Women: Progress Report' (2003) 51(1-2) *Administration* 240 (Progress Report).

⁶⁷ Council for the Status of Women, *Who Makes the Decisions?* (Dublin: CSW, 1981); Council for the Status of Women, *Who Makes the Decisions?* (Dublin: CSW, 1985).

⁶⁸ *Progress Report* (note 66 above) p. 43.

⁶⁹ McCarthy E, 'Women in Management in Ireland', In Davidson, M. and Burke, R. *Women in Management Worldwide: Facts, Figures and Analysis* (England: Ashgate, 2004) p. 48.

has persisted for so long and indicates the need for policy makers to consider a more effective approach to address it.

C. Central Research Question

The central research question of this thesis is whether the different regulatory tools i.e. legislative gender quota and recommendations in corporate governance codes can be appropriate and effective regulatory instruments to increase and sustain gender balance on boards of Ireland's SOEs. The aim of this thesis is therefore to identify the potentials of both regulatory tools within the Irish context for SOEs. The introduction and outcome of new regulation in corporate governance can be influenced by existing regulatory, political and cultural environment in a society.⁷⁰ Taking Ireland into perspective therefore, this thesis will further analyse how the existing culture, regulatory and political environment might impact on the introduction and outcome of a regulatory intervention for in addressing gender imbalance on SOE boards. The slow and almost stagnant process to change in respect of women representation on State boards generally, necessitates this exploration, hence the pace of effectiveness of both regulatory options is taken into consideration in the analysis.

The aim of this thesis is inspired by the current international trend whereby gender imbalance on boards, including SOE boards, is increasingly being addressed through regulation,⁷¹ and the need to ensure that Ireland's SOEs maintain a competitive edge globally in the area of corporate governance. This thesis is also inspired by the findings and recommendations contained in the independent think-tank TASC investigative reports: *Mapping the Golden Circle*,⁷²

⁷⁰ Egan A, Maughan R and Coughlan J, 'The Nomination and Motivations of Irish Non-Executive Directors of Listed Companies' (2009) Irish Accounting & Finance Association Annual Conference, *Dublin Institute of Technology Conference Papers*, p.3. Available at: <http://arrow.dit.ie/cgi/viewcontent.cgi?article=1012&context=buschaccon>. Assessed 08/03/16.

⁷¹ See Chapter Two for International developments in this regard.

⁷² Clancy et al, *Mapping the Golden Circle* (note 15 above).

and *Outsourcing Government: Public Bodies and Accountability*.⁷³ The reports recommend that a more prescriptive form of government intervention is required to address the gender imbalance on corporate boards in Ireland, including boards of SOEs.⁷⁴ In making this recommendation (among others), the authors also observed the slow progress in achieving the 40% objective despite the existing 1993 Government policy.⁷⁵ Another issue in relation to the absence of diversity on boards of SOEs identified in *Mapping the Golden Circle* Report was in relation to 'groupthink' and the dangers it could pose to decision-making.⁷⁶ A low level of gender diversity was identified as one of the reasons why 'groupthink' would have fostered on Ireland's boards prior to the 2007/2008 *Economic Crisis*.⁷⁷ Notably, a similar occurrence, that is, an economic crisis, which occurred in 2008-2010 in Iceland, triggered an increased and stronger activism for gender equality reforms, resulting in the introduction of a gender quota law for corporate boards including SOE boards.⁷⁸

This research mainly addresses the appointment of Non-executive directors on SOE boards and all other members of the board that are ultimately appointed by the Minister. The level of female representation on SOE boards relied on in this thesis however is based on the board membership as a whole. In Ireland, SOE board membership constitutes mainly of non-executive directors. The CEO who is an executive and a member of the board is regarded as an ex-officio member of the board while certain SOEs such as CIÉ and An Post are required by law to have employee representatives on their board (worker directors). With the exception

⁷³ Clancy, P. and Murphy, G. *Outsourcing Government: Public Bodies and Accountability* (Dublin: TASC, 2006) p. 51-53.

⁷⁴ Clancy et al, *Mapping the Golden Circle* (note 15 above) p. 25(3.18).

⁷⁵ *ibid*, p.24 (3.16).

⁷⁶ *ibid*, p. 24 (3.14-3.16). See also, Irving, (note 13 above).

⁷⁷ *ibid*, p.24.

⁷⁸ In March 2010, the Icelandic government approved an amendment of the laws on public limited companies Act respecting Limited Liability Companies No. 2/1995 as amended up to 1 May 2011, Art. 63 and private limited companies Act No. 138/1994 respecting Private Limited Companies, as amended up to 1 May 2011, Art.39, to include gender quota requirements. See also, Teigen, M. 'Gender Quotas on Corporate Boards: On the Diffusion of a Distinct National Policy Reform' in Englestad, F. and Teigen, M. (eds.) *Firms, Boards and Gender Quotas: Comparative Perspectives* (Comparative Social Research, Vol. 29)(Bingley, UK: Emerald Group Publishing Limited, 2012) p.140.

of certain appointments such as those of ex-officio members of the board which may be otherwise statutorily provided for, all other appointments are the final responsibility of the Minister. For example, although worker directors are nominated and elected by their fellow workers, the final appointment to the board is the Minister's prerogative.⁷⁹ The majority of female directors on SOE boards (Table 1) are however Non-executive directors as there is no woman occupying a CEO position while on SOE boards, female worker directors are almost non-existent. There was only one woman director on SOE boards during the period of survey (Table 1).

D. Research Methodology

In seeking to identify how regulation may be best suited to address gender imbalance on SOE boards, a theoretical approach is used to provide a framework/background on which the findings in this research can be related to in order to answer the research question. Existing theories on the hard and soft law debate, theories from studies on diversity and more particularly gender, on boards of directors, and the impact of regulation on board composition/corporate governance provide the framework/background. The theories span across a wide range of disciplines such as management studies, political science, organisational management, law, corporate governance and thus literature in these areas have been relied on.

A comparative analysis using case studies is used to identify how legislative gender quota and Corporate Governance Code Recommendations/Principles impacts the gender representation on boards of directors in the real world scenario. The instrument for comparison in Ireland is the *Code of Practice for the Governance of State Bodies 2009*,⁸⁰ a soft law instrument. For this purpose, four countries, Norway, Australia, Finland and the United Kingdom have been selected

⁷⁹ Worker Participation (State Enterprises) Act, 1977 s.15(1).

⁸⁰ Code of Practice 2009 (note 39 above),

as case studies for an analysis of their experience with regulation in this regard. Norway illustrates the legislative gender quota experience while Australia, Finland and the UK offer an experience with a soft law regulation through the use of Corporate Governance Codes. Two of the countries are EU countries (the UK and Finland) and two are Non-EU countries (Norway and Australia).

The comparative analysis includes a study in comparator countries of companies' 2014 Annual Reports and Corporate Governance Statements in order to investigate any correlation or possible correlation between compliance with gender diversity related regulatory requirements and gender representation in companies. A total of 302 annual reports and /or Corporate Governance Statements of companies listed on the indices across all three countries as at 31 December 2014 were studied. This would help to assess the effectiveness of a regulatory approach. Given that gender diversity related Recommendations/Principles/Code Provisions were included in the Corporate Governance Codes of Australia and the UK in 2010 and for Finland in 2008, it is expected that impact of the Code should be reflected in reports by 2014.

i. A State-Owned Enterprise Dimension

The analysis in this thesis is based on regulatory compliance of listed companies as the Corporate Governance Codes in the three countries studied targets only listed companies. However, Norway's gender quota law targets a wider variety of companies including SOEs. Regulatory attempts targeting SOEs have not been common practice and the existing ones are legislative instruments rather than soft law measures. While significant differences exist between SOEs and listed companies particularly in area of ownership and control which could pose a challenge in transferring practice between the two, this thesis adopts the stance that in the area of corporate governance, accountability and transparency both types of companies can be analysed on the same pedestal to the extent that their activities impact greatly on their shareholders/stakeholders and the society as a

whole. Nevertheless, caution has been applied in making suggestions and conclusions based on the comparative analysis. The analysis is therefore limited to those practices that can be commonly applied in Ireland's SOEs and companies listed on Stock Exchanges. A reliance on research in respect of listed companies in this thesis is necessitated by the following reasons: i.) The dearth of academic research on SOEs in the context of gender balance; ii.) Global research on SOEs is dominated by country-themed studies and a number of them pose language barrier issues. Language barrier issues have also led to reliance on secondary sources of literature in writing this thesis.

ii. A 'Critical Mass' Approach

This thesis adopts the 'critical mass' standard of three or more women as put forward by Erkut et al, in analysing the impact of regulatory compliance on gender balance on boards.⁸¹ The 'critical mass' theory presents a valid and verifiable approach in analysing women's impact on boards given that it is based on physical presence. It is also validated by common ideology thinking that the more the women are, the more likely they will be able to influence board activities. This is not to suggest however that the impact of women will always be positive as their presence could also either bring about an unproductive atmosphere on the board whereby a consideration of various diverse opinions could either delay decision-making or lead to improper decisions being made,⁸² or a situation where the female directors do not make quality contributions to board discussions and activities. By this approach, the analysis in this thesis considers the number of female directors on individual boards rather than the overall percentage/proportion occupied which could give a misleading view. While this

⁸¹ Erkut S, Kramer V and Konrad A, 'Critical Mass: Does the Number of Women on a Corporate Board Make a Difference?' in Vinnicombe, S. et. al. (eds) *Women on Corporate Boards of Directors: International Research and Practice* (Cheltenham: Edward Elgar, 2009) p.222.

⁸² Lau C. and Murnighan J. 'Demographic Diversity and Faultlines: The Compositional Dynamics of Organizational Groups', (1998) 23(2) *Academy of Management Review* 325

standard is relative to the size of the board, average board size of companies in the countries analysed (Ireland, Australia, Finland and the UK) fall within a range at which the standard of three or more can be applied. Average board size in Finland is between seven and eight members, in the UK about eleven members and in Australia seven members. An assessment based on percentage proportion could mask the fact that the number of women actually on the board are not adequate as to make an impact on the activities of the board, as identified in Erkut et al.⁸³ The aim/spirit of regulation needs to be taken into consideration in assessing its effectiveness so as to truly identify if the intended spirit has been achieved. With regard to women on boards, the aim of regulation is to give female directors greater opportunity to participate effectively on boards, hence the need for increase. As the impact of the hard law approach in Norway has been fully established and implemented for many years, the comparative analysis on Norway takes a different approach by looking at the general impact of the law not just on gender balance on boards but other incidental outcomes of the law.

iii. Choice of Case Studies

(a.) Norway

Norway presents an established and classic case in the implementation of a legislative gender quota law to address gender imbalance on boards. Norway was the first country to adopt this approach globally and as at 2016 remains the only country to have attained its set target of 40% gender representation. Since attaining the target in 2008, Norway has retained its global frontrunner position.⁸⁴ France made significant progress through a gender quota law however the

⁸³ Erkut et al. (note 81 above).

⁸⁴ Catalyst, 2014 Catalyst Census: Women Board Directors (2015). Available at: <http://www.catalyst.org/knowledge/2014-catalyst-census-women-board-directors> . Accessed 30/04/16.

implementation dates for the law is yet to occur i.e. 2017, as at the time of writing, and therefore a reliable analysis of the true outcome of the law cannot be had.⁸⁵ Italy's gender quota law also has its shortcomings that make it unsuitable to provide a classic subject. The law is temporary as it is due to expire after the third renewal of the board following its introduction.⁸⁶ Spain was the earliest country after Norway to adopt quotas but the law lacks the necessary 'force' through adequate sanctions commonly associated with mandatory laws.⁸⁷ The 2013 law in India does not represent an attempt to attain high or adequate level of gender balance as it only requires listed companies to have at least one female on its board.⁸⁸

The experience of Norway is also significant for this thesis as it is illustrative of the implementation of both regulatory types i.e. soft law through Corporate Governance Code recommendations and hard law through legislative gender quota (carrot and stick approach), in addressing gender imbalance on boards. Attempt to address gender imbalance on boards through Code recommendations proved inadequate thus necessitating the introduction of the legislative quota for the same purpose. Though a Non-EU country, certain similarities in the institutional environment of both countries e.g. both countries practice a unitary board structure; State-ownership/presence in key resource areas, afford a basis on which practice in Norway can be proffered for Ireland.

(b.) Finland

Finland is chosen as a case study for this thesis because it presents a unique perspective in the implementation of corporate governance codes towards addressing gender imbalance on boards. The gender diversity related

⁸⁵ See further discussion in Chapter Two.

⁸⁶ Act No. 120 of 12 July 2011 Official Journal No. 174 of 28 July 2011.

⁸⁷ See Chapter Two for further details on the Spanish gender quota.

⁸⁸ The Gazette of India, Ministry of Law and Justice, The Companies Act, 2013 s. 149 (1).

recommendation in the Finnish Code⁸⁹ reflects how a classic characteristic of soft law instruments, that is, ambiguity and uncertainty could undermine the effectiveness of the law. This affords an ideal example upon which a critical analysis of soft law instruments can be made. In addition, Finland also offers an illustration of the practice of both types of regulatory approach thus also illustrating the ‘carrot and stick’ approach. While the Corporate Governance Code is applicable to the private sector listed companies, SOEs (some are listed companies) are targeted under a hard law approach through legislative quotas/Government quota. Both approaches appear to be utilised effectively. The case of Finland will offer relevant background and evidential findings in the analysis of these two major regulatory approaches in this thesis given that both have been tested simultaneously within the same environment. The case of Finland also offers some insight into how a collaborative effect from both approaches may have influenced the outcome of regulation. An existing government target and legislation aimed at getting more women on boards applies to SOEs and as a result, SOEs in Finland have achieved the set target of 40% female representation. The extent of the impact of the Code provision addressing gender imbalance on listed company boards is however doubtful. In Finland, the State has shareholding in a number of listed companies and thus also implements the target policy on boards of those listed companies. Effectively, the success with the target/legislation approach translates on the boards. As listed companies are regulated by the Corporate Governance Code, the Code is inadvertently credited with the success on these boards. The unique situation in Finland makes an interesting case to highlight the varying effectiveness between the hard law and soft law approach.

The corporate governance system in Finland permits a dual (*Hallintoneuvosto/Förvaltningsrådd*) and/or a unitary board system (*Hallitus/Styrelse*).⁹⁰ The dual board system consists of a supervisory board and a management board while the unitary board consists of a management board. As

⁸⁹Securities Market Association, *Finnish Corporate Governance Code 2015*, Recommendation 8.

⁹⁰ *Limited Liability Companies Act- Finland* (624/2006; Osakeyhtiölaki) Chap. 6 s.1(1).

a rule however, most listed companies operate a unitary board system of mainly non-executive directors. Consequently, for the purpose of this thesis, gender balance on supervisory boards has not been taken into consideration. 102 companies of the 112 companies listed on the Helsinki Stock Exchange were studied.⁹¹ Language used in annual reports and websites was a barrier to studying the companies excluded.

(c.) The United Kingdom

The UK was chosen as a case study because it offers a classical example for the use of soft law approach in regulating the corporate governance of businesses, including the level of gender balance on company boards. The UK is widely referenced for its soft law approach in regulating business for several decades and it is seen to be working effectively so far. Against this background, the UK is opposed to the introduction of gender quota laws, rather opting for a soft law approach through the UK Corporate Governance Code and the setting of voluntary targets to attain adequate gender balance on boards of UK's listed companies.⁹² Given its long history with Corporate Governance Codes (since the Cadbury Code in 1992), it can be said that the UK represents a natural environment to study the impact of this form of soft law approach. Further, the experience of the UK is significant for the extensive practice of independent but collaborative initiatives aimed at increasing gender balance on boards. These initiatives appear weighty in their ability to influence change and thus create aspersions on the efficacy of regulation. There is need to analyse the true impact of these initiatives in relation to regulation. FTSE 100 companies are the basis of the analysis in this thesis as they represent the largest companies in terms of

⁹¹ See list of companies in Appendix 1.

⁹² The UK Corporate Governance Code was updated in April 2016 to apply to accounting periods beginning on or after 17 June 2016. The amendments included in the new Code were however limited to the composition and role of the audit committee. For these reasons, the 2016 Code is not taken into consideration in this thesis as it makes no impact to the analysis of the Code in the thesis.

capitalisation (as at 31/12/2014) and account for about 81% of the entire market capitalisation of London Stock Exchange.⁹³ FTSE 100 companies also appear to be making the fastest progress in increasing female representation in the UK.

(d.) Australia

The study on Australia contributes a global perspective to the thesis. Australia introduced and practices a more robust regulatory framework aimed at increasing diversity/gender balance on boards.⁹⁴ Diversity reporting and disclosure requirements in Corporate Governance Codes have increasingly become popularised since Australia adopted this approach and is now used in several countries including the UK, Finland and Canada.⁹⁵ Australia also offers a unique perspective to the regulating of gender balance discussion as it also prioritises increasing 'diversity' in a broader sense as well as 'gender diversity', which may be impeding the progress of gender balance on boards particularly . Companies on the ASX 100, largest companies by virtue of capitalisation (as at 31/12/14) were the subjects for this analysis.

The use of contradictory regulatory tools for the achievement of same goal in these countries will serve as a good basis for comparison. On a general note, Europe's leading global position in increasing gender balance on boards also informed the choice of European countries as case studies.⁹⁶ Accordingly, there is need to position Ireland within the European/European Union context in the interest of competitive advantage in this regard. However, the choice of these four countries as case studies does not preclude reference to other European and non-European countries where development in this area through regulation

⁹³ FTSE 100 Index, Available at: https://en.wikipedia.org/wiki/FTSE_100_Index Accessed 10/05/16.

⁹⁴ ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations 3rd Edition* (2014) Recommendation 1.5.

⁹⁵ See discussion on International developments in Chapter Two.

⁹⁶ Gladman K and Lamb M, *GMI Ratings' 2013 Women on Board Survey* (2013). Available at: http://www.calstrs.com/sites/main/files/file-attachments/gmiratings_wob_042013-1.pdf. Accessed 09/04/16.

has also been significant. The impact of institutional context in the outcome of regulation (this point is highlighted in Chapter 3) is also a consideration in the choice of countries used as case studies in this thesis.⁹⁷

E. Literature Review

Studies have shown that regulation i.e. legislation, and soft law can have an influence on the level of gender balance on boards.⁹⁸ More specifically, State intervention through affirmative action and other political strategies have also been observed to be a useful tool in preventing preferential selection of men over women, with an aim to create more equal democratic societies and utilise existing human capital.⁹⁹

While the topic of board composition has been extensively researched academically, much of the research has been in respect of private sector companies,¹⁰⁰ with the board composition of SOEs receiving limited attention in

⁹⁷ Variations in systems, traditions and cultures exist among countries and should be taken into consideration in a comparative analysis such as this. See Aguilera R and Jackson G, 'The Cross-national Diversity of Corporate Governance: Dimensions and Determinants' (2003) 28(3) *Academy of Management Review* 447; Grosvold J and Brammer S, 'National Institutional Systems as Antecedents of Female Board Representation: An Empirical Study' (2011) 19(2) *Corporate Governance: An International Review* 116.

⁹⁸ Chang M, 'The Evolution of Sex-segregation Regimes' (2000) 105(6) *The American Journal of Sociology* 1658; Huse M and Seierstad C, 'Getting Women on to Corporate Boards: Consequences of the Norwegian Gender Balance Law' (2013) *The European Financial Review*. Available at: <http://www.europeanfinancialreview.com/?p=572>. Accessed 30/04/16; Klettner A, Clarke T and Boersma M, 'Strategic and Regulatory Approaches to Increasing Women in Leadership: Multilevel Targets and Mandatory Quotas as Levers for Cultural Change' (2014) *Journal of Business Ethics*; Terjesen S, Aguilera R and Lorenz R, 'Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors' (2015) 128 *Journal of Business Ethics* 233.

⁹⁹ Seierstad C and Opsahl T, 'For the Few not the Many? The Effect of Affirmative Action on Presence, Prominence and Social Capital of Women Directors in Norway' (2011) 27(1) *Scandinavian Journal of Management* 44.

¹⁰⁰ A widely discussed issue in academic literature concerns how boards can be appropriately structured and to what extent the composition of the board influences the board's action or company performance. On this see for example, Van den Berghe L and Levrau A, 'Evaluating Boards of Directors: What Constitutes a Good Corporate Board?' (2004) 12(4) *Corporate Governance: An International Review*; Hermalin B and Weisbach M, 'Boards of Directors as an Endogenously Determined Institution: A Survey of the

academic research. A large part of the literature on SOEs is non-academic, emanating from international institutions such as the World Bank and OECD.¹⁰¹ In the context of SOEs, studies and texts on board composition are focused more on the need for competency and expertise on the boards.¹⁰²

Irish literature on SOEs in Ireland is minimal and dated. An in-depth analysis of gender balance on boards of Ireland's SOEs is particularly lacking within existing literature. Earlier studies that have addressed gender balance on boards in Ireland have focused on listed companies and only considered gender diversity or diversity as an incidental outcome, while analysing characteristics of boards of Ireland's listed companies.¹⁰³ The small number of Irish literature addressing gender balance on SOE boards have also been limited to providing a descriptive analysis of the trend in female participation on these boards over some years.¹⁰⁴

Economic Literature' (2003) *FRBNY Economic Policy Review*. Available at: <http://faculty.haas.berkeley.edu/hermalin/601herma.pdf>. Accessed 12/04/16; Forbes D and Miliken F, 'Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-making Groups' (1999) 24(3) *Academy of Management Review* 489; Dalton D, Daily C, Ellstrand A and Johnson J, 'Meta-analytic Reviews of Board Composition, Leadership Structure and Financial Performance' (1998) 19 *Strategic Management Journal* 269; Baysinger B and Butler H, 'Corporate Governance and The Board of Directors: Performance Effects of Changes in Board Composition' (1985) 1(1) *Journal of Law, Economics and Organizations* 101; Mace M, *Directors, Myth and Reality* (Harvard Business School Press: Boston, 1971).

¹⁰¹ For example, Vagliasindi M, 'Governance Arrangement for State-owned Enterprises' (2008) *Worldbank Policy Research Working Paper 4542*; Frederick W, 'Enhancing the Role of the Boards of Directors of State-Owned Enterprises' (2011) *OECD Corporate Governance Working Papers*, No 2. Available at: <http://www.oecd-ilibrary.org/docserver/download/5kg9xfg6n4wj.pdf?expires=1391734069&id=id&accname=guest&checksum=E01C05AA44D33A0A9911D03B3BA4AB87>. Accessed 12/04/16.

¹⁰² Hardiman N and Scott C, 'Ordering Things: The Irish State Administration Database' (2011) 27(1) *Irish Political Studies*; Frederick W, 'Enhancing the Role of the Boards of Directors of State-Owned Enterprises' (2011) *OECD Corporate Governance Working Papers*, No 2. Available at: <http://www.oecd-ilibrary.org/docserver/download/5kg9xfg6n4wj.pdf?expires=1391734069&id=id&accname=guest&checksum=E01C05AA44D33A0A9911D03B3BA4AB87>. Accessed 22/04/16. See also OECD, *Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries* (France: OECD Publishing, 2005).

¹⁰³ Brennan N and McCafferty J, 'Corporate Governance Practices in Irish Companies' (1997) 18(1) *Irish Business and Administrative Research* 116. See also O'Higgins E., 'Non-Executive Directors on Boards in Ireland: Co-option, Characteristics and Contributions' (2002) 10(1) *Corporate Governance: An International Review* 19, for highlighting the absence of diversity on boards in Ireland.

¹⁰⁴ Tansey J, *Who Makes the Decisions? Women on the Boards of State-sponsored Bodies* (2nd edn.) (Dublin: Council for the Status of Women, 1981); National Women's Council

Furthermore, available studies were conducted several years ago and thus contain out-dated information in terms of level of female representation. Significantly, the option of addressing gender imbalance on Ireland's SOE boards has not been the subject of any academic study. Other Irish-based studies that focus on SOEs are concerned with issues such as the structure, control and administration of SOEs,¹⁰⁵ the definition, role and impact of SOEs in the economy,¹⁰⁶ and the corporate governance of these companies.¹⁰⁷ Specific references to boards of directors of SOEs within existing literature have also been limited to highlighting the importance of boards e.g. in terms of monitoring and reiterating the need for adequate expertise and skill on the board and the need for a transparent appointment process for directors.¹⁰⁸ Consequently, a gap exists within existing literature in the area of gender balance on Ireland's SOE boards, which this thesis seeks to address.

Ireland, *Who Makes the Decisions in 1997? : A Review of Gender Balance on State Boards in Ireland* (Dublin: National Women Council of Ireland, 1998); McCarthy (2004) (note 69 above); Dobbins T, *Gender and Career Development –Ireland* (2007). Available at: <http://www.eurofund.europa.eu/eiro/studies/tn0612019s/ie0612019q.htm>. Accessed 23/04/16; Berkery E, Tiernan S and Morley M, 'Female Participation Trends in the Irish Labour Force: The Case of State-sponsored Bodies in Ireland, 1970-2007' (2012) 60 (2) *Administration* 73.

¹⁰⁵ MacCarthaigh M, 'State Agencies and State Enterprises' (2013) 60(4) *Administration* 69; Clancy and Murphy (2006) (note 71 above); FitzGerald, (note 78 above); Chubb (note 48 above); Litton, F. *The Structural Characteristics of State-sponsored Bodies* (Dublin: IPA, 1980)

¹⁰⁶ Hardiman and Scott (note 102 above) p.1; MacCarthaigh, M. 'National Non-Commercial State Agencies in Ireland' (2010) IPA. Available at: <http://www.ipa.ie/pdf/StateAgenciesReport.pdf>. Accessed 22/04/16; Lemass (1959) (note 53 above).

¹⁰⁷ MacCarthaigh (2009) (note 50 above); McGuaran A, Verhoest K and Humphreys P, *The Corporate Governance of Agencies in Ireland: Non-Commercial National Agencies* Committee for Public Management Research Report No. 6 (Dublin: IPA, 2005). Available at: http://edoc.vifapol.de/opus/volltexte/2009/1137/pdf/The_Corporate_Governance_of_Agencies_in_Ireland_Non_commercial_National_Agencies_CPMR_Research_Report_6.pdf . Accessed 22/04/16. MacCarthaigh (2009) (note 50 above).

¹⁰⁸ Hardiman and Scott (note 102 above); MacCarthaigh (2009) (note 50 above); McGuaran, Verhoest and Humphreys (2005) (note 107 above).

i. Academic Contribution

This thesis therefore represents the first extended academic study addressing the gender imbalance on boards of Ireland's SOEs through regulation. It extends the earlier research of O'Higgins,¹⁰⁹ and Connolly¹¹⁰ in identifying a similar but more recent level of female representation on SOE boards and going further by analysing and proposing regulation as a solution, in line with international practice. The thesis will also fill a gap in international literature by adding to existing country-based studies on board gender diversity. This thesis will also add to existing international literature on regulatory attempts aimed at increasing gender balance on boards through a detailed analysis of the nature and content of specific gender-related provisions in regulatory instruments and analysing same in the Irish SOE context. It is intended that the conclusions drawn based on analysis carried out in this research will be useful for future policies and actions in Ireland. This research can also be a useful base for further research on other areas in relation to board composition of SOE boards in Ireland and other locations.

F. Thesis Contextual Background and Definitions

For a broader understanding of the focus of this thesis, it will be useful to offer some underlying themes and definitions that guide the focus and extent of the analysis in this thesis.

i. Why Boards of State-Owned Enterprises

As agents of the State, SOEs should display exemplary best practice, which would hopefully influence the private sector to adopt similar practice.

¹⁰⁹ Brennan and McCafferty (note 103 above).

¹¹⁰ See Connolly P, 'The Development of Women as Leaders in the Public Sector' (2008) 56(3) *Administration* 83.

(a.) A Stakeholder Perspective

The OECD identifies a stakeholder interest in enhancing gender balance on SOE boards:

“Gender diversity in public institutions...is particularly crucial, given that these institutions make decisions and create rules that affect people’s rights, behaviours and life choices, influence the distribution of goods and services in society; and determine access to public and private resources. As such ensuring that decision-making bodies reflect the diversity of the societies they represent can provide a balance perspective in designing and implementing these rules, thus enabling an inclusive approach to policy making and service delivery”.¹¹¹

The Stakeholders of a company can be defined to include individuals and constituencies that contribute either directly or indirectly, voluntarily or involuntarily, to its wealth creating capabilities and who are therefore its potential beneficiaries and/or risk bearers.¹¹² By this definition SOE stakeholders will include their direct and indirect consumers/customers, employees, suppliers/contractors, the wider public and the State. In line with their public service obligations, SOEs interact to a large extent with their stakeholders. The ideals of stakeholder theory provide a basis for which the composition of SOE boards becomes significant.¹¹³ Stakeholder theorists argue that the interest of stakeholders, and not just shareholders, should be taken into consideration when decisions are being made, because they are also affected by the activities of

¹¹¹ OECD, *Women, Government and Policy Making in OECD Countries: Fostering Diversity for Inclusive Growth* (OECD Publishing, 2014) *Executive Summary*. Available at: <http://dx.doi.org/10.1787/9789264210745-en>. Accessed 18/04/16.

¹¹² Post J. Preston L and Sachs S. ‘Managing the Extended Enterprise: The New Stakeholder View’ (2002) 45(1) *California Management Review* 8.

¹¹³ See Chapter Two for more discussion on the relationship between the stakeholder theory views and the composition of SOE boards.

the SOE.¹¹⁴ Corporate governance involves the ability of leadership to acknowledge the importance of stakeholders given the impact these stakeholders have with regard to how the company's direction is shaped. The interest of stakeholders, it is said, can only be given adequate consideration when their diversity is reflected in the composition of the board.¹¹⁵ Women represent a significant stakeholder group for SOEs as they are a significant part of the public. Women on the board can also play the role of maintaining relationships with other stakeholder groups. Addressing multiple stakeholder interests and demands requires a relational perspective and the ability to maintain a positive relationship with all stakeholder groups.¹¹⁶ Prior studies show the positive impact women on the board can make in a company's relationship with its various groups of stakeholders such as suppliers, employees and customers.¹¹⁷ Women are said to have a better understanding of the needs of customers; be more empathic towards employee needs and can relate better with female employees. Undoubtedly, creating and maintaining a harmonious relationship with these stakeholders results in sustenance and improved performance for the company.¹¹⁸

¹¹⁴ Warren R, 'Company Legitimacy in the New Millennium' (1999) 8(4) *Business Ethics: A European Review*.

Evan W and Freeman R, 'A Stakeholder Theory of the Modern Corporation: A Kantian Analysis' in Beauchamp T and Bowie N, *Ethical Theory and Business* (Englewood Cliffs, N.J: Prentice Hall, 1993); Freeman R and Evan W, 'Corporate Governance: A Stakeholder Interpretation' (1990) 19(4) *The Journal of Behavioural Economics* 337; Jones T and Goldberg L, 'Governing the Large Corporation: More arguments for public directors' (1982) 7 *Academy of Management Review* 603.

¹¹⁵ See Collier P, 'A Stakeholder Accountability: A Field Study of the Implementation of a Governance Improvement Plan' (2008) 21(7) *Accounting, Auditing and Accountability Journal* 933.

¹¹⁶ Hillman A and Keim G. 'Shareholder Value, Stakeholder Management and Social Issues: Whats the bottom line?' (2001) 22(2) *Strategic Management Journal* 125.

¹¹⁷ Williams R. 'Women on Corporate Boards and their Influence on Corporate Philantropy' (2003) 42(1) *Journal of Business Ethics* 1; Bilimoria D. and Wheeler J. 'Women Corporate Directors: Current Research and Future Directions' in Davidson M and Burke R. (eds) *Women in Management; Current Issues*, (Volume 11) (London: Sage, 2000) p138; Stanwick P and Stanwick S. 'The Determinants of Corporate Social Performance: An Empirical Examination' (1998) *American Business*.

¹¹⁸ Sharma S. and Henriques i. 'Stakeholder Influences on Sustainability Practices in the Canadian Forest Industry' (2005) 26(2) *Strategic Management Journal* 159; Waddock S and Graves S. 'The Corporate Social Performance-Financial Performance Link' (1997b) 18(4) *Strategic Management Journal* 303.

The consideration of stakeholders and maintenance of good relationships with them is also relevant for the corporate governance of SOEs because of the increased expectation for accountability and transparency with SOEs. Attaining a good level of accountability and transparency towards its stakeholders will involve direct engagement with these stakeholders. Inclusivity of the stakeholders illustrated by a representative decision-making body of the SOE is one of the ways that engagement with stakeholders can be had. Having women on the board has also been said to be indicative of a board that is sensitive to the feelings of its stakeholders and the environment thereby enhancing legitimacy and trust too.¹¹⁹

(b.) A Governance Perspective

The governance complexities faced by SOEs also suggest a pertinent need for gender balance on their boards. The corporate governance of SOEs may not operate as smoothly as with private sector companies owing to the multiple levels of authority involved in the process, i.e. the board of directors, the sponsoring Minister and the Department of Finance. SOEs may also face peculiar challenges because of their exposure to the State as an owner, financier and controller.¹²⁰ Managing these multiple and potentially conflicting objectives as a result of multiple shareholder interests, i.e. the State and the public, is a major governance challenge the management of SOEs have to contend with.¹²¹ These challenges suggest that SOEs should be more dependent on efficient corporate governance practices than companies in the private sector. As stated above, a gender balanced board imports a high standard of corporate governance practice on the board.

¹¹⁹ Hart S. and Sharma S. 'Engaging Fringe Stakeholders for Competitive Imagination' (2004) 18(1) *Academy of Management Executive* 7-18.

¹²⁰ OECD (2005) (note 102 above) p. 13.

¹²¹ Scott D, 'Strengthening the Governance and Performance of State-Owned Financial Institutions' (2007) *World Bank Policy Research Working Paper*, 4321. Available at: <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-4321>. Accessed 12/04/16; OECD (2005) (note 102 above).

(c.) A Performance Perspective

The relationship between gender diversity and performance is a relevant consideration for SOEs given that they are committed to fulfilling commercial objectives and therefore there is need for improving and sustaining their performance financially and in other areas. Theoretically, the improved dynamics the presence of women brings to boards and the activities of boards in the areas of CEO monitoring, attendance of meetings, avoidance of groupthink etc, is indicative of an ideal setting for the company to perform well. Empirical results have however been divergent in identifying conclusively the effect women on boards could have on financial performance.¹²²

Although there is still no consensus in academic literature on a positive relationship between having more women on boards and company performance the number and quality of research that has found a positive link between a gender diverse board and company performance on several indices makes it difficult to ignore these researches. In 2015 for example a study of 3,876 public companies across 47 countries found strong evidence that companies with more female directors had higher performance by Tobin's Q and return on assets (ROA) indices.¹²³ Several others have made similar findings.¹²⁴ Mixed research outcomes

¹²² For example, Shrader C., Blackburn V and Iles P., 'Women in Management and Firm Value: An Exploratory Study' (1997) 9 *Journal of Managerial Issues* 355; Rose C 'Does Female Board Representation Influence Firm Performance? The Danish Evidence' (2007) 15(2) *Corporate Governance: An International Review* 404 and Ryan M and Haslam S. 'Glass Cliffs: Exploring the Dynamics Surrounding the Appointment of Women to Precarious Leadership Positions' (2007) 32(2) *Academy of Management Review* 549, are some studies that found a negative correlation between having more women on boards and different indices of financial performance.

¹²³ Terjesen S. Couto E and Francisco P. 'Does the Presence of Independent and Female Directors Impact Firm Performance? A Multi-country Study of Board Diversity' (2015) *Journal of Management Governance*.

¹²⁴ Such as Carter D., Simkins B. and Simpson G. 'Corporate Governance, Board Diversity and Firm Value' (2003) 38 *Financial Review* 33; Burke R. 'Company Size, Board Size and the Numbers of Women Corporate Directors' in Burke R and Mattis M (eds) *Women on Corporate Boards of Directors: International Challenges and Opportunities* (Dordrecht, The Netherlands: Kluwer, 2000) p118.

notwithstanding, validity has been given to the fact that gender diversity does increase value for shareholders,¹²⁵ including stakeholders.

A number of non-academic robust and empirical studies have also established that having more women on company boards translates to better performance in various financial indices. In as much as these studies have not identified a direct causal relationship, as stated earlier, the robustness of the studies which involve a wide range of companies across several countries over a number of years suggest that the conclusions drawn should not be overlooked in the discussion of the relevance of gender diversity on SOE boards. In a 2004 study Catalyst found that companies that attain diversity on their boards achieve better financial performance, on average, than other companies.¹²⁶ In 2007 Catalyst also found that boards with more women performed better than those that had no women on them as they showed a higher percentage on return on equity(53% higher), return on sales (42% higher) and return on invested capital (66% higher).¹²⁷ In a further study carried out in 2011 Catalyst also found companies that had a greater number of women on their boards performed better than those with the least number of women on return on sales (ROS) by 16% and return on invested capital (ROIC) by 26%.¹²⁸ Companies that had three or more women on their board over a number of years (4 to 5 years) outperformed those with no women significantly.¹²⁹ In 2007 McKinsey's study corroborated Catalyst's findings by finding that the 89 European-listed companies in the Stoxx Europe 600 with at least two women on their boards and the highest proportions of women in senior leadership position performed better than industry averages with 10% higher return on equity (ROE) and 48% higher operating result (EBIT).¹³⁰ In 2016, a Credit Suisse study reconfirmed its earlier findings to the effect that companies

¹²⁵ Terjesen S. Sealy R and Singh V. 'Women Directors on Corporate Boards: A Review and Research Agenda' (2009) 17(3) *Corporate Governance: An International Review* 320.

¹²⁶ Catalyst, *The Bottom Line: Connecting Corporate Performance and Gender Diversity* (New York, 2004).

¹²⁷ Joy L., Carter N, Wagner H and Narayanan S. *The Bottom Line: Corporate Performance and Women's Representation on Boards* (Catalyst 2007).

¹²⁸ Carter N. and Wagner H. *The Bottom Line: Corporate Performance and Women's Representation on Boards (2004-2008)* (Catalyst 2011).

¹²⁹ *Ibid.*

¹³⁰ McKinsey & Company, *Women Matter: A Corporate Performance Driver* (2007).

with more women in decision-making positions generate higher market returns and better profits.¹³¹

ii. Regulation as a Solution- A Broader Perspective

As mentioned earlier, the focus on regulation in this thesis is inspired by the increasing rate of success being recorded in countries that have taken a positive step and adopted a regulatory approach to address the issue. However, other considerations have led to this exploration of regulation for Ireland.

A reliance on the option of regulation is of current relevance when the situation of gender balance on Ireland's SOE boards is viewed from a historical perspective (see discussion above). A relationship has been suggested between the low representation of women in decision-making in Ireland and the Irish patriarchal culture, which perceives women to be on an unequal status with men and a legal regime that served to enhance the discrimination of women in economic participation.¹³² A change from this historically perceived status of women in Ireland seems to be occurring rather slowly over the years and the effects of this perception of women in Ireland in those times may still be lingering in some areas of the Irish society.¹³³ Following analysis that suggests the influence/role legislation and State policies had in entrenching the discriminatory culture and unequal society, with particular reference to labour participation, there is need to

¹³¹ Credit Suisse, *The CS Gender 3000: The Reward for Change* (Credit Suisse Research Institute, 2016).

¹³² Pyle J, *The State and Women in the Economy: Lessons from sex discrimination in the Republic of Ireland* (Albany: The State of New York Press, 1990). See also, Commission on the Status of Women, *First Report* (note 66 above).

¹³³ Despite an increase in female labour participation following the introduction of the *Employment Equality Act 1977* (making discrimination on grounds of sex and marital status in recruitment unlawful), and the removal of the *Marriage bar* in 1973, women are still being marginalised from decision-making positions. See Pyle (1990) (note 132 above) p. 95, for a full discussion on how in the 1960s and 1970s the man, in Ireland, was perceived as the sole decision-maker in economic matters in the home while the woman was subject to whatever decisions the man made. This perception at a family unit level obviously translated to the wider society and still persists today.

investigate whether legislation /State initiated regulation could work to correct same,¹³⁴ in relation to SOEs where government control is direct.¹³⁵

iii. Barriers Preventing the Appointment of Female Directors

Barriers that prevent women from getting into decision-making positions have proven to be strongly ingrained in organisational and societal norms¹³⁶ and could be resistant to a natural process for breakthrough. Barriers are similar in all societies but may differ slightly owing to institutional and cultural factors in each location. The same barriers preventing women from getting onto company boards in the private sector in Ireland are also working against achieving a higher level of gender balance on Irish SOE boards.¹³⁷ Popularly referred to as the 'glass-ceiling' preventing women from accessing higher positions in an organisation,¹³⁸ the barriers facing women's advancement may be categorised according to the levels at which they operate. Barriers could stem from an individual,

¹³⁴ Pyle (note 132 above).

¹³⁵ Natividad I, 'There is no Denying the Effectiveness of Quotas' (2010) *Directors & Boards*, p.24. Available at:

http://www.globewomen.org/summit/2010/New_Folder/Natividad%20Article.pdf.

Accessed 15/04/16.

¹³⁶ Weyer B, 'Twenty Years Later: Explaining the Persistence of the Glass Ceiling for Women Leaders' (2007) 22(6) *Women in Management Review* 494.

¹³⁷ See Institute of Directors in Ireland, *Women on Boards in Ireland: Insights from Women Directors on the Progress Made and Obstacles Remaining* (2013) p. 3. Available at: <https://www.iodireland.ie/sites/default/files/documents/Women%20on%20boards%20in%20Ireland%20-%202013%20Final.pdf> . Accessed 28/04/16; See also Institute of Directors in Ireland, *State Boards in Ireland 2015: Views from the Boardroom Table* (Dublin: Institute of Directors, Ireland, 2015) (IoD Survey 2015) p.6. Available at: <https://www.iodireland.ie/sites/default/files/documents/State%20Boards%20in%20Ireland%202015%20-%20Views%20from%20the%20Boardroom%20Table%20-%20November....pdf>. Accessed 26/03/16.

¹³⁸ Fagan C, Menendez M and Anson S, (Eds.) *Women on Corporate Boards and in Top Management: European Trends and Policy* (Basingstoke: Palgrave Macmillan, 2012) p.5.

organisational and/or at societal levels.¹³⁹ An understanding of the nature of barriers is important in deciding on a regulatory approach.¹⁴⁰

The individual-level perception sees women as the cause of their inability to make it into director positions. A lack of requisite qualification and experience for these positions appears to prevent female directors from being appointed to those positions.¹⁴¹ Nevertheless, studies show that sex-based bias often influences the appointment of female directors rather than a lack of experience or qualification.¹⁴² The barrier stemming from women's lack of ambition and self-confidence and the inability to exert leadership traits, is also disproved by research, rather the exclusion of female directors is influenced by social factors.¹⁴³ Apart from a woman's supposed 'self induced' barriers, the organisational structure and societal norms also play a major role in fostering the gender imbalance observed on boards. Organisational structures and processes tend to be 'gendered' in favour of the male gender rather than being gender neutral.¹⁴⁴ Job designs, work practices, organisational culture, selection, recruitment and promotion processes are evident of gender stereotyping, and act in preventing women from going up the career ladder.¹⁴⁵ As mentioned above, the process of appointing State board directors in Ireland is criticised for being exclusionary to potential female directors. This scenario of a male-dominated business culture which perceives a woman as an 'outsider' in a male environment is replicated in

¹³⁹ *ibid.*

¹⁴⁰ Connolly P, 'The Development of Women as Leaders in the Public Sector' (2008) 56(3) *Administration* 183; See also Klettner et al (note 98 above) p. 8.

¹⁴¹ Vinnicombe S and Singh V, 'Locks and Keys to the Boardroom' (2011) 26(3) *Gender in Management: An International Journal* 202. See however, Singh V, Terjesen S and Vinnicombe S, 'Newly Appointed Directors in the Boardroom: How do Women and Men Differ?' (2008) 26(1) *European Management Journal* 55, for finding to the contrary the theory that women lack in experience.

¹⁴² Bilimoria D and Piderit S, 'Board Committee Membership: Effects of Sex-based Bias' (1994) 37(6) *The Academy of Management Journal* 1469; Peterson C and Philpot J, 'Women's Roles on US Fortune 500 Boards: Director Expertise and Committee Membership' (2007) 72(2) *Journal of Business Ethics* 190.

¹⁴³ Singh V and Vinnicombe S, 'Why So few Women Directors in Top UK Boardrooms? Evidence and Theoretical Explanations' (2004) 12(4) *Corporate Governance: An International Review* 483.

¹⁴⁴ See Connolly (note 140 above) p. 188.

¹⁴⁵ *ibid.* See also, Terjesen, Sealy and Singh (note 3 above) p. 326.

most work places and is considered to be a major barrier that also discourages women from entering into the labour market or furthering their career.¹⁴⁶

iv. Policy Initiatives to Date in Ireland

Policies taken into consideration here refer to State boards, which also includes SOEs. It is difficult to construe any specific impacts on SOE boards. The general impact of the policy in achieving change is however what is useful here.

The awareness and pressure created by the reports and recommendations of the Commission on the Status of Women and the NWCI (mentioned above) gave rise to the 1993 Government policy that was aimed at improving gender balance on all State boards, including SOEs, at the time. The Recommendations of the report of the Commissions and the Government policy that followed were significant developments in Ireland at the time given the very low representation of Irish women in decision-making and the role of SOEs in the country's economic growth.¹⁴⁷ While the outcome of the policy was below expectation, some positive impact was still observable following its introduction. Female directors' participation in decision making on State boards (including SOEs) rose from 15% in 1993 to 29% in 1997,¹⁴⁸ a significant increase within a four-year period. The increase was largely due to government appointees, indicating a positive response from Ministers to the policy.¹⁴⁹ In broad terms, the overall level of female representation on State boards as at 2014, i.e. 36.2%¹⁵⁰ may seem impressive considering how low representation was in the 1970s. However, when

¹⁴⁶International Labour Office, *Breaking Through the Glass Ceiling: Women in Management* (Geneva: ILO, 2009) p. 8. Available at: <http://www.shebacss.com/docs/soewcsr020-09.pdf>. Accessed 05/05/16.

¹⁴⁷ FitzGerald, G. *State-sponsored Bodies* (Dublin: IPA, 1963) p. 2.

¹⁴⁸ Galligan Y, *The Development of Mechanisms to Monitor Progress in Achieving Gender Equality in Ireland* (Dublin: Government Publications Sales office, 2003) p. 90. See also National Women Council of Ireland, *Who Makes the Decisions in 1997: A Review of Gender Balance on State boards in Ireland* (Dublin: NWCI, 1998) p.ii.

¹⁴⁹ Galligan (note 148 above) p. 90.

¹⁵⁰ Department of Justice and Equality, *Gender Equality in Ireland: Women on State Boards* (2014). Available at: http://www.genderequality.ie/en/GE/Pages/State_Boards. Accessed 03/05/16.

the fact that the policy was introduced more than 20 years ago is taken into account and the objective of 40% is still an issue of concern, more so, with the level of representation having remained in this range in the past five years, it can be concluded that the implementation of the policy has not been optimal.

In 2005, the Government attempted to address issues with the appointment process of directors to State boards with the aim of increasing opportunities for more female candidates to be nominated or appointed. The Government required that the organisations with the power to nominate board members present a variety of male and female names to the Minister for selection.¹⁵¹ In the past, the practice had been to present the sponsoring Minister with nominations corresponding to the number of vacancies to be filled without regard for gender diversity.¹⁵² Experience, qualification and expertise were the primary considerations in making board appointments at the time.¹⁵³ The new requirement did make some positive impact at the time as it resulted in an increase of female board membership. In 2005, women accounted for 33% of positions on State boards, which rose to 35.4% by 2007.¹⁵⁴ For a number of years however, female representation on State boards has remained in the range of 36%-37%,¹⁵⁵ hence not indicating a reliable and tangible impact of the policy.

Notably, in 2009 the Government made a commitment in its legislative programme to put the principles of the UK Combined Code of Corporate Governance on a legislative footing for all banks, public companies and State-sponsored bodies in Ireland, in relation to certain governance issues, which

¹⁵¹ Department of Justice and Equality, Gender Equality in Ireland: *Women on State Boards* (2014) Available at: http://www.genderequality.ie/en/GE/Pages/State_Boards. Accessed 10/05/16.

¹⁵² Collins N and Quinlivan A, 'Multi-level Governance' in Coakley J and Gallagher M, (eds) *Politics in the Republic of Ireland* Fourth Edition (London: Routledge, 2005) p. 393.

¹⁵³ Dooney S and O'Toole J, *Irish Government Today* 2nd Edition (Dublin: Gill & Macmillan, 1998) p.194.

¹⁵⁴ Berkery E, Tiernan S and Morley M, 'Female Participation Trends in the Irish Labour Force: The Case of State-sponsored Bodies in Ireland, 1970-2007' (2012) 60 (2) *Administration* 73. This figure constituted one-third of all public appointments.

¹⁵⁵ See Department of Justice and Equality, Gender Equality in Ireland: *Women on State Boards* (2014) for 2013/2014 figure. (note 150 above).

included board composition.¹⁵⁶ Evidently, the commitment was unfulfilled. The *Programme for Government of National Recovery 2011-2016* also makes a number of resolutions aimed at advancing the position of women in Ireland. Among the resolutions made is a recommitment to the 1993 policy towards ensuring that all State boards have at least 40% of each gender.¹⁵⁷ This commitment led to the decision that details of all vacancies on State boards should be published on their websites, and applications thereby invited. Ministers are, however, not obliged to make the selection from those who apply.¹⁵⁸ In addition, it was required that these invitations should indicate the qualifications, skills and competencies required as well as the need for gender balance, and to further show how those being nominated for appointment met these requirements.¹⁵⁹ In 2012, further requirements were introduced, requiring State agencies to report on steps they are taking to achieve the target.¹⁶⁰

The Government's attempt to make the appointment process more transparent and open to more candidates was however unsuccessful in this regard. The result of a survey conducted by the Institute of Directors (IoD) Ireland in 2012 showed that appointments to State boards were still being significantly politically influenced.¹⁶¹ The survey, which was influenced by a need to improve corporate

¹⁵⁶ Department of Taoiseach, *Renewed Programme for Government* (2009) p. 13. Available at: [http://www.defence.ie/WebSite.nsf/72804bb4760386f380256c610055a16b/2a49a2267d0f095b80257754004d3e17/\\$FILE/94315182.pdf/Renewed_Programme_for_Government,_October_2009.pdf](http://www.defence.ie/WebSite.nsf/72804bb4760386f380256c610055a16b/2a49a2267d0f095b80257754004d3e17/$FILE/94315182.pdf/Renewed_Programme_for_Government,_October_2009.pdf). Accessed 19/04/16.

¹⁵⁷ See Department of Taoiseach, *Towards Recovery: Programme for a National Government 2011-2016*, P. 53. Available at: <http://www.susanokeeffe.ie/uploadedfiles/Programme%20for%20Government.pdf?phpMyAdmin=39a0da28af7067f1771b8a767b7a380b>. Accessed 05/05/16.

¹⁵⁸ Gender Equality in Ireland: *Women on State Boards* (note 150 above).

¹⁵⁹ Department of Social Protection, *Process and Procedures for Appointment of Members to Boards of State Bodies under the Aegis of the Department Of Social Protection*. Available at: http://www.welfare.ie/en/downloads/dsp_procedures.pdf . Accessed 20/03/2016.

¹⁶⁰ Department of Justice and Equality, *Gender Equality in Ireland: Women on State Boards* (2014) (note 150 above).

¹⁶¹ Institute of Directors in Ireland, *State Boards in Ireland 2012: Challenges for the Future* (Dublin: Institute of Directors, 2012). (IoD Survey 2012) p.4. Available at: <https://www.iodireland.ie/assets/files/downloads/IoD%20State%20Boards%20in%20Ireland%202012%20-%20Challenges%20for%20the%20future%2024%2004%2012.pdf>. Accessed 01/05/2016. In 2015, the same issue was also identified to still be persisting. See

governance standards on State boards in Ireland revealed that despite Government's policy in relation to appointments to boards, a majority of appointments were still being done irregularly. The result of the survey showed that 27% of respondents were made aware of board vacancies appointments through word of mouth; 20% got the information through a direct contact with the Minister and 16% of the respondents said they had been informed through the Public Appointment Service.¹⁶² Evidently, the publication of vacancies on the website of the Department may not have been widely observed: only 11% of respondent directors had got the information on a vacancy on the Department's website.¹⁶³ It could also have been that in spite of publication on websites, the existing practice of communication by word of mouth still prevailed. A 72% majority of the respondents agreed that there was need for more independence from political influence on appointments to State boards.¹⁶⁴ In 2014, new Guidelines on appointments to State boards (including SOEs) were introduced which also aimed at making the process more transparent. The Guidelines emphasise the Government Decision to ensure a 40% gender representation on State boards, even though the Government's recommitment to gender balance on State boards is expected to be reflected through this more transparent appointment process.¹⁶⁵ The impact of the Guidelines, even though it presents no significant deviation from past policy attempts, is however yet to be ascertainable

Institute of Directors in Ireland, *Women on Boards in Ireland 2015* (2015) p. 6. Available at:

<https://www.iodireland.ie/sites/default/files/documents/Women%20on%20Boards%20In%20Ireland%202015%20Final.pdf>. Assessed 10/05/16. See also, Michael Brennan, 'Public still left out as State board jobs go to ministers' candidates' *Independent.ie* 23 February 2013. Available at: <http://www.independent.ie/irish-news/public-still-left-out-as-state-board-jobs-go-to-ministers-candidates-29089205.html>. Accessed 02/05/2016.

¹⁶² IoD Survey 2012. (note 161 above) p. 4.

¹⁶³ *ibid.*

¹⁶⁴ *ibid.*

¹⁶⁵ See Department of Public Expenditure and Reform, *Guidelines on Appointments to State Boards* (2014) Guideline 16.1. Available at: http://www.publicjobs.ie/publicjobs/publication/document/Guidelines_on_Appointments_to_State_Boards_Jan2015.pdf. Accessed 05/05/16. See also Maura Quinn, *It's Time to Restore Confidence in State Board Appointments* (31 October 2014) Available at: <http://www.independent.ie/opinion/comment/its-time-to-restore-confidence-in-state-board-appointments-30706754.html>. Accessed 30/04/16.

given that it is a recent (2014) publication.¹⁶⁶ A follow-up to the 2012 survey conducted in the fourth quarter of 2015 however did show more positive views from respondents on the appointment process, indicating that the new Guidelines had influenced some positive changes.¹⁶⁷ Nevertheless, significant drawbacks to a system of total transparency and fairness still remain.¹⁶⁸

G. Chapter Structure of Thesis

The rest of the thesis is structured as follows:

Chapter 2 of this thesis seeks to introduce and establish the Irish SOE structure and environment within the context of this thesis. The discussion highlights the relationship of SOE board composition to gender balance while also identifying how the complexity in SOE corporate governance establishes a critical need for gender balance on their boards. With particular reference to their ownership and control structure, their role and significance to the Irish economy and the society as a whole, a stakeholder perspective is used to suggest a justification for the imperativeness of gender balance on SOE boards. The discussion in this chapter also seeks to identify a relationship between the role of the SOE board in upholding the public interest and stakeholder objectives of the SOE. The second part of the chapter also gives an overview of how regulation has been used in other countries to address gender imbalance on boards including SOE boards. The aim of this chapter is to identify the need to improve the level of gender diversity on boards of SOEs, in view of their role and significance in the Ireland, and highlighting the need for a regulatory intervention in achieving this.

¹⁶⁶ Provisions of the 2014 Guideline in respect of gender balance on SOE boards is considered critically in Chapters Four and Six of the thesis.

¹⁶⁷ See IoD Survey 2015, (note 161 above). It is however important to note that the respondents to the 2012 and 2015 IoD Surveys represented a small percentage of the over 2,500 director positions of State boards. 45 and 77 directors responded to the 2012 and 2015 surveys respectively. This suggests that the result of the survey should be regarded with caution.

¹⁶⁸ *ibid.* See Chapter Six for discussion on these drawbacks in relation to political interference and cronyism.

In Chapter 3, a theoretical framework using existing theories on the hard law and soft law forms of regulation is advanced. The chapter provides a background discussion, on how either form of regulation can be used to increase gender balance on Ireland's SOE boards. The discussion in this chapter extends to include the impact of institutional context in regulatory outcomes in order to highlight how the impact of similar regulation could vary as a result of national context. The chapter also discusses some regulatory processes of implementation and how dynamics in regulatory implementation may play a role in how regulation can be made more effective in improving gender balance on SOE boards. The aim of this chapter is to provide a theoretical background and support for the findings in this thesis.

Chapter 4 critically analyses the hard law regulatory approach, specifically through legislative gender quotas, as a tool to increase gender balance on boards of directors. The experience of Norway in achieving increased gender balance through a legislative quota law is presented as a case study. The Norwegian experience is presented and critically analysed with the aim of identifying the pros and cons of the quota law in increasing gender balance on boards, including SOEs, and highlighting any country-specifics that may have encouraged its success in Norway. Ways in which these highlighted factors may relate to the context of Ireland are also identified.

Chapter 5 also contains a critical analysis of soft law approach in practice with the aim of identifying its potential in effecting increased levels of gender diversity on boards. The discussion will focus on corporate governance codes being used to increase gender diversity on boards, highlighting their effectiveness (or not). The experience of Finland, Australia and the UK are presented for more insight in how these approaches have been used in increasing gender diversity on boards. The analysis on these countries seeks to highlight factors that may have impacted on the effectiveness of codes or detracted from it and how these can be useful in determining an approach for SOEs in Ireland. The chapter also critically analyses the potential of a similar approach for Ireland.

Chapter 6 analyses the potential for regulation from an institutional/national context perspective. The chapter considers political and society-based factors in the Irish environment that could impact a regulation to increase women on SOE boards. This chapter also puts forward some recommendations based on international practice on how some systemic issues may be addressed so as to allow regulation attain its potential within the Irish context.

Chapter 7 contains the conclusion and recommendations of the thesis based on the arguments and findings in the previous chapters.

Conclusion

The aim of this thesis has been highlighted in the chapter. The central research question has been put forward and backed by general and contextual justification. The aim and central research question of this thesis has also been placed within an academic context highlighting that there is a gap within the literature that the thesis addresses. In the next chapter, justification is provided more specifically in the context of Ireland's SOEs and their corporate governance arrangement in terms of the composition of their boards. Justification is also given in the next chapter within the context of regulatory international developments.

Chapter 2: Nature, Role and Corporate Governance of State-Owned Enterprises (SOEs) in Ireland

A. Introduction

This chapter seeks to set Ireland's SOE sector in context. A relevant context is identified from a number of perspectives: the role, nature and significance of SOEs to the economy and society; the corporate governance framework of SOEs in Ireland and the role of Ireland's SOE boards. The role and nature of SOEs suggest that an ideal and efficient corporate governance arrangement is crucial to ensure good governance and sustainability in SOEs; the role of SOE boards and the corporate governance framework of SOEs in Ireland afford a basis for analysing existing practice and aspects of the practice that indicate a relevance for improved gender balance on the boards. The discussion thus seeks to show that gender balance is a necessary governance resource on SOE boards in view of their universal public/social objectives and increased accountability. SOE boards also have a greater obligation to uphold a higher standard of corporate governance given the complexities in the corporate governance arrangement of SOEs.

The corporate governance of Ireland's SOEs is unique and as a result could create challenges which are specific to SOEs. A multiplicity of stakeholders i.e. the State, citizens and Ministers (representing the State), and the ownership and control role of the State suggests that a conflict of objectives could arise for SOEs as a result of satisfying all shareholders/stakeholders. This indicates an imperative need for best practice in corporate governance so as to mitigate any negative outcome that could arise as a result of the complicated corporate governance environment for the SOE. Accordingly, the discussion in this chapter seeks to show that an increased level of female directors on boards of SOEs is one form of best practice that would be useful in achieving this purpose. The presence of female directors on boards has been shown to impact positively on corporate

governance practice on boards,¹ including in the maintenance of stakeholder and other third party relationships with the board.² In addition, a board that is representative of its shareholders/stakeholders is better resourced to deal with the multiplicity of shareholders objectives.

B. Background

The corporate governance of SOEs in Ireland is governed by the *Code of Practice for the Governance of State Bodies 2009* (Code of Practice 2009), issued by the Department of Finance.³ The Code of Practice was originally issued in 1992 (*State Bodies Guidelines*) and updated in 2001.⁴ The 2009 update is the third update with an updated version (fourth) being deliberated on at the time of writing. Notably, the issue of board composition was dealt with for the first time in the 2009 version of the Code of Practice. However, despite being inspired by the need for setting higher standards in corporate governance:

“Directors and employees of State bodies and their subsidiaries should be guided by the principles set out hereunder in meeting their responsibility to ensure that all of their activities, whether covered specifically or otherwise in this document, meet the highest standards of corporate governance”,⁵

the 2009 update appears to fall short as it lacked in importing significant aspects of good governance for public sector entities into the Code.

¹ See discussion in Chapter One. See also Rosenblum D and Roithmayr D, ‘More than a Woman: Insights into Corporate Governance after the French Sex Quota’ (2015) 48(3) *Indiana Law Review* 910.

² See discussion in Chapter One. Terjesen S, Sealy R and Singh V, ‘Women Directors on Corporate Boards: A Review and Research Agenda’ (2009) 17(3) *Corporate Governance: An International Review* 330; Rosenblum and Roithmayr (note 1 above) p. 916.

³ Department of Finance, Code of Practice for the Governance of State Bodies (2009) (Code of Practice 2009).

⁴ Department of Finance, Code of Practice for the Governance of State Bodies (2001).

⁵ Code of Practice 2009 (note 3 above) Introduction, p.1.

The fundamentals of public sector entities are predicated on the principle of public interest including stakeholder recognition and engagement,⁶ which the Code of Practice 2009 does not place enough emphasis on. By this, the Code does not align with subsequent international framework that places a focus on public interest and stakeholder involvement as priority in achieving good governance in public sector organisations:

“Governance comprises the arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved. The fundamental function of good governance in the public sector is to ensure that entities achieve their intended outcomes while acting in the public interest at all times”.⁷

International framework further states that:

“Acting in the public interest requires ensuring openness and comprehensive stakeholder engagement”.⁸

The Code of Practice 2009 does address the public interest perspective although this appears more subtle than is suggested in the international framework:

“Corporate governance comprises the systems and procedures by which enterprises are directed and managed. State bodies must serve the interest of the *taxpayer*, pursue value for money in their endeavours.... and act transparently as public entities. The Board and management should accept accountability for the proper management of the organisation”.⁹

The use of the word ‘taxpayer’ rather than stakeholders can be viewed as limited to the taxpaying members of society rather than the wider society/stakeholders who are consumers of the services of the SOE. It can be argued that this

⁶ See Chapter One for theoretical discussion of the stakeholder theory in relation to more women on SOE boards. p.1.

⁷ International Federation of Accountants, International Framework: Good Governance in the Public Sector, Supplement (2014) p.5. Available at: <http://www.ifac.org/system/files/publications/files/International-Framework-Good-Governance-in-the-Public-Sector-supplement-IFAC-CIPFA-June-2014.pdf>. Accessed 16/03/16.

⁸ *ibid.*

⁹ Code of Practice 2009 (note 3 above) Introduction, p. 1.

perceived disinclination with a wider stakeholder view could suggest why the Code has consequently lacked in portraying a public interest/stakeholder inclination in other relevant areas of corporate governance such as board composition and board refreshment. Both areas are ideal for reflecting a public interest/stakeholder focus. The Code of Practice 2009 however does enjoin boards of State bodies to take the public interest into consideration in setting the strategic plan for the State body.¹⁰ This is also a subtle and ambiguous Provision that does not serve to further a stakeholder focus of the board as it will be difficult to ascertain that the board has taken this direction.

The Code of Practice 2009 does not address the issue of diversity of board members including in terms of gender and is specifically silent on board refreshment in relation to the tenure of directors and the number of terms a director can serve on the board.¹¹ Board refreshment exercise is relevant as it will not only ensure the board remains effective but will also be useful in creating vacancies (as a result of resignation or retirement) where more female directors can be appointed to. In other words, long director tenure will impact on any attempt to improve gender balance.¹²

The issue of board refreshment and composition is addressed in a substandard manner within the Code of Practice. The Code of Practice provides that:

“The Board should constantly review its own operation and seek to identify ways of improving its effectiveness. This will include the identification of gaps in competencies and ways these could be addressed. Where a Board Chair is of the view that specific skills are required on the Board, he/she should advise the relevant Minister of this view for his/her consideration

¹⁰ Code of Practice 2009, (note 3 above) Para. 2.15.

¹¹ Board tenure is however provided for certain SOEs by the Statutes under which they are created. The Statutes are silent on the number of terms a director may be appointed for. See further discussion in Chapter Five, p. 274

¹² See further discussion in Chapter Five, p. 274 on how lengthy board tenures could jeopardise an objective to have more women on boards. Gladman K and Lamb M, *Director Tenure and Gender Diversity in the United States: A scenario Analysis* (GMI Ratings, 2013).

sufficiently in advance of a time when board vacancies are due to arise in order that the Minister may take the Chair's views into consideration when making appointments".¹³

The above Code Provision emphasises a need for skill on the board. However, while it could create openings for the appointment of women directors, it is not a guarantee that more women will be appointed as men also possess the required skill and therefore will be suitable to fill the vacancy. The Provision indicates that skills and competencies on the board should be the focus of any review/evaluation of the board and ultimately, appointments to the board. While a focus on skills and competencies is not necessarily a wrong focus, it can be argued that focusing on achieving gender balance on the board does not detract from also ensuring the board is made up of people with the right skills and competency while having the right gender balance. A mix of both genders could provide a wider range of relevant skills on the board.¹⁴

Against this background, there is need to identify and analyse Ireland's SOEs under the existing regulatory regime as a pertinent sector for regulation aimed at getting more women on their boards.

To this end, the discussion in this chapter is structured in the following sequence: the development of the Irish SOE sector is discussed in an attempt to highlight its significance to the Irish society. The sector is then discussed from the perspective of corporate governance which includes a discussion on the corporate governance arrangement that creates a unique challenging and complex environment for the board of SOEs. The discussion then goes on to highlight the role of Ireland's SOE boards and particularly, the relevance of gender balance on these boards to ensure they perform their role effectively. The discussion emphasises the public interest/ stakeholder perspective in trying to link gender

¹³ Code of Practice 2009, provision 2.17.

¹⁴ Women and men possess similar and also varied skills that will be useful in performing board roles. See Konrad A, Ritchie J, Lieb P and Corrigan E, 'Sex Differences and Similarities in Job Attribute Preferences: A Meta-analysis' (2000) 126 *Psychological Bulletin* 593. See also, Singh V, Terjesen S and Vinnicombe S, 'Newly Appointed Directors in the Boardroom: How do Women and Men Differ?' (2008) 26(1) *European Management Journal* 48.

balance to the role of SOE boards. The need for regulatory intervention to increase gender balance on these boards is thus put forward. In the final part of the chapter the potentials of regulation in this regard is analysed through a discussion of regulatory approaches adopted globally, towards increasing gender balance on boards of SOEs and private sector companies.

C. SOE Sector in Ireland

i. Evolution of the SOE Sector in Ireland

The process and stages through which the Irish SOE sector developed is indicative of its role to the Irish economy and society. The growth of the sector was largely influenced by key features in the history of the State and economic and political events, which occurred at national and global levels. World Wars I and II for example, were precursory to the intervention of the State in certain commercial activities that were argued by many to be the remit of the private enterprises.¹⁵ Also, the gaining of independence from Britain in 1922¹⁶ led to the adoption of practices that were aimed at providing protection and self-sufficiency for the economy of the new State at the time.¹⁷ Following the new status for Ireland, majority foreign control of manufacturing was subsequently banned in the period of 1932 to 1958.¹⁸

¹⁵ Fitzgerald G, *State-Sponsored Bodies* (Dublin: Institute of Public Administration, 1963) p. 20; Chubb B, *The Government and Politics of Ireland* (3rd edn) (London: Routledge, 1992) p. 248. See also Forfas, *The Role of State-Owned Enterprises: Providing Infrastructure and Supporting Economic Recovery* (Dublin: Forfas Publications, 2010) p. 17. Available at: <http://www.forfas.ie/media/SOE%20press%20release.pdf>. Accessed 04/04/16.

¹⁶ Sweeney P, *Ireland's Economic Success: Reasons and Success* (Dublin: New Island, 2008) p. 5.

¹⁷ *ibid*, p. 6

¹⁸ See McCann G, *Ireland's Economic History: Crisis and Development in the North and South* (London: Pluto Press, 2011) p. 86, for a detailed discussion on the economic war. The economic war with Britain was caused by a dispute over which government, the Irish

A low level of economic development in the newly founded Irish State explains why the State saw the need to intervene in commercial activities. As part of the programme of self-sufficiency, many SOEs were established in areas where the private sector was inadequate or reluctant to invest. The State was however reluctant to play a major controlling position in the commercial arena and rather created those early SOEs such as the Agricultural Credit Company Limited and the Irish Sugar Company Limited (Comhlucht Siuicre Eireann Teoranta) as public companies with the intention of offering their shares to the public at a later date and possibly move them to the private sector eventually.¹⁹ SOEs were however a necessary resource at the time and needed to be created notwithstanding the ideology of the State. The Irish Free State was considered to be liberal-democratic and conservative without an inclination to propagate socialism.²⁰ Being a new State, the economic and social conditions under which the Irish State had to operate did not offer much incentive to private enterprises to engage in certain activities leading the State to eventually 'rescue', and establish some particular industrial and commercial activities which were of economic and social welfare significance to the Irish State at the time.²¹ The lack of basic industries, the absence of a viable private enterprise sector and the necessary conditions, such as access to capital, for such private initiatives to thrive led to the creation of SOEs to further the State's economic goals.²²

or British, should receive the land annuities paid by Irish tenant purchasers. See Sweeney (2008) (note 16 above) p. 6.

¹⁹Devlin L, *Report of the Public Service Organisation Review Group (Devlin Report)* (Dublin: Stationery Office, 1969) p. 31 (5.2.10).

²⁰ Sinn Fein, 'The Economic Crisis: The Left Alternative' (1976) Paper 97 *Materials*. Available at: <http://arrow.dit.ie/cgi/viewcontent.cgi?article=1096&context=workerpmat>. Accessed 12/04/16. See also Chubb (1992) (note 15 above) p. 249.

²¹At the time, the Irish market for capital was not fully developed owing to an Irish economy which was considerably dependent on a larger economic and financial unit that was London-oriented. The situation meant that most investors were drawn towards seeking for capital in the London Market. See Chubb (1992) (note 15 above) p. 250. See also Lane P, 'Role of Government: Rational, Levels and Size' in O'Hagan J and Newman C, *The Economy of Ireland : National and Sectoral Policy Issues* (10th edn.) (Dublin: Gill and Macmillan, 2008) p. 60.

²² Palcic D and Reeves E, *Privatisation in Ireland* (Basingstoke: Palgrave Macmillan, 2011) p. 56.

(a.) An Economic Objective

The sequence in which earlier SOEs were created in Ireland illustrates the link between SOEs and serving of economic needs. SOEs are created to fulfil an economic need for society which could be temporary or permanent. For example, during the World War II SOEs such as Tea Importers Limited and the Irish Shipping Limited were established for the sole purpose of providing wartime essentials and were thus closed down after the war ended.²³ SOEs such as Voluntary Health Insurance (VHI)²⁴ and Radio Teilifis Éireann (RTÉ)²⁵ were also created in 1957 and 1960 in response to increased economic activity in Ireland. Both SOEs are still in existence and continue to fulfil societal economic needs. Voluntary Health Insurance Company (VHI) was specifically founded to provide health insurance for those not covered by the Health Act, 1947.

The first Government of the Irish Free State created SOEs specialising in the areas of infrastructural provision and the exploitation of the natural resources of the country.²⁶ Transport²⁷ and electricity supply²⁸ were taken on by the State to address infrastructural needs while food production activities served to ensure the natural resources/produce of the State were being utilized and managed. Generation of employment was also a significant factor which informed the creation of some SOEs at the time. The Public Service Organisation Review Group identified the three categories of enterprises that emerged in the early period of the Irish Free State:

- i.) The group of companies that provided an infrastructural foundation for the economy, where private enterprise were reluctant to undertake such activities;

²³ Walsh B, 'Commercial State-Sponsored Bodies' (1987) *Irish Banking Review* 28; O'Grada C, *A Rocky Road: The Irish Economy since the 1920s* (Manchester: Manchester University Press, 1997) p. 9.

²⁴ Voluntary Health Insurance Act 1957, s.3.

²⁵ Broadcasting Authority Act 1960, s.3.

²⁶ *Devlin Report* (note 19 above) p. 31-39.

²⁷ Córas Iompair Éireann (CIE).

²⁸ Electricity Supply Board (ESB).

- ii.) The group which consisted of companies involved in the development of Ireland's natural resources or for the provision of employment; and
- iii.) The group of companies where the State needed to move in and take over their activities in order to prevent the company's collapse.²⁹

The Electricity Supply Board (ESB) was created in 1927 and set the precedent for the creation of other SOEs in Irish history. The ESB was established following the State's financial involvement in the Shannon hydro-electric Scheme in a bid to retain electricity supply in Ireland under public ownership.³⁰ The importance of ESB to the Irish economy lay in the value of electricity as an input into all areas of the economy and therefore has an impact on the country's competitiveness.³¹ The involvement in the Shannon scheme also meant that the Government was able to successfully further its policies on wage control and maintenance of working conditions through the scheme.³² The era of industrialisation (1932-1939) saw the establishment of several SOEs that was geared towards enhancing Ireland's development. In 1933, through a nationalisation process, Irish Sugar Company Limited was established by the Irish government in an attempt to promote self-sufficiency in sugar manufacturing at the time.³³ The Industrial Credit Company Limited was also created in the same year to provide capital for Irish entrepreneurs and farmers so as to enhance the development of a national industrial environment.³⁴ Earlier on, in 1927, The Agricultural Credit Corporation had been created to provide capital for agricultural activities.³⁵ Aer Lingus, the national airline and the Bord na Mona (Peat Development Company) also had their roots during this period, 1936 and 1934 respectively, while the Irish Life

²⁹ *Devlin Report* (note 19 above) p. 31-39.

³⁰ Sweeney, P. *The Politics of Public Enterprise and Privatisation* (Dublin: Tomar, 1990) p. 115 and Palcic and Reeves (note 22 above) p.53, highlighting on the significance of ESB to the Irish economy.

³¹ Sweeney 1990 (note 30 above) p. 115.

³² *ibid*, p. 19.

³³ *Devlin Report* (note 19 above) p. 14, 3.2.5

³⁴ *ibid*.

³⁵ Agricultural Credit Act, 1927, s.3.

Assurance Company was also taken over by the State during this time.³⁶ In 1945, CIÉ (Coras Iompair Éireann), a union of Great Southern Railway, United Dublin Tramway Companies and Grand Canal Company was established to provide bus and rail public transport and rail freight services.³⁷

In line with the State's utilisation of SOEs for economic purposes, the creation of SOEs also increased in the period of recovery and change (1958-1972) following the war.³⁸ This period was characterised by greater emphasis being placed on export activities and the attraction of foreign direct investment. Nitrigín Éireann Teoranta, the State fertiliser company, was created in 1960 to further the economic significance of having a domestic nitrogenous fertiliser industry.³⁹ In 1976, Bord Gais Éireann, the monopoly distributor of natural gas was established.⁴⁰ The Irish National Petroleum Corporation was created in the 1980s as a rescue attempt to maintain in operation a refinery, which was being shut down by private oil companies owing to financial difficulties.⁴¹ In 1984, Bord Telecom Éireann and An Post were corporatised to SOEs following the withdrawal of the management of postal and telecommunication systems from government departments.⁴² By this action, both departments began to operate as independent commercial companies. It was believed that these services would be more efficiently managed in the provision of services, as commercial activities, without the bureaucracy that characterises the functioning of government departments.⁴³ The Irish Aviation Authority and the State forestry company Coillte Teoranta (1989) were also corporatised for similar reasons.⁴⁴ Other SOEs that have also emerged from public service organisations, having been given an

³⁶ *ibid.*

³⁷ CIÉ Group of Companies, *Overview*. Available at: [http://www.cie.ie/company-profile-\(2\)/organisational-structure](http://www.cie.ie/company-profile-(2)/organisational-structure). Accessed 15/04/16. The Transport Act, 1950 formally nationalised CIE.

³⁸ Palcic and Reeves (note 22 above) p. 55.

³⁹ Walsh (note 23 above) p. 28.

⁴⁰ Gas Act, 1976, s.7.

⁴¹ Walsh (note 23 above) p. 28.

⁴² Postal and Telecommunications Services Act, 1983, s.9.

⁴³ See Forfas, (note 15 above) p.18.

⁴⁴ Chubb (1992) (note 15 above) p. 250.

explicit commercial ambit, include Ordnance Survey Ireland (2002) and National Oil Reserves Agency (2007).

Evidently, the existence of SOEs is crucial to the viability of Ireland as a country and the quality of life of the Irish people. Thus in spite of changes that have had to occur in the SOE sector over the years as a result of privatisation and nationalisation,⁴⁵ the trend of establishing SOEs to fulfil economic goals of the State continued. The consequences of Ireland's 2008/2009 financial crisis led to the sale of certain State Assets in order for the State to meet economic/financial obligations at national and global levels i.e. EU/IMF obligations.⁴⁶ State Assets such as Bord Gáis Energy, a subsidiary of Bord Gáis was sold in 2014,⁴⁷ in 2012 and 2014, some of ESB's interests was also sold off.⁴⁸ Irish Water was however still established in 2013 to fulfil the service of provision and development of water services in Ireland.⁴⁹

ii. Size of SOE Sector in Ireland

In 2016, the sector consisted of 31 SOEs.⁵⁰ The number of SOEs in Ireland reflects their strong presence and influence in the economy and society. Over past years, while privatisation did bring about significant changes to the structure and

⁴⁵ For example the privatisation of SOEs such as Telecom Éireann, Irish Steel and Irish Sugar. See Palcic and Reeves (note 171 above), for detailed discussion on privatisation in Ireland.

⁴⁶ Department of the Taoiseach, *Government for National Recovery 2011-2016* p. 15. Available at: <http://www.socialjustice.ie/sites/default/files/attach/policy-issue-article/3292/2011-03-06-programmeforgovernment2011-2016.pdf>. Accessed 15/04/16.

⁴⁷ Ailish O'Hara, 'Sale of Bord Gais Energy in € 1.1bn Deal to Centrica Consortium Finalised' *Irish Independent* 21 March 2014. Available at: <http://www.independent.ie/business/irish/sale-of-bord-gais-energy-in-11bn-deal-to-centrica-consortium-finalised-30112464.html>. Accessed 15/04/16.

⁴⁸ ESB, Press Release: 'ESB Completes the Sale of its 50% Shareholding in Marchwood Power Limited' (2013). Available at: <https://www.esb.ie/main/press/pressreleaseWS.jsp?id=3374>. Accessed 22/04/16; Press Release: 'ESB and Osaka Gas UK Limited Complete Sale of Bizkaia Energia SL (BESL) to Affiliate of Arclight Capital'

⁴⁹ Water Services Act 2013, s. 4 & 5.

⁵⁰ See list of SOEs in Chapter One Table 1.

composition of the SOE sector particularly in the areas of telecommunications (Telecom Eireann now Eircom (1999)), Air transport (Aer Lingus (partly privatised in 2006 and full privatisation in 2015),⁵¹ on international comparison, the rate of privatisation in Ireland has been of a lesser extent.⁵² Despite the global wave of privatisation in the 1980s and the difficulties faced by Irish SOEs in the 1970s and 1980s,⁵³ the Irish Government focused on improving the performance and commercialisation of SOEs at the time and as a result, SOEs became more profitable and improved generally in their financial performance.⁵⁴ The first privatisation in Ireland occurred in 1972⁵⁵ but the practice began noticeably in 1991 with the privatisation of the Irish Sugar Company and Irish Life.⁵⁶ With the privatisation of (Arramara Teoranta) (the State seaweed company) and National Lottery in 2014, and full privatisation of Aer Lingus in 2015, at the time of writing, 13 Irish SOEs have been privatised since Ireland became a Free State.⁵⁷

⁵¹ The privatization of Telecom Eireann (Eircom) was considered in hindsight, to be a major policy mistake. The privatised Eircom did not live up to the benefits, which prompted its sale. In addition to the total loss of public control in an industry that was argued to benefit from public ownership, Eircom successfully exploited its monopoly position in the telecom industry in the area of pricing its services and making some structural changes to the company that proved detrimental in the end. See Sweeney P, *Selling Out? Privatisation in Ireland* (Dublin: TASC/New Island, 2004) p. 5-6 & Chap. 3 for a more detailed discussion.

⁵² Palcic and Reeves (note 22 above) p. 60.

⁵³ National Economic and Social Council, *A Strategy for the Nineties: Economic Stability and Structural Change (NESC Report no 89, 1990)* p. 353, 367. Also available at: <http://www.nesc.ie/en/publications/publications/nesc-reports/a-strategy-for-the-nineties-economic-stability-and-structural-change/>. Accessed 25/04/16. The report indicated that SOEs, which they described as 'job creation vehicles' of government, were affected by 'market conditions, adverse cost developments and inappropriate financial structures'.

⁵⁴ Sweeney P, *The Celtic Tiger: Ireland's Economic Miracle Explained* (Dublin: Oak Tree Press, 1998) p. 96. See also Palcic and Reeves (note 22 above) p.61.

⁵⁵ This first privatisation was not done through the sale of shares but by a surrender of dividends in Irish Life Assurance Company to a private company in return for payment. In 1975, the first industrial privatisation occurred when the assets of State owned Bord Bainne (The Irish Dairy Board) were transferred to the private Bord Bainne Cooperative Ltd. See Sweeney (1990) (note 30 above) p. 187. Possibly owing to the fact that it was a lone privatisation, the practice of privatisation of SOEs is not considered to have started in Ireland in the 1980s. See Barrington, T. 'Public Enterprise in Ireland' (1985) 56(3) *Annals of Public and Cooperative Economics*, p. 287.

⁵⁶ Palcic and Reeves (note 22 above) p. 60.

⁵⁷ See Palcic and Reeves (ibid) for list of earlier privatised SOEs.

The size of the sector is also reflected in its level of employed labour. The sector includes some of the largest employers in the State: An Post, ESB and CIÉ. Prior to the financial crisis, which resulted in a depletion of the labour market, in 2008, the Irish SOE sector employed about 41,200 people.⁵⁸ However, in 2012, 25 of Ireland's SOEs still employed about 43,000 of the Irish labour market.⁵⁹ In 2014, over 40,000 people were employed by Ireland's SOEs.⁶⁰

In 2008, Ireland ranked highly (26th) among OECD countries for government involvement in the infrastructure sector which includes energy, transport and telecommunication.⁶¹ Evidently, in spite of privatisation and the impact of the financial crisis, the Irish State has remained active in sectors of huge economic and social significance to society such as electricity, gas, transport and postal services through SOEs and thus the sector continues to be of significance to Ireland's economy.

iii. Implications of the Role of SOEs in Ireland

Ireland's SOEs have multiple roles, consisting of political, economic and social objectives. While revolutionary changes leading to greater demand for corporate governance and corporate social responsibility may have begun to steer the focus of the private sector companies towards social objectives,⁶² social objectives have

⁵⁸ Forfas (note 15 above) p.3.

⁵⁹ OECD Corporate Affairs, *OECD Dataset on the Size and Composition of National State-owned Enterprise Sectors* (2012)(OECD2012) Available at:<http://www.oecd.org/corporate/ca/oecdDatasetontheSizeandCompositionofNationalState-ownedEnterpriseSectors.htm>. Accessed 27/04/16. The data may however be seriously understated owing to the fact that data from countries such as Japan and America which have substantial SOE sectors did not provide adequate data and thus estimates had to be done.

⁶⁰ Author's calculation from information in 2014 Annual Reports of 31 SOEs listed in Table 1, Chapter One.

⁶¹ See Forfas (note 15 above) p. 16.

⁶² CSR has become a greater objective for private sector companies in light of the extensive and indirect benefits to the shareholder and company as a whole. CSR continues to gain recognition even at national levels. In Ireland for example. See Ireland's National Plan on Corporate Social Responsibility 2014-2016 *Good for Business Good for the Community*. Available at:

been more traditionally associated with SOEs.⁶³ Irish SOEs may sometimes be faced with the conflict of balancing all three objectives as they are charged with obligations under all the objectives. For instance, SOEs face the dilemma of a conflicting obligation in the need to engage in economically oriented activities that will generate income or work towards policies aimed at social objectives.⁶⁴ For example, in 1991 An Post was required by the Government to maintain rural post offices for purely social reasons. This order was made despite the financial consequences to An Post's profitability.⁶⁵ SOEs in Ireland are still expected to meet social objectives in the areas of environmental services, public service obligations and corporate social responsibilities, which could sometimes be detrimental to their profitability objective.⁶⁶ Similarly, in an attempt to balance the social and economic objectives of Irish water, in 2015 a cap was put on water charges in order to mitigate any financial burden to users.⁶⁷ Consequently, water charges in Ireland have been viewed as "lacking in economic significance".⁶⁸ SOEs are an outcome of the State's political decision to participate in commercial activities that are in the national interest and not solely aimed at earning profit.⁶⁹ However, over the years economic needs and modernisation have realigned the State's objectives regarding SOEs.⁷⁰ In some cases, the obligation for financial

http://www.djei.ie/publications/enterprise/2014/National_Plan_CSR.pdf. Accessed 21/04/16.

⁶³ In Ireland, for example, historically, SOEs were established for different reasons and only few were expected to be commercially successful. Sweeney (1990) (note 30 above) p. 209.

⁶⁴ Sweeney, P. 'Public Enterprise in Ireland: A Statistical Description and Analysis' (1990) Vol. XXVI (II) *Journal of the Statistical and Social Inquiry Society of Ireland* 101; Chubb (1992) (note 15 above) p. 248;

⁶⁵ Chubb (1992) (note 15 above) p. 248.

⁶⁶ MacCarthaigh M, 'The Corporate Governance of Commercial State-owned Enterprises in Ireland' *Committee for Public Management Research Report (CPMR) No.9* (Dublin: IPA, 2009) p.22.

⁶⁷ Water Services Act 2014, s. 3(3). It is proposed that the cap will extend beyond 2018 as provided by the Act. See Fiach Kelly, 'Irish Water: Coalition to Link € 100 With Bill Payment' *The Irish Times* 20 August 2015.

⁶⁸ European Commission-Eurostat, *Sector Classification of Irish Water* (28/07/2015). Available at: <http://ec.europa.eu/eurostat/documents/1015035/6761701/Advise-2015-IE-Classification-of-Irish-Water-Summary.pdf>. Accessed 14/02/16.

⁶⁹ Chubb (1992)(note 15 above) p. 248.

⁷⁰ The National Treasury Management Agency was established to manage public assets and liability commercially. Available at: <http://www.ntma.ie/about-the-ntma/mission-and-values/>. Accessed 10/04/16.

performance is placed on the SOE by legislation. The Electricity (Supply) Act, 1927, for example, requires the ESB to break even,⁷¹ and Bord na Mona is permitted under legislation to incur financial obligations.⁷² In fact, drastic measures such as privatisation and winding up have been taken against SOEs for inability to meet financial objectives. The privatisation of B&I Line and the Irish Steel Company in 1992 and 1996 respectively, was carried out on grounds of poor financial performance.⁷³ However the sale of State assets which included a subsidiary of Bord Gais in 2013, to meet financial obligations following Ireland's financial crisis appears to have been guided by the beneficial value (worth) of the SOE towards the State's target income (€3 billion) from the sales rather than poor economic performance.⁷⁴

While there is consensus that Irish SOEs play a significant role economically, politically and socially in the society,⁷⁵ the extent to which SOEs fulfil their role is greatly hampered by problems plaguing the existence and functionality of the sector. Apart from the multiple role objectives (discussed above) another common problem SOEs experience is in relation to the ownership and control rights of the State and how it could interfere with corporate governance best practice or the efficiency and funding of the SOE. The complexities that arise as a result of State control and ownership in SOEs are historically and traditionally synonymous with the SOE structure and have attracted significant attention in Ireland and globally.⁷⁶

⁷¹ Electricity (Supply) Act, 1927, s. 21 (1) & (2).

⁷² Turf Development Act, 1946, s. 55-59.

⁷³ Palcic and Reeves (note 22 above) p. 66.

⁷⁴ Report of the Review Group on State Assets and Liabilities (2011) p.1.

⁷⁵ FitzGerald (note 15 above); Sweeney (1990) (note 213 above) p. 69-123. Available at: http://www.tara.tcd.ie/xmlui/bitstream/handle/2262/2859/jssisiVolXXVI69_123.pdf?sequence=1; MacCarthaigh (2009) (note 66 above) ; Palcic and Reeves (note 22 above) p. 224.

⁷⁶ FitzGerald (note 15 above) p. 44; Chubb (1992) (note 15 above) p. 259. See also, World Bank Group, *Corporate Governance of State-Owned Enterprises: A Toolkit* (Washington, DC: World Bank, 2014) p. 69 and OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2015) p. 12. Available at: <http://www.oecd.org/daf/ca/OECD-Guidelines-Corporate-Governance-SOEs-2015.pdf>. Accessed 18/04/16.

iv. Ownership/Control of SOEs in Ireland

Ireland's SOE structure is characterised by a dual ownership model, which poses a challenge for best practice corporate governance in SOEs. As described in Chapter one, under this model, the State's shareholding responsibility is shared between the sponsoring Department and a common Department which is the Department of Finance in Ireland. The enabling legislations for Bord Na Mona and ESB for example, emphasise on how this responsibility is shared.⁷⁷ Both Departments share responsibilities on issues such as appointments to the board of directors, making strategic plans and decisions on major transactions.⁷⁸ While the dual model may be useful in curbing the excesses of one ministry over the other, it creates the issue of multiplicity of principals, which could hamper accountability and also afford for increased political interference in the governance of SOEs.⁷⁹ Calls for a shift from the dual model to a 'centralised model' under which SOEs will be managed and overseen by a single ownership entity (a 'holding company'), similar to what is obtainable in several countries including the UK and Finland,⁸⁰ are yet to be heeded.⁸¹ It is argued that a single ownership entity would address some governance issues particularly in relation to reducing political interference.⁸² New Economy and Recovery Authority (NewERA) which was established in 2009 under the National Treasury Management Agency, serve this purpose, however its remit is currently limited to only five SOEs: ESB, Bord Gais,

⁷⁷ Turf Development Act 1946, s.6 and Electricity (Supply) Act 1927, s.30.

⁷⁸ MacCarthaigh, M. 'Managing State-Owned Enterprises in an Age of Crisis' (2010) *The Mapping of the Irish State' Project Series* (University College Dublin: Geary Institute Working Paper Series) p.14. Available at: <http://www.ucd.ie/geary/static/publications/workingpapers/gearywp201040.pdf>. Accessed 18/04/16.

⁷⁹ Palcic and Reeves (note 22 above) p. 226.

⁸⁰ The role is played by the 'Shareholder Executive' in the UK and an 'Ownership Steering department' under the Prime Minister's Office is charged with the responsibility in Finland.

⁸¹ Sweeney (2004) (note 51 above) p. 112-114; Irish Congress of Trade Unions (ICTU) *A New Governance Structure for State Companies* (Dublin: ICTU, 2005). Available at: http://www.ictu.ie/download/pdf/governanceof_state_companies.pdf. Accessed 04/04/14. See also MacCarthaigh, (2010) (note 78 above) p.7; and Palcic and Reeves (note 22 above) p. 227-228.

⁸² Palcic and Reeves (note 22 above) p.228.

EirGrid, Bord Na Mona and Coillte. In the oversight of these SOEs, NewEra provides advisory services to the State (Minister) with regard to financial and commercial issues in respect of the five SOEs and any other SOEs as the Minister may require.⁸³ NewEra is also statutorily required to advise the Minister on the appointment of directors and chairpersons to boards of the SOEs which it oversees.⁸⁴

The OECD recommends that:

“.....The exercise of ownership rights should be centralised in a single ownership entity, or if this is not possible, carried out by a co-ordinating body. This “ownership entity” should have the capacity and competencies to effectively carry out its duties”.⁸⁵

According to the OECD, a centralised model would effectively serve to separate the exercise of the State’s ownership function from other conflicting activities of the State.⁸⁶ Without the adoption of a centralised model however, it could be suggested, as mentioned above, that a more gender-balanced board could serve the purpose of keeping the board in line with its traditional objectives in spite of political interference or conflicts. Strong internal controls to ensure managers are effectively monitored; an independent board that is free from political influence and strong constraints on wide managerial discretion are some suggested requirements for good corporate governance of SOEs.⁸⁷ Female directors have

⁸³ *National Treasury Management Agency (Amendment) Act 2014*, s. 19 (1&2).

⁸⁴ *ibid*, s.19 (2h).

⁸⁵ OECD, *Recommendation of the Council on Guidelines on Corporate Governance of State-Owned Enterprises (C(2015)85)*, (2015) Annotations to Chapter II, (D). Available at: <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=323&InstrumentPID=359&Lang=en&Book=False>. Accessed 22/04/16.

⁸⁶ *ibid*, D 44.

⁸⁷ Shapiro D and Globerman S, ‘The International Activities and Impacts of State-Owned Enterprises’ (2009) p.13. Available at: <http://dspace.africaportal.org/jspui/bitstream/123456789/26419/1/The%20International%20Activities%20and%20Impacts%20of%20State-Owned%20Enterprises.pdf?1> . Accessed 02/03/16.

been shown to make a significant difference on boards particularly in areas monitoring and board independence.⁸⁸

The unsuitability of the State as a shareholder/owner in commercial related business does present challenges in the governance of SOEs.⁸⁹ The State as a shareholder does not afford the necessary constraints and incentives such as takeovers and possible loss of performance pay, that are presented in private shareholding practice.⁹⁰ Such constraints and incentives are believed to propel management of SOEs towards better governance practice. In addition, bureaucratic tendencies that commonly characterise government institutions could create problems in decision-making. There have been concerns regarding the way SOEs in Ireland are being controlled as a result of State ownership. The wide and unfettered powers exercised by the Ministers over SOEs, without adequate parliamentary control and the board composition of SOEs are some of the common concerns that have persisted over time.⁹¹ In a broad sense however, despite the State's attempts to instil coherence and efficiency in the Irish Public Administration (including SOEs) through reorganisations,⁹² problems with accountability was still identified as an issue with State bodies including SOEs.⁹³ The performance of Irish SOEs is critical to the country's economy in light of

⁸⁸ See Terjesen et al (note 2 above) and Rosenblum, and Roithmayr (note 1 above).

⁸⁹ Sweeney (1990) (note 30 above) p.12; Okhmatovskly, I 'Performance Implications of Ties to the Government and SOEs: A Political Embeddedness Perspective' (2010) 47(6) *Journal of Management Studies* 1020-1047.

⁹⁰ Okhmatovskly, I (note 89 above) p. 1025

⁹¹ Chubb B, 'Public Control of Public Enterprise' (1954) (Chubb 1954) *Administration Journal* 31. Available at: <http://www.ipa.ie/index.php?lang=en&p=page&id=306>.

Accessed 20/04/16; Bristow, J. 'State-Sponsored Bodies' in F.Litton (ed.) *Unequal Achievement: The Irish Experience 1957-82* (Dublin: IPA, 1982) p. 165-182

See also Chubb (1992) (note 15 above) p. 258; Palcic and Reeves (note 22 above) p. 225, Sweeney (2004) (note 51 above) Chapter 4; MacCarthaigh (2009) (note 66 above) p.58, Fine Gael's Local election Manifesto, 2009. Available at: <http://michaelpidgeon.com/manifestos/docs/fg/Fine%20Gael%20LE%202009.pdf>.

Accessed 22/04/16;". See, NewEra. Available at: <http://www.noelcoonan.com/wp-content/uploads/2012/07/NewERA.pdf> . Accessed 22/04/16.

⁹² Hardimann N and MacCarthaigh M, 'Organising For Growth: Irish State Administration 1958-2008' 2010 41(3) *The Economic and Social Review* 367.

⁹³ MacCarthaigh M and Scott C. ' "A Thing of Shreds and Patches" : Fragmenting Accountability in a Fragmented State' ECPR Joint Sessions, Lisbon, April 2009 Workshop 17-European Domestic Societies in the face of European Integration and Globalisation, UCD Geary Institute Discussion Paper Series.

Ireland's deficiencies in industrialisation particularly in the area of infrastructure.⁹⁴ For this reason, ensuring that corporate governance standards of SOEs are in line with best practice is paramount.

D. SOEs in Ireland and Corporate Governance

i. Definition

A broad definition of corporate governance is best suited for SOEs given their wider stakeholder objectives. The OECD defines corporate governance as "A set of relationships between a company's management, its board, its shareholders and other stakeholders...".⁹⁵ The OECD also recognises the role of stakeholders in corporate governance by proposing that:

"...corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises".⁹⁶

The broad definition of corporate governance by the Australian National Audit Office (ANAO) is also illustrative of the significance of stakeholders. The ANAO defines corporate governance as:

"...the processes by which organisations are controlled and held to account. It encompasses authority, accountability,

⁹⁴ Palcic and Reeves (note 22 above) p. 225.

⁹⁵ OECD, *OECD Principles of Corporate Governance* (2015) p.9.
<http://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf>.
25/04/16.

Available at:
Accessed

⁹⁶ *ibid*, Chap IV, p.37.

stewardship, leadership, direction and control exercised in the organisation”.⁹⁷

This definition serves to emphasise the link between the board of directors from a stewardship and accountability perspective and the realisation of good corporate governance standards. Viewing the board from a stewardship and accountability perspective is even more relevant when considering the corporate governance of SOEs in view of their relationship and responsibility to the public. Such a definition also provides justification for improving gender balance on SOE boards in the interest of stewardship and accountability.

Another definition of good corporate governance which identifies a link between corporate governance and stakeholders, that is, the public, consumers, and which this thesis also endorses, is that given by the UK Independent Commission on Good Governance in Public Services: “Good governance means focusing on the organisation’s purpose and the outcome for its citizens and service users”.⁹⁸ In the Commission’s view, the principle that should guide all governance activity should be to ensure that the organisation fulfils its overall purpose, achieves its intended outcomes for citizens and service users while operating in an effective, efficient and ethical manner.⁹⁹

ii. The Role of the Board of SOEs in Ireland

Notwithstanding the control of the State on SOEs, the board of directors still play the crucial role of being the principal governance and oversight forum in the organisation. The Code of Practice 2009 emphasises the strategic and important

⁹⁷ Australian National Audit Office *Principles and Better Practices: Corporate Governance in Commonwealth Authorities and Companies*, Discussion Paper (ANAO Publication) (Canberra: ANAO, 1999) p.1. Available at: http://www.anao.gov.au/uploads/documents/Corporate_Governance_in_Commonwealth_Authorities_and_Companies.pdf. Accessed 24/04/16.

⁹⁸ The Independent Commission for Good Governance in Public Service *The Good Governance Standard for Public Services* (London: Hackney Press Ltd, 2005) p.7.

⁹⁹ *ibid*, p.7.

role of the board in decision-making, directing the organisation's activities and monitoring of management.¹⁰⁰ The decision-making role of the board extends to certain strategic issues of which some may be subject to Ministerial approval. These matters include but are not limited to; significant acquisitions, disposals and retirement of assets of the State body or its subsidiaries, major investments and capital projects, approval of major contracts, approval of annual budgets and corporate plans, production of annual reports and accounts and the remuneration of senior management except the Chief Executive.¹⁰¹

The maintenance of good corporate governance is particularly challenging for SOE boards given that multiple and sometimes conflicting objectives of the State, the sponsoring Minister and the public/society need to be taken into consideration by the board in making decisions.¹⁰² Significantly, SOE boards lack total autonomy in performing their role, thus creating an impediment to the board in carrying out its governance functions effectively.¹⁰³ A lack of sufficient autonomy in policy and strategic decisions could adversely affect the board's performance in relation to public services and in general too.¹⁰⁴

A link between good corporate governance in SOEs, accountability and stewardship to shareholders and stakeholders is identified in the discussion above. Safeguarding the interest of its organisational shareholders and stakeholders is a key governance role of a board.¹⁰⁵ The relationship between the role of the board and the public, which underlines the distinctive public nature of

¹⁰⁰ Code of Practice 2009, (note 3 above) Para. 2.

¹⁰¹ Ibid, Para. 2.1.

¹⁰² Ibid, Para 2.13 & 2.15. See also, OECD, *Boards of Directors of State-Owned Enterprises: An Overview of National Practices (OECD 2013)* (Paris: OECD Publishing, 2013) p. 21-27.

¹⁰³ See MacCarthaigh (2009) (note 66 above) p. 33.

¹⁰⁴ See below for further discussion.

¹⁰⁵ Ansoff I, *Corporate Strategy* (New York: McGraw-Hill, 1965) p. 33-35; Freeman R and Reed D, 'Stockholders and Stakeholders: A New Perspective on Corporate Governance' (1983) XXV (3) *California Management Review* 88; Baysinger B and Butler H, 'Corporate Governance and the Board of Directors: Performance Effects of Changes in Board Composition' (1985) 1 (1) *Journal of Law, Economics and Organization* 101; Huse M and Rindova V, 'Stakeholders' Expectations of Board Roles: The Case of Subsidiary Boards' (2001) 5(2) *Journal of Management and Governance* 153.

SOEs has been emphasised in other jurisdictions. In 2005, the UK Independent Commission on Good Governance in Public Services made this point:

“The governors of our public service organisations face a difficult task. They are the people responsible for governance—the leadership, direction and control of the organisations they serve. Their responsibility is to ensure that they address the purpose and objectives of these organisations and that they work in the public interest. They have to bring about positive outcomes for the people who use the services, as well as providing good value for the taxpayers who fund these services. They have to balance the public interest with their accountability to government and an increasingly complex regulatory environment...”¹⁰⁶

The Australian National Audit Office in specifying the role of the board in Commonwealth Authorities and Companies (under public service sector), also highlighted this link:

“...In addition, the board is expected to take due regard of, be responsive to and to deal fairly with other stakeholder interests, demands and expectations, including those of employees, suppliers, creditors and the general community. Therefore, it is critical that an appropriately selected board is put in place and that it functions in the most effective manner possible.”¹⁰⁷

Similarly, the OECD also acknowledges the role of the board of directors of SOEs in relation to the interest of the public/stakeholders:

“In the case of wholly-owned SOEs, the shareholder and owner are essentially the same, but the board still has a duty to act in a

¹⁰⁶ Sir, Alan Langlands, Chair of the Commission, the UK Independent Commission on Good Governance in Public Services, *Good Governance Standard for Public Services* (note 97 above) p. V.

¹⁰⁷ ANAO publication (note 97 above) p. 10.

way that represents both the “owner’s” interests, (the ownership function) and the shareholders interest (the general public –assumed to be represented by government /parliament). Board members must act in a way that does not compromise their duty of loyalty to both interests”.¹⁰⁸

“...The governance framework should recognise the interests of stakeholders and their contribution to the long term success of the company...”¹⁰⁹

Notably, in Ireland, 1980 NESC report on enterprise in the public sector did argue that ‘boards of State-sponsored bodies (includes SOEs) should see themselves as active agents of community development, recognising and discharging the extra dimension of responsibility expected of a ‘State organisation’.¹¹⁰

(a.) A Resource Dependency Perspective for SOE Boards

Generally, the board is considered as a strategic resource that impacts a company’s performance.¹¹¹ The board provides valuable resources that can enhance the overall performance of the company. Resource in this case refers to human capital, that is, persons with required experience, knowledge and networks which the company depends on for its success. As a resource, the role of the board can be viewed as a control and service providing one: provision of vital information to management,(service role), influencing decision-making (control role), connecting the board/company via its networks to relevant stakeholders such as regulators, the local community, consumers, employees, the government (service role) and monitoring management (control role). In addition,

¹⁰⁸OECD (2013) (note 102 above) p. 23-24.

¹⁰⁹ OECD (2015) (note 76 above) p. 37.

¹¹⁰National Economic and Social Council *Enterprise in the Public Sector* (Report No. 49, 1980) 23 Para. 19. Available at: http://files.nesc.ie/nesc_reports/en/NESC_49_1980.pdf. Accessed 05/05/16.

¹¹¹ Huse and Rindova (note 105 above) p. 156.

the board through its membership can also provide legitimacy for the company.¹¹² Directors could be included on boards to serve co-optation purposes. Co-optation occurs when people from relevant/significant sectors of the environment are appointed on the board of directors.¹¹³ Inclusion of directors for this purpose serves to avert threats to the company of its stability and continued existence by reducing risk they could face from external dependency.¹¹⁴ The use of stakeholder representatives on boards is regarded as a useful tool in achieving co-optation.¹¹⁵ It can be suggested that the service role of the board (and the control role to some extent), provides a platform for which the board needs to be connected/linked to stakeholders. This connection may be achieved through human capital resource of the board, by including those that can not only provide the vital information and necessary networks from relevant stakeholders but also make the SOE board to be viewed as representative of its stakeholders, thereby enhancing legitimacy and support from the public.¹¹⁶ The body of research on stakeholder theory, corporate social responsibility and the resource dependency theory provide a link to the role of boards and stakeholder interest.¹¹⁷ Kaufman

¹¹² Pfeffer J and Salancik G, *The External Control of Organizations: A Resource Dependence Perspective* (New York: Harper and Row 1978) p. 145, 161.

¹¹³ Daft R, *Organisation Theory and Design* (8th Edn.) (Ohio: Thomson South Western, 2004) p.156.

¹¹⁴ Hillman A, Cannella A Jr, and Paetzold R, 'The Resource Dependence Role of Corporate Directors: Strategic Adaptation of Board Composition in Response to Environmental Change' (2000) 37(2) *Journal of Management Studies* 242.

¹¹⁵ Huse and Rindova (note 105 above) p. 163.

¹¹⁶ Oliver C, 'Strategic Responses to Institutional Processes' (1991) 16 (1) *The Academy of Management Review* 153.

¹¹⁷ Pfeffer and Salancik (1978) (note 112 above) ; Jones T and Goldberg L, 'Governing the Large Corporation: More Arguments for Public Directors' (1982) 7 *The Academy of Management Review* 603; Freeman R, *Strategic Management: A Stakeholder Approach* (Boston: pitman, 1984); Freeman, R. and Evan, W. 'Corporate Governance: A Stakeholder Interpretation' (1990) 194 *Journal of Behavioural Economics* 337; Wang J and Coffey B, 'Board Composition and Business Ethics' (1992) 11 *Journal of Business Ethics* 115; Jones T, 'Instrumental Stakeholder Theory: A Synthesis of Ethics and Economics' (1995) 20 (2) *Academy of Management Review* 404; Donaldson T and Preston L, 'The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications' (1995) 20(1) *Academy of Management Review* 65; Huse and Rindova (note 254 above) p. 153. See also, O'Higgins E, 'Non-Executive Directors on Boards in Ireland: Co-option, Characteristics and Contributions' (2002) 10(1) *Corporate Governance: An International Review* 27; Ibrahim N, Howard D and Angelidis S, 'Board Members in the Service Industry : An Empirical Examination of the Relationship between Corporate Social Responsibility Orientation and Directorial Type' (2003) 47(4) *Journal of Business Ethics* 393; Hillman A and Dalziel T,

and Englander specifically recommend that company board members should represent all those stakeholders that add value, assume unique risks and possess strategic information for the corporation about new product, market opportunities and current technological research.¹¹⁸ They argue that for ethical and economic reasons, a board should constitute of those who can knowledgeably express the interest of the multiple stakeholders.¹¹⁹

In the case of SOE boards, the primary stakeholders of concern would be the public they serve, their direct customers and other relevant stakeholders. As stated in Chapter One, women make up a significant part of the public that these SOEs serve and having an adequate representation of female directors on boards would contribute positively to their service role and ultimately, the company's performance through information/feedback from external sources. Any feedback information that can be received from the public and users of SOE services and also non-users from different backgrounds may be of premium value to the board as this will ensure that informed decisions are being taken. Studies have established a link between diversity on boards and broadening of perspectives and ideas on which the board can rely to make decisions.¹²⁰ In addition, the challenging governance environment which SOEs face can be tempered by instituting increased communication and consultation avenues with its

'Boards of Directors and Firm Performance: Integrating Agency and Resource Dependence Perspectives (2003) 28(3) *The Academy of Management Review* 383.

¹¹⁸ Kaufman A and Englander E, 'A Team Production Model of Corporate Governance' (2005) 19(3) *Academy of Management Executive*, 10. See also, Lorsch J and Mclver E, *Pawns and Potentates: The Reality of America's Corporate Boards* (Cambridge, M.A: Harvard Business School Press, 1989) p. 11; Hillman A, Shropshire C and Cannella Jr A, 'Organizational Predictors of Women on Corporate Boards' (2007) 50(4) *Academy of Management Journal* 941.

¹¹⁹ Kaufman and Englander (note 118 above) p. 10-12.

¹²⁰ Forbes D and Miliken F, 'Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups' (1999) 24(3) *Academy of Management Review* 494; Daily C and Dalton D, 'Women in the Boardroom: A Business Imperative' (2003) 24(5) *Journal of Business Strategy* 8-9; Torchia M, Calabro A and Morner M, 'Board of Directors' Diversity, Creativity and Cognitive Conflict' (2015) 45(1) *International Studies of Management & Organization* 20.

stakeholders.¹²¹ The significance of such communication and feedback from the board is emphasised by Chubb:

“As owners, sponsors, and very often, providers of both new capital and the funds to cover current operating deficits, the public relies mainly, and inevitably, on its government and representatives. It has a right to a general assurance that state enterprises are fulfilling their purposes, that its government and representatives are in a position to control them adequately and that they are responsive to public demands and public policy”.¹²²

iii. Impact of Board Composition on Decision-Making

The composition of the board is an important factor when assessing the ability of the board to perform its role.¹²³ Whereas a range of factors may affect the board’s ability to discharge its governance role effectively, changes in its composition are said to have an effect on how the board can bring about strategic changes particularly in relation to the products and services of the organisation and also how they respond to environmental changes.¹²⁴ There is a correlation between the composition of the board and the board’s ability to perform its governance role.¹²⁵ While the literature on board composition mainly addresses

¹²¹ The UK Independent Commission on Good Governance in Public Services, *Good Governance Standard for Public Services* (note 98 above) p. 23-26.

¹²² Chubb B, ‘Public Control of Public Enterprise’ (1954) *Administration Journal* 28. Available at: <http://www.ipa.ie/index.php?lang=en&p=page&id=306>. Accessed 20/04/16. See also, International Federation of Accountants, *International Framework: Good Governance in the Public Sector, Supplement* (2014) (note 6 above), principle B.

¹²³ Pearce J and Zahra S, ‘Board Composition from a Strategic Contingency Perspective’ (1992) 29(4) *Journal of Management Studies* 413.

¹²⁴ Goodstein J and Boeker W, ‘Turbulence at the Top: A New Perspective on Governance Structure Changes and Strategic Change’ (1991) 34(2) *Academy of Management Journal* 309.

¹²⁵ Baysinger and Butler (note 105 above); Baysinger B and Hoskisson R, ‘The Composition of Boards of Directors and Strategic Control: Effects on Corporate Strategy’ (1990) 15(1) *Academy of Management Review* 72; Daily C and Dalton D, ‘Bankruptcy and Corporate Governance: The Impact of Board Composition and Structure?’ (1994) 37(6) *Academy of*

this correlation from an inside/outside director classification of board members,¹²⁶ the classification could be extended to include diversity indices such as gender.

In fact, the tendency of a board to maintain status quo and not undergo any changes in its membership presents a threat to constructive change strategies.¹²⁷ The creation of strategy involves aligning an organisation's strength and weaknesses with the problems and opportunities in its environment.¹²⁸ Unlike the board of private enterprises, the SOE board has limited freedom in performing its governance role of strategy creation. As discussed earlier, certain major decisions taken or strategies developed by the board are subject to approval by the sponsoring Minister/Department.¹²⁹ It is not to say however, that the board does not exercise autonomy over certain issues. Although autonomy is limited and varies in degree depending on the age and size of the SOE, the board still has a strategic role to play in taking decisions in certain important areas. Survey findings suggest that Irish SOE boards are becoming more concerned with broad strategic policy matters.¹³⁰ One of such areas is Human Resources (HR). The board of Irish SOEs exercise autonomy on some HR issues such as salary levels, conditions for promotion, number of staff employed and criteria for dismissal.¹³¹

Management Journal 1603; Daily C, Dalton D and Cannella A, 'Corporate Governance: Decades of Dialogue and Data' (2003) 28 (3) *Academy of Management Review* 371; Kang H, Cheng M and Gray S, 'Corporate Governance and Board Composition: Diversity and Independence of Australian Boards' (2007) 15(2) *Corporate Governance: An International Review* 194. See however, Goodstein J, Gautam K and Boeker W, 'The Effects of Board Size and Diversity on Strategic Change' (1994) 15 *Strategic Management Journal* 241, for a dissenting view, finding that board diversity acts as a constraint to strategic change.

¹²⁶ See for example, Pfeffer J, 'Size and Composition of Corporate Boards of Directors: The Organization and its Environment' (1972) 17 (2) *Administrative Science Quarterly* 218; Baysinger B and Butler (note 105 above) 101; Dalton D, Daily C, Ellstrand A and Johnson J, 'Meta-Analytic Reviews of Board Composition, Leadership Structure, and Financial performance' (1998) 19 *Strategic Management Journal* 269. See also, Lim S, Matolcsy Z and Chow D, 'The Association between Board Composition and Different Types of Voluntary Disclosure' (2007) 16 (3) *European Accounting Review* 555.

¹²⁷ Brady G and Helmich D, *Executive Succession* (Englewoods Cliffs, NJ: Prentice Hall, 1984) p. 88 as cited by Goodstein and Boeker (1991) (note 125 above) p. 313.

¹²⁸ Wiersema M. and Bantel K, 'Top Management Team Demography and Corporate Strategic Change' (1992) 35(1) *Academy of Management Journal* 91.

¹²⁹ Code of Practice 2009 (note 3 above), MacCarthaigh 2009 (note 66 above).

¹³⁰ MacCarthaigh (2009) (note 66 above) p. 29

¹³¹ *ibid*, p. 29.

Irish SOE boards also exercise varying degrees of financial autonomy in relation to certain matters such as service charge and fee income.¹³² This is in line with the increasing obligation on them to be profitable as the private enterprise in addition to the obligation to mandatorily engage in non-commercial activities. Irish SOEs also enjoy some degree of autonomy in matters of general policy.¹³³

The gender balance of a board could have an impact on decisions taken in welfare and charitable related matters affecting stakeholders.¹³⁴ Such matters include CSR and HR related matters that affect wider stakeholders and employees. It has been found that female directors tend to be more philanthropic and sensitive to external/other issues.¹³⁵ Also, though arguable, women are likely to be younger than their male counterparts¹³⁶ and thus represent a generation gap likely to offer different ideas. In addition, and also arguable, the level of gender diversity on a board is said to positively affect the level of female employees within an organisation and ultimately the overall workforce diversity.¹³⁷ Where females hold executive directorships, the company is likely to gain legitimacy from female employees and potential recruits.¹³⁸ There is however no evidence to suggest that

¹³² *ibid*, p. 33.

¹³³ *ibid*, p. 40.

¹³⁴ See discussion in Chapter One. See Wang, J. and Coffey, B. 'Board Composition and Corporate Philanthropy' (1992) 11 (10) *Journal of Business Ethics* 777; Williams, R. 'Women on Corporate Boards of Directors and their Influence on Corporate Philanthropy' (2003) 41(1) *Journal of Business Ethics* 1-10; see also Bear S, Rahman N and Post C, 'The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation' (2010) 97(2) *Journal of Business Ethics* 217.

¹³⁵ Ibrahim N and Angelides J, 'Effect of Board Members' Gender on Corporate Social Responsiveness Orientation' (1994) 10(1) *Journal of Applied Business Research* 38.

¹³⁶ *ibid*, p.38. See also Matsa D and Miller A, 'A Female Style in Corporate Leadership? Evidence from Quotas' (2013) 5(3) *American Economic Journal: Applied Economics* 156.

¹³⁷ Bilimoria D, 'Building The Business Case for Women Corporate Directors' in Burke R and Mattis M, *Women on Corporate Boards of Directors : International Challenges and Opportunities* (The Netherlands: Kluwer,Dordrecht, 2000) 25; Bilimoria D, 'The Relationship Between Women Corporate Directors and Women Corporate Officers' (2006) 18(1) *Journal of Managerial Issues* 47.

¹³⁸ Terjesen S and Singh V, in ' Female Presence on Corporate Boards: A Multi Country Study of Environmental Context' (2008) 83(1) *Journal of Business Ethics* 55 find that, based on data from 43 countries, the presence of females in senior management and women's historical role in government leadership positively impacted on levels of women in senior management and legislative positions in that country. Sealy R and Singh V, 'Role Models, Work Identity and Senior Women's Career Progression- Why Are Role Models Important?' (2010) 12(3) *International Journal of Management Review* 284.

this is a universal occurrence as not all female employees or external female stakeholders may consider the female director as an inspirational role model.¹³⁹

Changes in board membership are also likely to bring about new perspectives and ideas that will enhance decision-making. To institute strategic changes and innovation, decision-making needs to involve an interaction of the board members. Such an interaction is shaped from the different types of cognitive perspectives present on the board.¹⁴⁰ The lack of specific attributes such as gender, age, ethnicity as a requirement for board composition in the Code of Practice 2009 is evidently a drawback to boosting cognitive perceptions on SOE boards. The attributes of skills and experience as required by the Code may not portray the type of difference that brings about a variety of cognitive perspectives.¹⁴¹ Apart from compromising different cognitive perceptions, the shortfall in the Code, with regard to addressing gender representation on the board, does exclude the voice of the public in decision-making. The voice of the public is relevant in SOE decision-making to ensure quality decisions are taken, and a diverse board of both genders that reflects the society/public, can be instrumental to having some of the public voice on the board.

The provision in the Code of Practice 2009 which attempts to address 'groupthink' on the board and thus a useful avenue through which differing perspectives on the board could be emphasised, also falls short of highlighting the relevance of difference on the board:

“.....All Board members must be afforded the opportunity to fully contribute to Board deliberations while excessive influence on Board Decision-making by one or more individual members should be guarded against”.¹⁴²

¹³⁹ Mavin S, 'Queen Bees, Wanna Bees and Afraid to Bees: No More 'Best Enemies for Women in Management?' (2008) 19 (Issue Supplement s1) *British Journal of Management* p. S77.

¹⁴⁰ Wiersema and Bantel (note 128 above) p. 92; Forbes and Milliken (note 120 above) p. 492. See also Torchia et al. (note 120).

¹⁴¹ See Code of Practice 2009 (note 3 above) provision 2.17.

¹⁴² *ibid*, provision 2.2.

It can be argued that the above provision is limited as it makes no reference to the need for a diversification of opinion which is also an antidote to 'groupthink'. It also reflects a lack of consideration for a more robust composition of SOE boards specifically through improved gender balance. The issue of 'groupthink' should be of concern in the governance of SOEs given their multiple objectives and challenges that may arise in trying to balance those objectives at board level. Over the years the demands on SOEs to fulfil profitability and social objectives has increased¹⁴³ which in turn has also increased pressure on the management of SOEs to improve on performance.¹⁴⁴ Consequently there is a more challenging and demanding environment for SOEs and their management to operate. It can be argued that under such circumstance, the need to maintain best practice in corporate governance cannot be over emphasised as it can aid in creating a conducive environment on which the challenges can be tackled and pressure dealt with. A diversified board illustrates best practice in this regard. Diversity of board members in this case will serve to avoid the occurrence of 'groupthink' where for example the promotion of one objective may overshadow the fulfilment of other obligations/objectives of the SOE.¹⁴⁵ As studies have shown, gender diverse boards could be an antidote to 'groupthink' as dominant ideas could be challenged and alternative perspectives heard.¹⁴⁶

While there is empirical evidence that corporate governance reforms such as changing of internal governance systems and giving the board more powers so as to reduce political influence are potentially effective in improving the performance of SOEs, there is doubt as to the certainty of the effectiveness of these governance tools in ensuring that SOEs perform in the best interest of their shareholders and the public.¹⁴⁷ A significant presence of female directors on

¹⁴³ See *Report of the Review Group on State Assets and Liabilities* (Dublin: Stationery Office, 2011) Section 4.

¹⁴⁴ MacCarthaigh (2009) (note 215 above) Chapter 7.

¹⁴⁵ See discussion on 'Groupthink' in Chapter 1.

¹⁴⁶ *ibid.*

¹⁴⁷ Aivazian V, Ge Y and Qiu J, 'Can Corporatisation Improve the Performance of State-owned Enterprises Even without Privatization?' (2005) 11(5) *Journal of Corporate Finance* 791-808; this study of corporatized SOEs in China showed a positive significance with their performance. The study which identified changes in corporate governance as areas of

boards could provide the needed link between the board and the shareholders/public and thus ensure their interests are maintained.¹⁴⁸ The consensus as to the impact of gender balance on company financial performance is mixed and indefinite.¹⁴⁹ It may however be contended that with women's growing business experience and higher level academic qualification, an improved level of gender balance may be favourable to strategic decisions taken on financial related matters.¹⁵⁰

E. Stepping Up Globally

Following the discussion above, it is evident that the corporate governance framework for Ireland's SOEs is yet to align with changing global trends in relation to board composition. The discussion to increase gender balance on boards has extended to include boards of SOEs¹⁵¹ and increasingly, a number of countries

change following corporatization, may however not be considered for universal application being that it was a single country study. Aguilera R, 'Corporate Governance and Director Accountability: An Institutional Comparative Perspective' (2005) 16 *British Journal of Management* 539-553 argues that corporate governance mechanisms act to ensure that firms are run effectively and maximize shareholder and stakeholder value. See Shapiro and Gopherman (note 87 above) for a dissenting view.

¹⁴⁸ Studies show that female directors are more affiliated to stakeholder interests. Terjesen et al (note 2 above).

¹⁴⁹ More detailed discussion is contained in Chapter one. Carter D, D'Souza F, Simkins B and Simpson W, 'The Gender and Ethnic Diversity of US Boards and Board Committee and Firm Financial Performance'. (2010) 18(5) *Corporate Governance: An International Review* 411; O'Reilly C and Main B, 'Women in the Boardroom: Symbols or Substance? Research Paper No. 2098 Graduate School of Business. Available at: <http://dx.doi.org/10.2139/ssrn.2039524>. Accessed 03/03/16.

¹⁵⁰ Peterson C and Philpot J, 'Women's Roles on US Fortune 500 Boards: Directors Expertise and Committee Membership' (2007) 72(2) *Journal of Business Ethics* 177; Terjesen S, Singh V and Vinnicombe S, 'Do Women Still Lack the "Right" Kind of Human Capital for Directorships on the FTSE 100 Corporate Board?' in Vinnicombe S, Singh V, Burke R, Bilimoria D and Huse M, *Women on Corporate Boards of Directors: International Research and Practice* (eds) (Cheltenham: Edward Elgar Publishing, 2008).

¹⁵¹ For instance, the European Commission also includes certain State-owned companies (i.e. large listed public undertakings) as one of its target companies under its proposal for a quota to increase female directors on boards. See European Commission, *Women on Boards: Commission Proposes 40% Objective* (2012). Available at: http://europa.eu/rapid/press-release_IP-12-1205_en.htm. Accessed 14/02/16. See also, OECD, *Gender Equality in Education, Employment and Entrepreneurship: Final Report to*

have adopted various measures including regulation to address gender balance on boards.

According to OECD recommendations, certain mechanisms, all of which could be applicable for Ireland's SOEs could be used to increase gender balance in leadership positions in public sector organisations. These include:

- i. Disclosure requirements;
- ii. Target setting or quotas for women in senior management positions;
- iii. Strengthening the flexibility, transparency and fairness of public sector employment systems and policies; and
- iv. Monitoring progress of female representation in the public sector.¹⁵²

An observable trend across countries where gender balance on SOE boards is being addressed through regulation is the common adoption of legislative gender quotas for this purpose. Another observation is that where they have been adopted, legislative gender quotas have mostly resulted in a rapid increase in gender balance. Nevertheless, the ownership and control influence of the State on the SOE suggests that any State-initiated regulatory instrument would be effective in regulating the activities and practices of SOEs. The extent of effectiveness could however vary as a result of the type of regulation, that is, legislative gender quotas or Corporate Governance Code recommendations given their different characteristics.¹⁵³ Another observable trend with SOEs is the effective implementation of non-binding quotas (government policies) in some countries such as Austria, Finland and Australia towards increasing gender

the MCM 2012, C/MIN (2012)5 (2012) Meeting of the OECD Council at Ministerial Level, Paris, 23-24 May 2012, p.100 where the public sector was identified as an environment where gender balance should be prioritised. Available at: <http://www.oecd.org/employment/50423364.pdf>. Accessed 14/02/16.

¹⁵² OECD, *Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship* (Paris: OECD, 2013) p.4.

¹⁵³ See Chapter Three for a discussion on the characteristics of both regulatory approaches and how these can determine effectiveness.

balance on SOE/government boards. While this approach is not a major consideration in this research, the discussion in the next section extends to include the implementation of this approach in order to further emphasise particular attributes of regulatory instruments that could enhance or compromise effectiveness. Notably, the government target policy is also implemented for Ireland's SOEs, that is, the 40% Government policy for State boards, but has so far been less effective. The discussion will thus also highlight the likely drawbacks of the Irish version. The discussion is also broadened to include regulatory developments in private sector companies. Soft law approach through Corporate Governance Codes have been commonly used in respect of listed companies, hence the inclusion of listed companies in the discussion so as to offer an insight to their efficacy. Also, given that the extent of regulatory intervention targeting SOEs in respect of gender balance has been limited in comparison to listed/private sector companies, there is a dearth of empirical causative link between regulation and gender balance on SOE boards. The discussion aims to show the impact these regulatory approaches, that is, legislative gender quota, Corporate Governance Code recommendations and Government target policy could have on the level of gender balance on boards of SOEs in Ireland.¹⁵⁴ The impact of regulation on companies in the private sector is however relied on with caution given their disparity with SOEs in terms of ownership and control. The combination of ownership, control and regulatory authority rights in the State should have significant influence in the regulatory outcome for SOEs.¹⁵⁵

Part II: International Regulatory Developments

Countries including Austria, Australia, Canada, Denmark, Finland, France, Germany, Greece, Iceland, India, Israel, Italy, Japan, Malaysia, the Netherlands, Slovenia, Spain and the United Kingdom now implement regulation to address

¹⁵⁴ The discussion in Chapter Four and Five is more specific, using country case studies to analyse the practicality of these instruments.

¹⁵⁵ See further discussion in Chapter Five.

gender balance on company boards. While some countries have targeted only listed companies (which may include SOEs), others have either specifically included SOEs with listed companies in the regulation, e.g. the Netherlands and Italy or initiated regulation solely for SOEs. For example, Austria, Belgium, Israel, Italy, Finland and Quebec have quotas (binding and non-binding) targeted at SOEs.

Generally, countries applying legislative gender quotas appear to have performed better than those with non-binding targets or Recommendations/Principles in Corporate Governance Codes, evidently as a result of significant different attributes in both.¹⁵⁶ The fact that legislative quotas are being implemented by more European countries explains why higher levels of gender balance are reflected on European company boards.¹⁵⁷ In 2015, European countries continued to dominate in the adoption/implementation of legislative quotas.¹⁵⁸

¹⁵⁶ See European Commission, *Women and Men in Leadership Positions in the European Union*, (2013) Luxembourg: Publications Office of the European Union (Leadership Report 2013). Available at: http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/131011_women_men_leadership_en.pdf. Accessed 02/05/2016; Gladman K and Lamb M, *GMI Ratings' 2013 Women on Boards Survey*, (GMI Survey 2013). Available at: <http://www3.gmiratings.com/home/2013/05/gmi-ratings-2013-women-on-boards-survey/>. Accessed 02/05/16; MSCI, ESG Research, *2014 Survey of Women on Boards, Governance Issue Report* (2014) p. 2. Available at: <http://30percentclub.org/wp-content/uploads/2014/11/2014-Survey-of-Women-on-Boards-1.pdf>. Accessed 22/04/16. Catalyst, *2014 Catalyst Census: Women Board Directors* (2015). Available at: <http://www.catalyst.org/knowledge/2014-catalyst-census-women-board-directors>. Accessed 12/04/16; Deloitte, *Women in the Boardroom: A Global Perspective* (2015) p.22. Available at: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-cg-women-in-the-boardroom-a-global-perspective4.pdf>. Accessed 15/04/16. See Chapter Three for detailed discussion of these attributes.

¹⁵⁷ *ibid.*

¹⁵⁸ European countries including Belgium, France, Germany, Iceland, Italy, the Netherlands, Norway and Spain constitute over 50% of countries that have implemented legislation in respect of gender balance on boards i.e. listed companies and SOEs. Canada, India and Israel are other countries where similar legislation are in force.

F. Regulatory Responses Targeting SOEs

i. Non-binding Quotas

In 2011, Austria introduced a 25% non-binding gender quota targeted solely at Ministerial nominees of supervisory boards of SOEs in which the State owned a 50% or more interest, to be attained by the end of 2013, and a 35% target to be achieved by the end of 2018.¹⁵⁹ In the event that the target was not achieved by 2018, binding measures through legislation would be initiated.¹⁶⁰ As a result of the quota, by 2014, female representation on these boards had increased to 33%, a marked increase from the 16.1% representation in 2008/2009.¹⁶¹ While the Austrian non-binding gender quota appears similar to Ireland's 40% quota for State boards,¹⁶² significant differences between the two exist which could have contributed to faster progress in Austria. The Austrian quota had a set date/period within which the quota should be achieved. Having a set timeline is shown to be particularly useful under soft law instruments as this will also inspire companies to comply faster to meet up with the set time.¹⁶³ In addition, although the Austrian quota lacked substantive sanctions in the event of non-compliance, an underlying threat that binding measures would be imposed can be said to have served the purpose and encouraged higher compliance in order to avoid more stringent laws.¹⁶⁴ It is however doubtful how and if the attained quota will be sustainable after 2018 without an active legislative backing or formal regulation.

Finland's *Act on Equality between Women and Men (1987)* (Finland Equality Act), includes: 'Composition of public administration bodies and bodies exercising public authority', Section 4a (2):

¹⁵⁹ European Women's Lobby, *'Cracks in the Glass Ceiling or Just a Trick of Light?'* (Women on Boards: Second Progress Report) (2015) p.9.

¹⁶⁰ Paul Hastings, *Breaking the Glass Ceiling: Women in the Boardroom, Third Edition* (2012) p.64. Available at:

¹⁶¹ *ibid*, p.9.

¹⁶² Irish Government target policy of 40% female representation on State boards.

¹⁶³ See discussion in Chapter Five.

¹⁶⁴ See further discussion on the threat of quotas in Chapter Five.

“If a body, agency or institution exercising public authority, or a company in which the government or a municipality is the majority shareholder, has an administrative board, board of directors or some other executive or administrative body consisting of elected representatives, this must comprise an equitable proportion of both women and men, unless there are special reasons to the contrary”.¹⁶⁵

In line with the law, in 2004, the Finnish government set a non-binding quota of 40% for female directors on boards of SOEs which included wholly-owned and majority-owned SOEs to be achieved by first quarter of 2005.¹⁶⁶ In accordance with the target, by 2005 the percentage of women rose to 40% on boards of companies with full or majority government ownership.¹⁶⁷ The Finnish non-binding quota is backed by a threat to impose legislation where the target is not met by 2014.¹⁶⁸ By 2014 however, female directors made up 44.2% of State appointed board member positions on these company boards.¹⁶⁹ Notably, the non-binding quota in Finland is similar to the Austrian quota with a set date for achievement and an underlying threat of potential legislation.

The law in Denmark in respect of gender balance on SOE boards is couched as a soft measure as no mandatory quota targets are included in the law and no sanctions indicated in the event of non-compliance. The legislation was introduced in 2012 and required that from 2013, various categories of companies including SOEs should set voluntary target for the under-represented gender on the board and adopt a policy to increase under-represented gender in senior

¹⁶⁵ Available at: <http://www.tasa-arvo.fi/en/publications/act2005> . Accessed 28/04/16.

¹⁶⁶ Ministry of Social Affairs and Health, *Government Action Plan for Gender Equality 2004-2007* (Publications of the Ministry of Social Affairs and Health: Helsinki, Finland 2005) p.18.

¹⁶⁷ Ministry of Social Affairs and Health, *Gender Equality and Policies in Finland* (Publications of the Ministry of Social Affairs and Health : Helsinki, Finland, 2006)p.9

¹⁶⁸ Ministry of Social Affairs and Health, *Government Action Plan for Gender Equality 2012-2015* (Publications of the Ministry of Social Affairs and Health: Helsinki, Finland 2012) p.23.

¹⁶⁹ State Ownership Steering Annual Report 2014, p.20. Available at: http://vnk.fi/documents/10616/1221497/2014_OO+vuosikertomus_eng.pdf/1f84341c-ddb7-4a04-9de6-3fb50013c606. Accessed 18/04/16.

executive positions.¹⁷⁰ It is notable that the Danish legislation was introduced in Denmark following a lack of change under various soft initiatives including Corporate Governance Code recommendations.¹⁷¹ From 2013, affected companies including SOEs, with an under-representation of one gender are required to publish in their annual report or website the status of their progress towards correcting the imbalance and achieving gender equality.¹⁷² There are no available figures for SOEs separately but in 2013, women accounted for 25% of board members, an increase from 18.2% in 2011.¹⁷³ It may not be farfetched to speculate that the influence of the State on SOEs could have contributed to this increase as given the voluntary-based nature of the law listed companies may not have complied in great numbers.

In 2010, the then Australian Government introduced a target of 40 percent representation for both men and women on Australian Government boards by 2015.¹⁷⁴ The introduction followed the Recommendations contained in the *2010 Gender Equality Blueprint* which included that,

“.....a minimum target of 40% representation of each gender on all Australian Government Boards within three years should be set, publicly announced and reported annually....”¹⁷⁵

¹⁷⁰ Bill No L17 (2012), s. 1(1). The rules were introduced in two separate legislations: *Danish Companies Act*, s. 139a and *Danish Financial Statements Act*, s. 99b.

¹⁷¹ Committee on Corporate Governance, *Recommendations for Corporate Governance for April 2010*, provision 5.1.2. See also Blöndal E and Bendixen J, ‘Women on Boards and Women in Management: A Comparative Overview of Regulation in Iceland and Denmark’ (2012) p.6. Available at: http://skemman.is/stream/get/1946/13354/32034/1/ElinBlondal_JytteBendixen_Women_in_boards_and_management.pdf. Accessed 16/04/16.

¹⁷² Deloitte, *Women in the Boardroom: A Global perspective* (2015) p. 46. (note 156 above).

¹⁷³ Credit Suisse, *The CS Gender 3000: Women in Senior Management* (2014) p. 8. Available at: <https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=8128F3C0-99BC-22E6-838E2A5B1E4366DF>. Accessed 21/04/16.

¹⁷⁴ Australian Government, Office for Women, *Women on Australian Government Board Report 2009-2010*, p.3.

¹⁷⁵ Australian Human Rights Commission, *2010 Gender Equality Blueprint* (Blueprint Report) Recommendation 7. Available at:

“...a minimum gender equality target in the Senior Executive Service in the Australian Public Service should be set, publicly announced and progress should be reported annually.....”¹⁷⁶

The details of the Government policy provide for a gender diversity target of 40% for each gender and the remaining 20 percent to be made up of either gender.¹⁷⁷ Following the introduction, gender balance on Government boards has seen a marked improvement growing from 35.3 percent in 2011¹⁷⁸ to 41.7% in 2013¹⁷⁹ and dropping to 39.7% by 2014.¹⁸⁰ In 2015 representation of women had further dropped to 39.1% on these boards.¹⁸¹ In 2015 a Bill proposing that the Government target policy become legislation in order to attract faster and consistent increase across all portfolios was introduced and opposed and still to be decided on at the time of writing.¹⁸² Nevertheless, data taken in mid 2015 showed that ten out of the 18 Government portfolios met or exceeded the policy target.¹⁸³ Of the eight that failed to meet the target four were within a four percent mark to reach the target.¹⁸⁴

http://www.humanrights.gov.au/sites/default/files/document/publication/Gender_Equality_Blueprint.pdf. Accessed 21/04/16.

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

¹⁷⁸ Australian Government, Office for Women, *Gender Balance on Australian Government Board Report 2010-2011* (2011) p.4.

¹⁷⁹ Australian Government, Office for Women, *Gender Balance on Australian Government Board Report 2012-2013* (2013) p.8.

¹⁸⁰ Commonwealth of Australia, *Gender Balance on Australian Government Board Report 2013-2014* (2014) p.7.

¹⁸¹ Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Gender Balance on Australian Government Board Report 2014-2015* (2015) p.3.

¹⁸² Australian Government Boards (Gender Balanced Representation) Bill 2015.

¹⁸³ The gender diversity report is based on portfolio outcomes rather than individual boards. See Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Gender Balance on Australian Government Board Report 2014-2015* (2015) p.3.

¹⁸⁴ *ibid.*

ii. Legislative/Binding Quotas

From 2012, Belgium requires that a one-third representation of directors appointed by the State or by a company controlled by the State, on boards of listed companies and SOEs, shall be of a different gender than the other directors.¹⁸⁵ Following the passage of the law, female representation on boards of Belgium's large listed companies increased from 11% in 2012¹⁸⁶ to 23% as at April 2015.¹⁸⁷

In 2012, the gender quota law for listed companies in Italy was extended to include SOEs. Law no. 120 (the quota law) which was approved by the Italian Parliament on 12 July 2011 became effective in February 2012.¹⁸⁸ The quota law which also introduced ultimate severe sanctions including dissolution of the company board upon non-compliance requires that a fifth of the seats on boards of directors of listed companies and SOEs should go to the underrepresented gender.¹⁸⁹ The growth of female representation on Italy's listed companies from 7.4% in 2011 to 22.2% in 2014¹⁹⁰ suggests that the law has been effective. Female directors occupied 26% of board positions on Italy's large listed companies as at 2015.¹⁹¹

Since 2000, a legislative gender quota has been in place in Greece in respect of State-appointees to partially or fully owned SOE boards.¹⁹² Decisions taken by a board in contravention to the law is illegal and liable to annulment.¹⁹³

¹⁸⁵ Art. 2 and 5 of Law of July 28, 2011 to ensure that women have a seat on the board of directors of State-owned Enterprises, listed companies and the national lottery, *Belgian Official Journal*, September 14, 2011.

¹⁸⁶ *Leadership Report 2013* (note 156 above).

¹⁸⁷ European Commission, *Database of Women and Men in Decision-Making* (2015).

¹⁸⁸ Act No. 120 of 12 July 2011, published in Official Journal No. 174 of 28 July 2011.

¹⁸⁹ *ibid.*

¹⁹⁰ MCSI ESG, 2014 Survey of Women on Boards (2014) (note 156 above) p. 5.

¹⁹¹ European Commission, *Database of Women and Men in Decision-Making* (2015).

¹⁹² Law 2839/2000, Art. 6 *Government Gazette* No. 196, 12 September 2000. (OJ A 196/12.09.2000).

¹⁹³ *ibid.* See also, Selanec, G and Senden, L. *Positive Action Measures to Ensure Full Equality in Practice between Men and Women, Including on Company Boards* (2012) p.97. Available at: <http://ec.europa.eu/justice/gender->

In Israel, a Government resolution of 2007 required that all SOEs must have an equal representation of both genders within two years of the resolution being made, i.e. by 2009/2010.¹⁹⁴ Following this, female directors on SOE boards increased from 37% in 2007 to 43% in 2010.¹⁹⁵ The same requirement is contained in the 1975 Governmental Companies Law (as amended in 1993).¹⁹⁶

G. Regulatory Responses Targeting Listed Companies

i. Legislative/Binding Quotas

The adoption of legislative gender quotas in respect of company boards in Norway sparked the interest in regulation particularly among European countries. In certain countries however, legislative gender quota is implemented alongside Recommendations in Corporate Governance Codes. Norway, Spain, Germany, Italy, Netherlands, Australia, Finland, and the UK, are among countries where both types of regulation are in place. While both approaches are observed to have led to an increase in gender diversity level, the difference in approach is notable in relation to the pace of progress under both regimes.

Following the adoption of legislation in respect of gender representation, Norway's Public Limited Liability Companies Act 1997 was amended in 2005 to

[equality/files/gender_balance_decision_making/report_gender-balance_2012_en.pdf](#).

Accessed 2/05/16.

¹⁹⁴ *Government Resolution No. 1362 (2007)* UN Committee on Elimination of Discrimination against Women (CEDAW) (2011) (CEDAW/C/ISR/CO/5 5/4/2011, *Concluding Observations Concerning Women in Israel: Principal Concerns and Recommendations*, para. 32.

¹⁹⁵ Report Submitted by the State of Israel, *'The Status of Women in Israel "Beijing +20" (2014)* p.10-11. Available at: http://www.unwomen.org/~media/headquarters/attachments/sections/csw/59/national_reviews/israel_review_beijing20.pdf?v=1&d=20150306T032018. Accessed 14/11/15.

¹⁹⁶ Companies Law 5759-1999, Part VI, Chapter 1, Article E(d). Available at: http://www.isa.gov.il/sites/ISAEng/1485/Law/Documents/IsaFile_958.pdf#search=companies%20law. Accessed 14/10/15.

include a requirement for a 40% representation of both genders on boards.¹⁹⁷ The legislation is applicable to a wide range of publicly owned enterprises including public limited companies and SOEs. While public limited liability companies had until 2008 to comply, SOEs were required to comply at an earlier date of 2006. Companies that failed to comply by the date faced the ultimate penalty of dissolution. Both type of companies had complied by their compliance date.¹⁹⁸ The Norwegian Code of Practice for Corporate Governance (2014) which governs companies listed on the Oslo Stock Exchange including some SOEs also requires that the composition of the board of directors in terms of the gender of its members must satisfy the requirements of the Norwegian Public Limited Liability Companies Act 1997.¹⁹⁹

In 2007, the Spanish parliament approved legislation which recommended that both genders should be equally represented on all boards.²⁰⁰ Companies were required to comply with the measure by 2015. Failure to comply with the law attracted no sanction but the gender balance situation in companies would be a consideration in awarding State contracts. The absence of sanctions is said to have led to the slow pace of progress under the regime.²⁰¹ Female director position on boards stood at 12.8% as at 2014, a long way from the proposed 40% for 2015.²⁰² As at 2015, women only accounted for 19% of board seats on Spain's large listed companies.²⁰³ In 2014, the Corporate Enterprises Act was amended and reflected a similar concept for gender representation. Companies are required to set their own minimum targets for female directors on their boards.²⁰⁴ From 2015, a similar recommendation is in place for listed companies through a soft law instrument. The Good Governance Code for Listed Companies

¹⁹⁷ See *Norwegian Public Limited Liability Act, Act of 13 June 1997 No. 45* (as amended in 2003) s. 6-11a. See Chapter Four for further discussion on Norway's gender quota.

¹⁹⁸ Storvik A and Teigen M, *Women on Board, The Norwegian Experience* (2010) Friedrich Ebert Stiftung: Germany, p.8.

¹⁹⁹ The *Norwegian Code of practice* is available at: www.nues.no. See p.8 Accessed 24/04/15.

²⁰⁰ Constitutional Act 3/2007 of 22 March 2007 on effective equality between men and women, Article 11 (1) & (2).

²⁰¹ MCSI ESG, 2014 Survey of Women on Boards (note 156 above) p.6.

²⁰² *ibid.*

²⁰³ European Commission, *Database of Women and Men in Decision-Making* (2015).

²⁰⁴ Law 31/2014 Corporate Enterprises Act (2014), Article 540.

2015 recommends that a director selection policy should include a goal aimed at having at least 30% of total board places occupied by female directors before the year 2020.²⁰⁵ Listed companies that do not comply must provide an explanation in their annual report.²⁰⁶

In 2015, the German Parliament passed legislation, which requires listed companies with employee representation on their supervisory boards to maintain a 30% representation of female non-executive directors from 2016.²⁰⁷ Companies that do not meet the 30% quota are required to leave seats allocated to female directors vacant until a female director is appointed.²⁰⁸ Germany's Corporate Governance Code for listed companies (2014) also contains similar recommendations, including that the management board should take diversity into consideration when appointing directors to managerial positions.²⁰⁹ Non-compliant companies are required to disclose their non-compliance in annual report.²¹⁰

In 2011, the French National Assembly passed a law requiring company boards to have a minimum of 20% representation of both genders by 2014 and 40% by 2017.²¹¹ The law targets listed and unlisted companies that meet a set of criteria. Any director appointments made while a company is in contravention of the quota is void and non-compliance could attract a non-payment of all director fees until the quota is met. Following the 2011 French Law, women representation in France grew from 12.7% in 2011 to 18.3% in 2013, with majority of the companies

²⁰⁵ See Recommendation 14. Available at: http://www.cnmv.es/DocPortal/Publicaciones/CodigoGov/Good_Governanceen.pdf. Accessed 22/04/15.

²⁰⁶ *ibid.*

²⁰⁷ Law on Equal Participation of Men and Women in Private-Sector and Public-Sector Management Positions, s.25(1) EG-AktG (Introductory Law of the German Stock Corporation Act), German Federal Gazette I. 2015, 642, 656.

²⁰⁸ *ibid.*

²⁰⁹ Regierungskommission, *German Corporate Governance Code 2010* (as amended in May 2015) (Deutscher Corporate Governance Kordex), Recommendation 4.1.5.

²¹⁰ *ibid.*, p.2.

²¹¹ Law 2011-102 of 27 January 2011 relating to the equal representation of women and men on boards and professional equality published in the Official Journal 28 January 2011.

surpassing the mid-term target of 20%²¹² and in 2015 female directors occupied 29.9% of board positions of listed companies, with a target of 40% to be achieved by 2017.²¹³ The Corporate Governance Code of Listed Companies contains a similar requirement from 2010. The Code also recommends a staggered approach in which a 40% gender representation is to be attained by 2016.²¹⁴

The Dutch Management and Supervision Act (2013) required executive and supervisory board members to include a 30% minimum of both genders by 2016.²¹⁵ The law is targeted at large listed and non-listed companies that meet a standard.²¹⁶ The regulation is not mandatory and there are no penalties in the event of non-compliance. Rather, the quota is applied under a 'comply or explain' approach, requiring an explanation in the annual report for failure to achieve target. The regulation is temporary and expires in January 2016. Female representation however increased under the regulation by about three percent, rising from 13.6% in 2013 to 17% as at 2015.²¹⁷

As stated above, a 2011 law 'Gender Parity Law' was adopted in Italy to require a one third representation of both genders on boards of listed companies by 2015.²¹⁸ Non-compliance with the quota could attract a €1 million fine and ultimately dissolution of the board. The law is temporary and is to expire after three board renewals have been made following the introduction of the law. The regulation became effective in January 2013.

²¹² Gladman, K. and Lamb, M. GMI Ratings' 2013 Women on Boards Survey, (GMI Survey 2013) p.12. Available at: <http://www3.gmiratings.com/home/2013/05/gmi-ratings-2013-women-on-boards-survey/>. Accessed 02/05/16;

²¹³ Deloitte, *Women in the Boardroom: A Global Perspective* (note 156 above) p. 48.

²¹⁴ AFEP-MEDEF, *Corporate Governance Code of Listed Companies (2013)*, Article 6.4.

²¹⁵ Dutch Civil Code, Article 2.391, para. 7.

²¹⁶ Dutch Civil Code, Article 2.397, para. 2.

²¹⁷ Figure is based on a sample of 84 listed companies. Lückerath-Rovers, M. *The Dutch Female Board Index 2015*, p. 8.

²¹⁸ Act No. 120 of 12 July 2011 Official Journal No. 174 of 28 July 2011.

ii. Corporate Governance Code Principles/Recommendations

The Finnish Corporate Governance Code recommends that both genders be represented on boards of Finland's listed companies.²¹⁹ In 2015 the Code was amended to require companies to "establish principles concerning the diversity of the board of directors".²²⁰ The law targets all listed companies on the Helsinki Stock Exchange, irrespective of size. A number of companies on the Stock Exchange are also partly owned by the State and thus had their board membership influenced by the State quota on SOEs. As is characteristic with Corporate Governance Codes, non-compliance with the Code's recommendation should be explained in the annual report.²²¹ Female representation on boards of Finland's large listed companies increased from 12% in 2008 when the Recommendation was introduced to 29% as at 2015.²²²

In the UK, regulatory intervention for gender representation on boards of listed companies (FTSE 350) was first introduced in the 2010 edition of the UK Corporate Governance Code.²²³ The Code required that "the search for board candidates should be conducted and appointments made on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender".²²⁴ In 2012 further amendments relating to board diversity were included in the UK Corporate Governance Code (The UK Code).²²⁵ The UK Code also characteristically requires that non-compliance be explained in the annual report. Female appointments to boards grew significantly under the Code

²¹⁹ Securities Market Association, Finnish Corporate Governance Code 2015, Recommendation 8. Available at: <http://cgfinland.fi/files/2015/10/hallinnointikoodi-2015eng.pdf>. Accessed 04/05/2016. See a more detailed discussion on Finland in Chapter five.

²²⁰ *ibid*, Recommendation 9.

²²¹ *Ibid*,

²²² European Commission, *Database of Women and Men in Decision-Making* (2015).

²²³ See further discussion on the experience of the UK in Chapter Fi.

²²⁴ Financial Reporting Council, *The UK Corporate Governance Code* (2010), Principle B.2 (Supporting principle).

²²⁵ Financial Reporting Council, *The UK Corporate Governance Code* (2012), Principle B.2.4 ; B. 6.

regime, i.e. from an average of 14.2% as at 2010 to 25% in 2012.²²⁶ In 2013, a 28% of female appointments led to women occupying 20.7% (25.5% non-executive, 6.9% executive) of board positions in the FTSE 100 companies in 2014 reflecting a significant growth from 12.5% female representation in 2011.²²⁷ By 2015, Lord Davies' target of 25% was achieved with female directors occupying 26% of FTSE 100 companies board positions.²²⁸

The UK Corporate Governance Code is however backed up by other significant initiatives which include a mandatory legislative instrument. The narrative reporting regulation came into effect in 2013 and is²²⁹ aimed at assessing the level of diversity within a company. The law requires all UK- incorporated companies except those entitled to take the small companies' directors' report exemption, to prepare a strategic report as a separate section of the annual report. The strategic report, which replaced the Business Review, is required to contain a breakdown showing;

- i. the number of persons of each sex who were directors of the company;
- ii. the number of persons of each sex who were senior managers of the company;
- iii. the number of persons of each sex who were employees of the company.²³⁰

²²⁶ Sealy, R. and Vinnicombe, S. *The Female FTSE Board Report 2012, Millstone or Milestone?* (Cranfield University School of Management, 2012) p. 22.

²²⁷ Cranfield University School of Management, *The Female FTSE Board Report 2014, Crossing the Finish Line.* (Cranfield Report 2014) Available at: <http://www.som.cranfield.ac.uk/som/dinamic-content/research/ftse/The%20Female%20FTSE%20Board%20Report%202014.pdf>.

Accessed 04/04/14; Lord Davies, *Women on Boards Davies Review Annual Report 2014.*

²²⁸ BoardWatch (January 2016). Available at: <http://www.boardsforum.co.uk/boardwatch.html>. Accessed 11/02/16.

²²⁹ *Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013.* Available at: <http://www.legislation.gov.uk/uksi/2013/1970/contents/made>. Accessed 02/04/14. the new reporting regulation

²³⁰ *The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013* (Chap 4A, s. 414c (8c)) (note 378 above).

By this information, a more detailed diversity reporting was made available for the benefit of shareholders and significant stakeholders.²³¹ The regulations became applicable for periods ending on or after 30 September 2013.

In 2010 Australia's Corporate Governance Code was updated to include diversity/gender diversity related recommendations.²³² The 2014 update of the Australian Code retains these recommendations.²³³

The Australian Code introduced a more robust disclosure and reporting practice aimed at addressing not just the gender imbalance on boards of listed companies but also across other levels of the organisation. Notably, appointment of female directors began to increase in 2010 even though the updated Code became applicable from January 2011. The ASX Corporate Governance Council encouraged an early adoption of the Recommendations which were applicable on an 'apply or explain' basis.²³⁴ Female appointments made up 25% of all female board appointments of ASX 200 companies in 2010, compared to 8% and 5% in 2008 and 2009 respectively.²³⁵ By 2016, the proportion of female directors on boards of ASX 200 companies was 23.3% compared to 8.3% in 2009 before the Code was updated.²³⁶ Significantly, Australia's regulatory efforts also include a legislative instrument that also imports a mandatory element through diversity reporting to the process. The Workplace Gender Equality Act 2012 requires non-public sector employers with 100 or more staff to submit a report of certain

²³¹Financial Reporting Council, Narrative Reporting: FRC up-dates guidance. Available at: <https://www.frc.org.uk/Our-Work/Codes-Standards/Accounting-and-Reporting-Policy/Ongoing-projects/Narrative-Reporting.aspx>. Accessed 05/05/16.

²³² ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (2nd Edition).

²³³ ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations* (3rd Edition) Recommendation 1.5. See Chapter Five for more discussion.

²³⁴ See a more detailed discussion of the Australian Recommendations in Chapter Five.

²³⁵ Australian Institute of Company Directors (AICD), *Statistics: Proportion of Women Comprising New Appointments*. Available at: <http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Statistics>. Accessed 10/06/15.

²³⁶ 2016 figure is as at March, 2016. See Australian Institute of Company Directors (AICD), *Percentage of female directorships on ASX 200 boards*. Accessed 11/05/2016.

gender equality indicators within their organisations annually to the Workplace Gender Equality Agency.²³⁷

In 2014, the Ontario Securities Commission introduced new regulations for nine jurisdictions including Manitoba, Quebec, Newfoundland and New Brunswick. The regulations are aimed at promoting gender balance on boards of non-venture issuers (listed companies) in these jurisdictions and require issuers to disclose on certain gender related board specifics.²³⁸ The regulations are applied on a ‘comply or explain’ basis and became applicable from 31st December 2014.²³⁹ Prior to the regulations, female representation on boards of Canada’s large companies, that is, FP500 had increased steadily albeit marginally over the years rising from 10.9% in 2001 to 17.1% in 2014.²⁴⁰ Gender quotas are however still being given strong considerations in Canada. In 2014, Bill S-217, -an *Act to modernize the composition of the boards of directors of certain corporations, financial institutions and Crown corporations, and in particular to ensure the balanced representation of women and men on those boards* (Boards of Directors Modernization Act) passed its first reading in the Canadian Senate. If the Bill is passed into law it will require a 40% representation of each gender on boards.²⁴¹ The bill is yet to go through a second reading at the Senate at the time of writing.

²³⁷ Part IV s. 13 of the Act.

²³⁸ Canadian Securities Administrators, Multilateral CSA Notice of Amendments to National Instrument 58-101 *Disclosure of Corporate Governance Practices*, October 15, 2014. (Rule Amendment) Nos. 3 & 4. Available at: http://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20141014_58-101_noa-national-instrument.pdf. Accessed 05/05/16.

²³⁹ Rule Amendment (note 219 above) p.8.

²⁴⁰ Canadian Board Diversity Council, 2014 *Annual Report Card*. p. 5. Available at: <http://boarddiversity.ca/sites/default/files/ARC-2014-Final-ENG.pdf>. Accessed 05/05/16.

²⁴¹ Parliament of Canada, Senate of Canada S-217. Available at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6484110>. Accessed 15/04/16.

Conclusion

The discussion in this chapter contextually identified an imperative need for increased gender balance on boards of Ireland's SOEs. The corporate governance framework, practices, objectives and significance of SOEs in Ireland are used as justification for more female directors to occupy SOE board positions. The responsibility of the board to a wider shareholder/stakeholder group is noted and provided a justification for a board that is representative of the diversity of the group.

Further, by illustrating existing international regulatory practices aimed at addressing gender imbalance on boards of SOEs and listed companies, regulation is proffered as a possible solution in addressing the gender imbalance on SOE boards in Ireland. Regulation across countries has been either through hard law, that is, legislative gender quota or soft law, that is, Corporate Governance Code. However some countries have also relied on non-binding quotas (Government target policies). In all, changes have occurred in all countries under regulation albeit at a varied pace. The relationship between the State and SOEs is a likely catalyst to the effectiveness of any regulatory instrument that is introduced however, it is observable that certain regulatory design factors such as severity of applicable sanctions is significant in the pace and extent of effectiveness.

This discussion is taken further in the next chapter. The next chapter will extend the contents of this chapter through a theoretical discussion of both types of regulation and their determinant factors/attributes with regard to effectiveness in improving gender balance on boards.

Chapter 3: Theoretical Background

A. Introduction

This chapter discusses theoretically how legislative gender quota (hard law) and corporate governance code Recommendations (soft law) could be useful in achieving gender balance on SOE boards in Ireland if adopted. This would involve the identification of those attributes including potential drawbacks in either approach that significantly affect their outcome in relation to effectiveness. As mentioned in earlier chapters, the utilisation of both approaches in different countries and under different conditions/designs has resulted in varied outcomes. This suggests that both regulatory instruments are susceptible to external factors which may also include the cultural, political and regulatory environment within which the regulation exists. In other words, national/domestic factors are also potential determinants of how either approach could play out. For instance, other forms of strategies such as child care policies and parental leave allowances may be introduced to support the main regulation by addressing sex segregation and the preferential selection of men over women in the workplace and these policies could vary in design across countries and thus impact on the outcome of regulation in different ways.¹ The viability of both approaches in theory is therefore considered in the context of the Irish society/environment. Against the background of national differences and factors the discussion in this chapter also extends to analysing the Irish context from an EU Membership perspective. EU Membership continues to be a strong determinant of Irish development and

¹ See also Chang M, 'The Evolution of Sex Segregation Regimes' (2000) 105(6) *The American Journal of Sociology* 1662; Inglehart R and Norris P, *Rising Tide: Gender Equality and Cultural Change around the World* (Cambridge: Cambridge University Press, 2003) p. 8, Seierstad C and Opsahl T, 'For the Few not the Many? The Effects of the Affirmative Action on Presence, Prominence and Social Capital of Women Directors in Norway' (2011) 27(1) *Scandinavian Journal of Management* 45.

activities.² The aim of this strand of discussion is to analyse if Ireland's EU status could potentially influence the adoption of either regulatory approach to address gender imbalance on SOE boards and the subsequent implementation of same. This discussion centres mainly on how the EU's increasing focus on gender balance in decision-making might influence regulatory activities in Ireland with regard to addressing gender balance on SOE boards.

The extent of the debate between both regulatory approaches makes it necessary to analyse them in terms of their characteristics. When the decision to regulate has been made, a significant issue could emanate in making the choice on the type of regulatory approach to utilise. The choice between regulating through hard law or soft law is an important one given that both have different and significant implications for achieving the regulatory objective. As a result, the debate between both types of regulation makes up a major part of the literature on regulation particularly in areas of corporate governance and international governance.³ The debate on choice has also extended to the subject of board composition as a result of the growing recognition of regulatory intervention in addressing gender imbalance on boards. The choice of the more suitable (in terms of the country's existing environment) and effective regulatory approach in

² Rees N, 'The Irish Economy and Europe' in Rees N, Quinn B and Connaughton B, *Europeanisation and New Patterns of Governance in Ireland* (Manchester: Manchester University Press, 2010) p.80.

³ See Aguilera R and Cuervo-Cazurra A, 'Codes of Good Governance Worldwide: What is the Trigger?' (2004) 25(3) *Organization Studies* 415; 'Codes of Good Governance (2009) 17(3) *Corporate Governance: An International Review* 1; Morrisson J, 'Legislating for Good Corporate Governance (2004) 15 *Journal of Corporate Citizenship* 121; Jeffrey A, 'Should Corporate Governance Guidelines be Legislated? Don't Do It' (2008) Available online at: http://www.mervynking.co.za/news/archives/08_08_sairr_gov_guidlines_legislation.htm Accessed 19/04/16; Balgobin R, 'Global Governance Practice: The Impact of Measures Taken to Restore Trust in Corporate Governance Practice Internationally' (2008) 7 *ICFAI Journal of Corporate Governance* 7; Zattoni A and Cuomo F, 'Why Adopt Codes of Good Governance? A Comparison of Institutional and Efficiency Perspectives' (2008) 16(1) *Corporate Governance: An International Review* 1; Aguilera R and Jackson G, 'Comparative and International Corporate Governance (2010) 4 (1) *The Academy of Management Annals* 481; Pieters K, 'More Efforts Needed to Improve Gender Equality in Corporate Governance in the EU' (2012) 13(3) *European Business Organization Law Review* 475.

dealing with gender imbalance on boards is now a major part of the discussion at national and global levels.⁴

Finally, this chapter further discusses some relevant theories on regulatory effectiveness that give an insight into how both regulatory types may be made more effective in implementation.

B. Hard Law Versus Soft Law

The term hard law refers to regulatory legislative instruments that are binding. Hard law could be defined as a compulsory form of State intervention through legislation, which seeks to control the behaviour of the regulated through the threat of negative sanctions.⁵ Hard law instruments have a higher rate of compliance because of the cost of sanctions that accrue from non-compliance.⁶ This approach is also commonly termed a command and control or top to bottom approach. Apart from legislative gender quotas that are being used to address gender imbalance on boards, the Sarbanes Oxley Act 2002 (SOX) in the US is another example of a hard law instrument implemented in the area of corporate governance.⁷ In contrast, soft law instruments are non-binding and would usually

⁴Senden L, 'The Multiplicity of Regulatory Responses to Remedy the Gender Imbalance on Company Boards' (2014) 10(5) *Utrecht Law Review* 51.

⁵ Sinclair D, 'Self-Regulation versus Command and Control? Beyond False Dichotomies' (1997) 19(4) *Law & Policy* 532. For other useful definitions of hard law, see Abbott K and Snidal D, 'Hard and Soft Law in International Governance' (2000) 54 (3) *International Organization* 421.

⁶Guzman A, 'A Compliance Based Theory of International Law' (2002) 90(6) *California Law Review* 1832-1833, 1845; Guzman A and Meyer T, 'International Soft Law (2010) 2(1) *Journal of Legal Analysis* 177. See also, Falkner G, Hartlapp M, Lieber S and Treib O, 'Non-compliance with EU Directives in the Member States: Opposition through the Back Door?' (2004) 27(3) *West European Politics* 452.

⁷ See SOX at <http://www.sec.gov/about/laws/soa2002.pdf>. Accessed 23/04/16. See also, Branson D, 'Initiatives to Place Women on Corporate Boards of Directors' (2012) 37(4) *Journal of Corporate Law* 793. The practice of using quotas to achieve an increase of female representation began with the political sector before it started being employed for similar purpose within the economic sector. See Krook M, 'Gender Quotas as a Global Phenomenon: Actors and Strategies in Quota Adoption' (2004) 3(3) *European Political Science* 59.

not include applicable sanctions. Soft law regulatory instruments are widely used in many fields of law such as business law and environmental law. They also encompass a wide variety ranging from non-binding recommendations or resolutions to non-binding codes of conduct such as *UK Corporate Governance Code*; the *Code of Practice for the Governance of State Bodies in Ireland*; *OECD Corporate Governance Principles*; EU Recommendations in the field of corporate governance and Stock Exchange listing requirements.⁸ One view of soft law instruments is that they are a set of rules of conduct which though may have no binding effect in principle, could however still result in practical effects.⁹ It is also argued that though they are non-binding, soft law instruments could over time come to bear legal consequences by shaping expectations as to what constitutes recommended behaviour.¹⁰ Another significant divergence from the hard law is that because soft law instruments are usually not accompanied by sanctions, moral suasion and the goodwill of the regulated are relied on to secure compliance.¹¹ The difference in the hard and soft law notwithstanding, their effectiveness is measured by their capacity to elicit compliance of the regulated

⁸Department of Finance, *Code of Practice for the Governance of State Bodies (2009)(Code of Practice 2009)*; Financial Reporting Council, *The UK Corporate Governance Code*, September 2014 (UK Code 2014); An example of a soft law instrument which the EU uses to regulate corporate governance among Member states includes COMMISSION RECOMMENDATION of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of listed companies 2009/385/EC (OJ L 120, 15-5-2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0028:0031:EN:PDF>). Accessed 21/04/16.

⁹ Snyder F, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques' (1993) 56(1) *Modern Law Review* 16; Senden L, *Soft Law in European Community law* (Oxford/Oregon: Hart Publishing, 2004) 112. See also Schafer A, 'Resolving Deadlock: Why International Organizations Introduce Soft Law' *Paper for the EUSA Ninth Biennial International Conference Austin, Texas March 31-April 2 2005* and Guzman and Meyer (note 6 above) 171. See Zerrilli F, 'The Rule of Soft Law: An Introduction' (2010) 56 *Focaal- Journal of Global and Historical Anthropology* 10; Schafer G and Pollack M, 'Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance' (2010) 94 *Minnesota Law Review* 706; Klabbbers J, 'The Redundancy of Soft Law' (1996) 65(2) *Nordic Journal of International Law* 181.

¹⁰ See Higgins R, *Problems and Process: International Law and How We Use It* (New York: Oxford University Press, 1994) p. 25. See also Guzman and Meyer (note 6 above) p. 175.

¹¹ See Sinclair (note 395 above) p. 534; Cini M, 'The Soft Law Approach: Commission Rule-making in EU's State Aid Regime' (2001) 8(2) *Journal of European Public Policy* 194; Sanderson P, Seidl D, Roberts J and Krieger B, 'Flexible or Not? The 'Comply or Explain' Principle in UK and German Corporate Governance' (2010) *Working Paper 407 University of Cambridge Centre for Business Research, University of Cambridge*.

and the enforceability of sanctions in the event of non-compliance.¹² Soft law enthusiasts argue that informal soft enforcement mechanisms such as shaming, reputation, social pressure and the need for legitimacy provide a coercive element that secures compliance under soft law regimes.¹³

Aside from the binding/non-binding binary identification, hard and soft law instruments differ significantly in the nature of their flexibility. While hard law requirements are mandatory, leaving minimal or no room for manoeuvre or discretion in its implementation, soft law instruments embody flexibility, allowing the use of discretion in its implementation as it recognises the existence of heterogeneity among the regulated.¹⁴ Under a soft law approach, the use of discretion effectively allows the obligation of the regulation to be defined by the perception of the regulated as to what the obligation should be.¹⁵ Hard law instruments, i.e. legal requirements could also create ambiguous obligations particularly where the law fails to include specific requirements.¹⁶ The allowance for discretion in this case could have positive or negative implications as regards the outcome of the regulation.¹⁷ The nature of both approaches with regard to their flexibility is significant because much of the support and development of soft law particularly in governance is as a result of its flexible nature and thus its ability to be utilised in an uncertain, varied and dynamic environment.¹⁸ Given its flexible nature, soft law instruments are considered a more timely response to

¹² Bernstein M, *Regulating Business by Independent Commission* (Princeton, NJ: Princeton University Press, 1955) p. 217, 220.

¹³ Merry S, 'Anthropology and International Law' (2006) 35 *Annual Review of Anthropology* 101; Zerrilli (note 399 above); See however Guzman (2002) (note 396 above) p. 1866 for arguing that indirect sanctions e.g. reputation costs are weaker than more direct sanctions.

¹⁴ Zeitlin J, 'Introduction: Governing Work and Welfare in a New Economy: European and American Limits' in Zeitlin J and Trubek D, (eds) *Governing Work and Welfare in a New Economy: European and American Experiments* (Oxford: Oxford University Press, 2003) p. 1-30 ; Schafer (2005) (note 9 above).

¹⁵ Guzman and Meyer (note 6 above) p. 174.

¹⁶ *ibid.*

¹⁷ These implications are discussed below.

¹⁸ Abbott and Snidal (note 5 above) p. 423; Zeitlin (note 14 above); Schafer and Pollack (note 9 above) p. 719;

issues as they can be easily modified to suit the issue to be addressed.¹⁹ Soft law instruments could therefore be more suited to coordination processes aimed at a particular goal but not as an instrument in achieving the goal itself. The process of achieving the identified goal is likely to be faced with uncertainties and therefore would require modifications along the line which will be more quickly addressed where the regulatory instrument controlling the process is a soft flexible one.²⁰ A corporate governance code of conduct that controls the conduct/processes offers a likely example for such a situation as it could be easily modified to suit changing circumstances. The attainment of gender balance on boards/workplace is an example of a goal where a process/conduct is aimed at. This suggestion is consistent with arguments that while soft law instrument such as corporate governance codes of conduct will be ideal in controlling and organising conduct of the board of directors for example, it may not be suited to achieve an identified quantifiable goal of a minimum standard of female representation on boards, particularly where consensus is lacking as to the validity of the identified goal, given the voluntary nature of soft instruments.²¹

The precision with which rules under hard law instruments is couched is said to make them more suitable to induce compliance on quantitative requirements such as a minimum standard figure for gender representation on boards.²² Under a soft law regime, general goals are often specified leaving the exact meaning to be identified in practice. For example, the recommendation contained in the UK Corporate Governance Code 2014 that the benefits of diversity including gender be considered when appointments are being made, is not precise in a way to

¹⁹ Zerrilli (note 9 above) p. 9; Ferran E and Alexander K, 'Can Soft Law Bodies Be Effective? Soft Systemic Risk Oversight Bodies and the Special Case of the European Systemic Risk Board' (2011) *Paper No. 36/2011 Legal Studies Research Paper Series, University of Cambridge*. Available at: http://www.rwi.uzh.ch/lehreforschung/alphabetisch/alexander/person/publikationen/KA_CSLBBE.pdf. Accessed 20/04/16.

²⁰ See Seidl P, 'Regulating Organizations Through Codes of Corporate Governance' (2006) *Working Paper No. 338 Centre for Business Research, University of Cambridge*.

²¹ See Morrison (note 3 above). See also Guzman (2002) (note 6 above) p. 1832-1833.

²² Responses to slow growth in women representation on boards have in many cases included calls to introduce mandatory minimum requirements i.e. quotas. See Katz D and McIntosh L, 'Developments Regarding Gender Diversity on Public Boards' (2013) 250 (86) *New York Law Journal*.

ensure that a certain level of gender representation is a priority to be attained on boards.²³ This could create ambiguity to the rule that may lead to a total deviation from effective compliance with the intent of the law.²⁴ Soft law would also be applied where there is no agreement as to a definite policy to address an issue, thereby creating opportunity for changes to be made where an agreement is made in future.²⁵

While the discussion on hard law and soft law in this thesis is limited to their function as alternatives, the existing scholarly debate on both regulatory approaches suggest that soft law and hard law can also interact in a complementary or antagonistic relationship.²⁶ Soft law instruments, for example, could be used as an end in its self to achieve purpose as well as act as a preamble to hard law, testing the environment for how hard law option could be received. For example, countries such as Norway, Germany, the Netherlands and Spain relied on Corporate Governance Code recommendations prior to introducing legislative gender quotas in addressing gender imbalance on boards.²⁷ The Codes however did not cease to exist after the quota laws were introduced and still act as complements or support to the laws. In effect, both types of approaches could co-exist.

Despite the debate concerning both approaches it is still argued that the distinction between them is much less in practice than is portrayed as the two do generate compliance through similar mechanisms (i.e. coercive though to

²³See UK Code 2014, *Principle B.2* . See also Schafer (note 399 above) p.17; Guzman and Meyer (note 6 above) p.174.

²⁴ Abbott and Snidal (note 5 above) p. 446.

²⁵Shafer (note 9 above) p. 17.

²⁶ Trubek D, Cottrell P and Nance M, 'Soft Law', 'Hard Law' and European Integration: Toward a Theory of Hybridity' (2005) *University of Wisconsin Legal Studies Research Paper Series 1002*, University of Wisconsin; Slominski P, 'Taking Hybridity of Hard and Soft Forms of Governance Seriously: Concept, Choice and Interaction of Legal Instruments in the EU' *Paper Prepared for the ECPR Standing Group on the European Union Pan-European Conference, Riga, 27-28 September 2008*; Schafer and Pollack (note 399 above); Senden, (note 4 above).

²⁷ For Norway, see Norwegian Corporate Governance Board, *The Norwegian Code of Practice for Corporate Governance 2006* , section 8; for Germany, see Government Commission, *German Corporate Governance Code (as amended on May 26, 2010)* 5.4.1. See also, Corporate Governance Code Monitoring Committee, *Dutch Corporate Governance Code 2008*, recommendation 111.3.

different extents).²⁸ It is however agreed that the impact of soft law instruments on behaviour and its ability to secure compliance is of a lesser magnitude to that of hard law.²⁹ Three major points of divergence between both approaches is thus identifiable; (i) the binding nature of the law; (ii) the precision of the obligations/requirements and (iii) the nature of flexibility of the law.³⁰ Despite their significant and difference in impacting behaviour, it could be difficult to rule out one in favour of the other as both could be effective under different circumstances, particularly when used as a tool to address gender imbalance on boards.

C. Legislative Gender Quotas as a Tool to Improve Gender Balance on Ireland's SOE Boards

A proliferation of the adoption of quota laws for women representation began after the Beijing Conference.³¹ The proliferation at this time however occurred more with regard to increasing women representation in politics rather than with economic representation. Voluntary and mandatory quotas were widely employed by political parties towards increasing women representatives.³² The use of quotas as an instrument to increase women's representation is also supported by international conventions such as the Convention on the Elimination of all forms of Discrimination against Women (1979) (CEDAW).³³ Quotas are considered a useful tool when women are significantly

²⁸ Guzman (2002) (note 6 above) p. 1283; Guzman (2010) p. 73-78.

²⁹ Guzman and Meyer (note 6 above) p. 12.

³⁰ *ibid.*

³¹ The introduction of quotas was more significant in politics and was crucial to women's increased political representation. See Tripp, A. and Kang, A., 'The Global Impact of Quotas: On the Fast Track to Increased Female Legislative Representation' (2008) 41(3) *Comparative Political Studies* 338.

³² European Commission, *The Quota Instrument: Different Approaches across Europe* (2011) *Working Paper 6, (The Quota Instrument)* p. 6. Available at: http://ec.europa.eu/justice/gender-equality/files/quota-working_paper_en.pdf. Accessed 23/04/16.

³³ See Art.2 (b), CEDAW full text available at: <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>. Accessed 21/04/16.

underrepresented in proportion to their numbers in the population. Consistent with hard law, legislative gender quotas are normally couched in precise wording requiring a quantitative minimum standard be occupied by each gender on the board.³⁴ While quotas are considered a democratic solution to the long history of the exclusion of certain voices e.g. women in governance institutions, they are thought to be a radical solution that may require a significant change in idea and social arrangements so as to ensure its acceptance.³⁵ Accordingly, it has been suggested that they should be used in a flexible form to avoid the rigidity they may impose, taking into consideration future changes in ideas and social arrangements that may also become necessary and thus make their further use unnecessary.³⁶ An inclusion of a flexible character may however mean it has lost a significant character of hard law and could be viewed as soft law following arguments which tend to suggest that flexibility is indicative of a soft law.

The use of mandatory requirements in corporate governance has generally not been lauded as a result of the desire to preserve the autonomy of businesses/shareholders and avoid burdensome and costly requirements even whilst seeking to ensure the maintenance of good governance standards in the interest of shareholders.³⁷ The case is similar for SOEs where such intervention

³⁴ The Norwegian gender quota law for example makes a specific mandatory minimum requirement of 40% gender representation on boards of targeted companies. *Norwegian Public Limited Liability Companies Act s. 6-11a*.

³⁵ Mansbridge J, Quota Problems: Combating the Dangers of Essentialism' (2005) 1 (4) *Politics & Gender* 629; and Atkinson J, 'Gendered Organizations and Women's Career Progression in the UK Financial Services Sector' (2011) 33(3) *Journal of Social Welfare and Family Law* 248.

³⁶ This view was embodied in the *proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures/COM/2012/0614 final-2012/0299(COD)*. The choice of instrument proposed, though a Directive was designed with flexibility so as to accommodate variety in Member States and unforeseen changes that may occur. See also, Mansbridge (note 35 above) p. 635.

³⁷ See *The Quota Instrument* (note 32 above) p. 10. This was one of the major arguments put forward by opposition to the Norwegian law (See Chapter Four). The passing of SOX in the US represented a departure from this historic attitude to regulating businesses and was met with heavy criticisms. See Romano R, 'The Sarbanes-Oxley Act and the Making of Quack Corporate Governance' (2004) 114 *Yale Law Journal* 1587, 1595; Regulating Business: The Trial of Sarbanes-Oxley *The Economist* 20 April 2006. See also, Leuz C and Wysocki P, 'Economic Consequences of Financial Reporting and Disclosure Regulation: A

through direct legal controls in corporate governance arrangements such as board composition could also hinder enterprise as prescriptive rules and threats of penalties upon non-compliance could constrain innovative and operational activities.³⁸ Gender quotas have particularly attracted significant hostility both in the corporate and political arenas where they have been used. The hostility is basically predicated on the fact that it would lead to the selection of unqualified women to fill in relevant positions.³⁹ Notably, hostility towards gender quotas has emanated from men and women in general and more specifically from those in countries where quotas have never existed such as in USA and Denmark. For example in 2008 when Danish Prime Minister Helle Thorning-Schmidt sought to introduce quotas similar to that of Norway, the attempt was strongly resisted by both men and women including the Minister of Equality and the deputy director of the Danish Confederation of Industries, who were both women. Despite a glacial growth of female directors in corporate America even with significant change occurring globally particularly in Europe,⁴⁰ there is still overwhelming lack of support for the introduction of gender quotas from within corporate America.⁴¹ In Norway, hostility to the gender quota after it was introduced was evidenced by the strong opposition it received from politicians and business players.⁴² Interestingly, it was not the first time a gender quota was being introduced in Norway. Mandatory requirements may however be justifiable in corporate governance arrangements as a result of the objectives and role of the

Review and Suggestions for Future Research' (2008) Working Paper, University of Chicago and Massachusetts Institute of Technology Available at: <http://www.center.laboratoireligue.net>. Accessed 22/04/16; Romano R, 'Does the Sarbanes-Oxley Act Have a Future?' (2009) 26(2) *Yale Journal on Regulation* 232.

³⁸ Spira L, 'Enterprise and Accountability: Striking a Balance' (2001) 39 (9) *Management Decision* 743; Langevoort D, 'The Human Nature of Corporate Boards: Laws, Norms and the Unintended Consequences of Independence and Accountability' (2001) 89 *Georgetown Law Journal* 831 for suggesting that when a law becomes too aggressive and demanding, it risks altering the operational and social dynamics of the board which could make the board less effective. See also, Morrisson, (note 3 above) p. 129.

³⁹ Wiersema M. and Mors M. 'What Board Directors Really Think of Gender Quotas' (2016) *Harvard Business Review*. Available online at: www.hbr.org. Accessed 21/01/17.

⁴⁰ In 2015 women held only 19.9% of board seats at S&P 500 companies with majority of companies having only one woman director. See Catalyst, Women on Corporate Boards Globally' (2017) . Available at: www.catalyst.org. Assessed 20/01/17.

⁴¹ Wiersema and Mors (note 39 above).

⁴² See further discussion on this in Chapter Four, p.175

company in society and to whom the company is answerable to.⁴³ The introduction of mandatory requirements in the regulatory framework of such companies could be beneficial in attaining standards that are necessary for company sustainability purposes and for the benefit of the wider society. Given their significance and societal inclination, SOEs afford grounds on which mandatory requirements can be introduced for. This will ensure that minimum but critical governance standards are met.⁴⁴ With regard to improving gender balance on boards of Ireland's SOEs, legislative gender quotas have proven effective in achieving the quantitative target in a short time, as was evident in Norway and France where the laws were also applicable to SOEs.⁴⁵

Gender quotas are more easily implemented with SOEs because of their relationship with the State as a major shareholder.⁴⁶ SOEs and listed companies have been the common target companies where legislated gender quotas were implemented, and in some countries such as Norway, it was successfully applied to SOEs first. The State is generally considered an ideal mechanism for effecting social change or social control in the role females play in society,⁴⁷ though they could also create obstacles to effecting such change,⁴⁸ for example where they follow up with inadequate monitoring of regulation.⁴⁹

⁴³ Morrisson (note 3 above) p. 123.

⁴⁴ The validity of this suggestion is further highlighted in the discussion below where the contrasting characteristics of gender quotas and corporate governance codes are identified with regard to their effectiveness in increasing gender diversity levels.

⁴⁵ See Chapter four for more detailed discussion on the use of gender quotas in Norway. See also Hoel M, 'The Quota Story: Five Years of Change in Norway' in Vinnicombe S, Singh V, Burke, R., Bilimoria D, and Huse, M., (eds.) *Women on Corporate Boards of Directors: International Research and Practice* (Cheltenham, UK: Edward Elgar Publishing 2008); Natividad I, 'There is no Denying the Effectiveness of Quotas' (2010)p.22, Available at: http://www.globewomen.org/summit/2010/New_Folder/Natividad%20Article.pdf. Accessed 22/04/16. For details on the French gender quota see European Women's Lobby, *Women on Boards, 2nd Progress Report- Country in Focus- France* (2015). Available at: <http://www.womenlobby.org/spip.php?article7088>. Accessed 17/04/16.

⁴⁶ Natividad (note 45 above) p. 23.

⁴⁷ Jaumotte F, 'Labour Force Participation of Women: Empirical Evidence on the Role of Policy and other Determinants in OECD Countries' (2003) 37 *OECD Economic Studies*. Available at: <http://www.oecd.org/social/labour/34562935.pdf>. Accessed 20/04/16.

⁴⁸ For details on how the State can perform contradictory roles in effecting social change see Radjavi, M. 'Quotas For Securing Gender Justice' in Groschl S and Takagi J (eds.)

i. Gender Quotas and Pace of Progress

The effectiveness of quotas in a timely fashion encouraged its wider usage towards increasing female representation and also led to calls for wider adoption.⁵⁰ To this end, given the slow and sometimes stalled growth of female representation on boards, gender quotas would seem an appropriate option to address the issue. The progress in improving gender balance on State boards in Ireland which includes SOEs has been slow and stalled in more recent years, despite the existing Government target which has been in place since 1993. In light of this background, a resort to mandatory measures such as legislative gender quotas could be a more result-oriented approach. The case of Ireland with regard to gender balance on State boards is illustrative of how an attempt to regulate through an approach that is non-binding and without applicable sanctions, even with quantitative specifics could compromise or hinder the effectiveness of non-binding quantitative targets/quotas. A similar trend is also observed with public boards in Scotland. The Scottish Government's non-binding

Diversity Quotas, Diverse Perspectives: The Case of Gender (Surrey, England: Gower Publishing Limited, 2012) p. 119.

⁴⁹ See further discussion in Chapter Four, p.224 and Five, p.296.

⁵⁰Dahlerup D and Friedenvall L, 'Quotas as a 'Fast Track' to Equal Political Representation for Women: Why Scandinavia is No Longer the Model' (2005) 7(1) *International Feminist Journal of Politics* 26; European Commission, *Women on Boards: Commission Proposes 40% Objective* (14 November 2012) Available at: http://europa.eu/rapid/press-release_IP-12-1205_en.htm. Accessed 21/04/16; International Business Report (IBR) published by Grant Thornton in 2014 shows that the percentage of world business leaders who favor gender quotas has grown from 37% in 2013 to 45% in 2014. See Grant Thornton, 'Women in Business: From Classroom to Boardroom' *Grant Thornton International Business Report 2014*, Available at: http://www.grantthornton.global/globalassets/insights/article-pdfs/2014/ibr2014_wib_report_final.pdf. Accessed 22/04/16. An earlier report in 2013 had shown that the imposition of quotas was being strongly opposed by the business society in most countries. See Corporate Women's Directors International, *Women Board Directors in the Fortune Global 200 and Beyond (CWDI Report 2013)* p.6, Available at: http://www.boarddiversity.ca/sites/default/files/2046_001.pdf. Accessed 20/04/16. See also, McGregor J, 'New Zealand's Boardroom Blues – Time for Quotas?' (2014) 28(2) *Women's Studies Journal* 4; and The Scottish Government, 'Women on Board: Quality through Diversity' *Scottish Government Consultation on the Introduction of Gender Quotas on Public Boards* (Scottish Government Publication, 2014).

target of 40% for female representation on public boards in Scotland has been in place for over a decade now and is yet to be achieved.⁵¹ A further exemplary illustration is the use of legislative gender quotas in the Netherlands, which included an element of ‘comply or explain’ and had no applicable sanctions.⁵² While increase of female directors is notable under the regime, the regulation is still considered to be potentially inadequate to achieve the quota target by the set date.⁵³ While countries like the UK and Australia may have experienced progress under soft law regimes, the pace of progress in both countries is not at par with that occurring under quota regimes.⁵⁴ This suggests that all three attributes of hard law instruments must be present so as to be effective.

ii. Gender Quotas and Culture/Stereotypes

Gender quotas have been found useful in opening up boardrooms to females where cultural and stereotypical attitudes traditionally prevent females from occupying high positions.⁵⁵ Historically, the Irish culture was considered to be synonymous with patriarchy.⁵⁶ The patriarchal culture thrived as a result of historical, economic, legal, political and social structures that fostered women’s inequality in Ireland.⁵⁷ Consequently, women in Ireland were excluded from

⁵¹ See Scottish Government Publication, 2014 (note 50 above).

⁵² See discussion in Chapter Two, p.94

⁵³ (As at August 2015, female representation on boards increased from 13.6% in 2013 to 17% in 2015. The trend of growth is said to be too slow as to achieve the target by 2016. See *The Dutch ‘Female Board Index’ 2015*, p. 8. Available at: <http://www.tias.edu/docs/default-source/Kennisartikelen/femaleboardindex2015.pdf?sfvrsn=0>. Accessed 22/04/16.

⁵⁴ See Chapter Five for further discussion on UK and Australia’s progress under Code regime.

⁵⁵ Grosvold J and Brammer S, ‘National Institutional Systems as Antecedents of Female Board Representation: An Empirical Study’ (2011) 19(2) *Corporate Governance: An International Review* 133.

⁵⁶ O’Connor P, *Emerging Voices: Women in Contemporary Irish Society* (Dublin: Institute of Public Administration, 1999) 6-9; 217-257; Finnegan R and Wiles J, *Women and Public Policy in Ireland: A Documentary History 1922-1997* (Dublin: Irish Academic Press, 2005) p. 11.

⁵⁷ O’Connor (note 56 above); Council for the Status of Women, *Submission to the Commission on the Status of Women* (Dublin: Council for the Status of Women, 1991);

economic participation which included participation in the workplace and in decision-making positions.⁵⁸ While female participation in economic and political positions generally may have improved, the slow response in addressing the imbalance in decision-making in Ireland could be evidence that the culture has not been completely eradicated.⁵⁹ The relevance of culture to female participation in decision-making is illustrated in the experience of Norway where notwithstanding its high ranking for being an egalitarian society, a culture that prevented females from getting into decision-making positions on company boards did persist, leading to the need for it to be addressed through a legislative gender quota.⁶⁰ Inglehart and Norris have argued that cultural change is usually necessary where an institutional change such as making women more visible in economic decision-making is going to be made, if such change is to be accepted.⁶¹ Even though it has been suggested that gender quotas could encourage new cultural attitudes towards females in decision-making,⁶² it is doubtful that the cultural attitude it would elicit is one that would ensure sustainability of female participation over time. It still remains unproven if in the absence of gender quotas, achieved progress in the countries where they are being implemented, can be sustained. It is only where gender balance on boards starts to occur naturally without the need for regulation, then it can be said that a new cultural attitude has begun.

National Women's Council of Ireland, *Who Makes the Decisions in 1997?* (Dublin: National Women's Council of Ireland, 1997) ii.

⁵⁸ *ibid.* See more discussion on women's labour participation and cultural implications in Ireland in Chapter Four and Chapter Six.

⁵⁹ See European Commission, *The EU and Irish Women*, (2014) Available at: http://ec.europa.eu/ireland/ireland_in_the_eu/impact_of_eu_on_irish_women/index_en.htm. Accessed 20/04/16. See also Inglehart and Norris (note 1 above) p. 8, for arguing that culture is important in the growth of gender equality in a society as men and women adopt predominant attitudes, values and beliefs about what the appropriate division of each gender's roles should be. Such attitudes tend to be predominant and difficult to eradicate. The significance of a society's culture to the development of gender diversity is also highlighted in Min Toh S and Leonardelli G, 'Strategies to Promote Women Should Vary across Cultures' *Harvard Business Review* 16 July, 2014. Available at: <https://hbr.org/2014/07/strategies-to-promote-women-should-vary-across-cultures/>. Accessed 15/04/16.

⁶⁰ See discussion on Norway in Chapter Four.

⁶¹ Inglehart and Norris (note 1 above) p. 9. See also Mansbridge (note 35 above) p. 643.

⁶² Kittilson M, 'In Support of Gender Quotas: Setting New Standards, Bringing Visible Gains' (2005) 1(4) *Politics & Gender* 638.

iii. Gender Quotas and Accompanying Sanctions

The severity of the sanctions that accompany gender quotas does play a role in incentivising compliance.⁶³ In fact it is sometimes suggested that regulatory compliance is not to be expected where the regulation does not also contain appropriate sanctions that is/are capable of compelling compliance.⁶⁴ The penalties that French and Norwegian companies were to face in the event that they failed to comply with the gender quota laws are said to have contributed to the high level of compliance in both countries.⁶⁵ Failure to attain the quota target for Norwegian companies could ultimately result in the company being dissolved;⁶⁶ and in France, non-compliant boards could have appointments made during the subsistence of non-compliance, nullified.⁶⁷ Similarly, it has been suggested that applicable sanctions that accompany Ireland's electoral gender quota law⁶⁸ is severe enough to compel compliance.⁶⁹ While no definite link has been ascertained (at the time of writing) it may be safe to agree that the sanction attracted compliance given the high number of female candidates fielded by parties in the 2016 Dáil election when compared to previous years, which was the

⁶³ Baldwin R, Cave M and Lodge M, *Understanding Regulation: Theory, Strategy and Practice* (Oxford: OUP, 2012) p. 238.

⁶⁴ Bernstein, (note 12 above) p. 220; Ayres, I. and Braithwaite, J. *Responsive Regulation* (New York: Oxford University Press, 1992) p. 84. See also, Kittilson (note 62 above) p. 640.

⁶⁵ It was only after a law with strong sanctions was introduced in Norway that increase was noted despite several non-legislative initiatives had been attempted for years. See Rasmussen J and Huse M, 'Corporate Governance in Norway: Women and Employee-elected Board Members' in Malin C, (ed.) *Handbook on International Corporate Governance: Country Analyses* (Cheltenham, UK: Edward Elgar Publishing Limited, 2011) p. 140. See Chapter 4 for further details on the Norwegian quota. See *CWDI Report 2013* (note 50 above) p.7 & 38, for impact of sanctions in France's attempt to increase gender diversity levels.

⁶⁶ *Norwegian Public Limited Liability Companies Act*, s. 16.15-s. 16.16.

⁶⁷ The Quota Instrument (note 32 above) p.12.

⁶⁸ *Electoral (Amendment) (Political Funding) Act 2012*, s. 42

⁶⁹ Buckley F, Mariani M and White T, 'Will Legislative Gender Quotas Increase Female Representation in Ireland? A Feminist Institutionalism Analysis.' (2014) 50(4) *Representation* 475.

first time the law was implemented.⁷⁰ There were 163 female candidates in the 2016 election compared to 86 in 2011.⁷¹ According to the quota law, parties that fail to nominate a 30% minimum of both genders for election to the Dáil will have 50% of their State funding support withheld.⁷²

It has however been proposed that where sanctions are too severe they may encourage compliance with the letter of the law rather than the spirit/objective of the law.⁷³ This line of argument does appear tenable under hard law regimes given their mandatory/compulsion nature. However, it may not apply in the case of gender quotas. Given that quotas usually seek to achieve quantitative objectives, a compliance with the letter of the law e.g. 30% representation for female directors, translates in the strict sense to an ultimate compliance with the regulation.⁷⁴ However, as mentioned earlier, where the attained target is not sustainable after the law ceases to exist, the spirit of the law has not been complied with. A similar outcome may also be expected with Ireland's SOEs because while their relationship with the State does suggest a higher level of compliance, the absence of a mandatory imposition will encourage varied deviations from the requirement. The state of gender balance on State boards under the Government Policy target is illustrative of this outcome. Deviations may however be less in the case of SOEs compared to other companies.

⁷⁰ [thejournal.ie](http://www.thejournal.ie), We Now Have More Female TDs than Ever Before - But Do We Really Have Gender Quotas to Thank? : A comprehensive analysis of the historic election of 35 women to the 32nd Dáil (2016). Available at: <http://www.thejournal.ie/women-in-32nd-dail-election-2016-2630150-Mar2016/>. Accessed 25/04/16.

⁷¹ *ibid.*

⁷² The required minimum representation increases to 40% after seven years. *Electoral (Amendment) (Political Funding) Act 2012 s. 42.*

⁷³ While this form of effect on compliance may not be visible in the descriptive representation of women (numbers of women appointed) given their numerically based objective, it could be identifiable in the substantive and symbolic representation of women which will in the long run go to negate the intention of putting more women on boards. Substantive representation is compromised where women are not encouraged to contribute to board activities and decision-making while their symbolic representation which represents the public's attitude toward women on boards if compromised, could affect future trends for women representation on boards negatively. See Franceschet S, Krook M and Piscopo J, 'Conceptualizing the Impact of Gender Quotas' in Franceschet S, Krook M and Piscopo J, (eds.) *The Impact of Gender Quotas* (Oxford: Oxford University Press, 2012) p.11.

⁷⁴ Dahlerup D, *The Impact of Gender Quotas* (Oxford: Oxford University Press, 2012) Preface.

The experience of Spain shows the significance of the quality of applicable sanctions accompanying gender quotas, in terms of compliance.⁷⁵ The consequence for non-compliance under the Spanish gender quota law is viewed as an incentive rather than sanction as it lacks a punitive nature. Under the law, the requirement for gender balance on boards is a factor taken into consideration before a company is granted State support through contracts, procurements or funding.⁷⁶ Incentives would appear to be more of an indirect or subtle approach to compel compliance. On the other hand, disincentives such as the punitive penalties that are applicable in Norway and France are a more direct approach in discouraging non-compliance with quotas.⁷⁷

iv. Gender Quotas and Boardroom Quality

Gender quotas could result in mixed consequences for boardroom representation. While quotas may be considered a good idea as they are an effective means for increasing female representation numerically and could encourage a positive change of attitude towards women in decision-making,⁷⁸ they do come across as a double-edged solution, as quotas could also prevent the harnessing of the values of gender balance on boards.⁷⁹ This explains why even

⁷⁵ See discussion in Chapter Two, p.92

⁷⁶ See *Constitutional Act 3/2007 of 22 March for Effective Equality between Women and Men, Chapter IV, Title IV, Art. 50 (Corporate equality mark)* available at: http://www.isotita.gr/var/uploads/NOMOTHESIA/INTERNATIONAL/SPANISH%20constitutional%20act3_2007_en.pdf Accessed 27/04/16. ; Suggesting that companies follow the recommendations of the Act so as to reach the Corporate Equality Mark so as to have more chances of favourable considerations with the State.

⁷⁷ See detailed discussion in Chapter Four on the Norwegian gender quota.

⁷⁸ Mansbridge (note 35 above) p. 638; see also Kittilson, (note 62 above).

⁷⁹ The practical consequences of gender quotas are discussed in Chapter 4. See Mansbridge (note 35 above) p. 631. See Baldez L, 'The Pros and Cons of Gender Quotas Laws: What Happens When You Kick Men Out and Let Women In' (2006) 2(1) *Politics & Gender* 102. While it is easy to assess their effectiveness in terms of their numerical target, the middle or long-term indirect effects of quotas are usually more difficult to assess. See Pande R and Ford D, 'Gender Quotas and Female Leadership: A Review' (2011) *Background Paper for the World Development Report on Gender*. Available at: http://scholar.harvard.edu/files/rpande/files/gender_quotas_-_april_2011.pdf. Accessed 20/04/16.

though the support for gender quotas is said to be growing,⁸⁰ their use as an instrument to increase the representation of female directors on boards is yet to have global consensus. A mandatory imposition could influence a hostile attitude towards those that were included on the board through it, resulting in a lack of co-operation amongst board members. Langevoort argues that an aggressive law such as mandatory gender quotas could alter the social arrangement of the board that would make it less effective as a decision-making and monitoring group.⁸¹ Also, a major opposition to gender quota is predicated on the view that it challenges the principle of merit in recruitment/appointment of board members.⁸² Opponents to gender quota have argued that such sub-optimal appointments could encourage lower quality decision-making with less qualified females being appointed to boards.⁸³

v. Gender Quotas and Distributive Justice

From an individual justice perspective, gender quotas aimed at increasing diversity are considered to be contravening the principle of non-discrimination

⁸⁰ *Grant Thornton International Business Report 2014* (note 50 above).

⁸¹ Langevoort D, 'The Human Nature of Corporate Boards: Laws, Norms and the Unintended Consequences of Independence and Accountability' (2001) 89 *Georgetown Law Journal* 831.

⁸² Tienari J, Holgersson C, Merilainen S and Hook P, 'Gender, Management and Market Discourse: The Case of Gender Quotas in the Swedish and Finnish Media' (2009) 16(4) *Gender, Work and Organization* 509; Pande and Ford (note 464 above) p.12. A major opposition to the imposition of quotas in Norway was that it would lead to the appointment of incompetent and inexperienced women for Board roles. See Engelstad F, 'Limits to State Intervention into the Private Sector Economy: Aspects of Property Rights in Social Democratic Societies' in Engelstad F and Teigen M, (eds.) *Firms, Boards and Gender Quotas: Comparative Perspectives* Comparative Social Research Vol. 29 (Bingley, UK: Emerald Group Publishing Limited, 2012) p. 255.

⁸³ The implementation of gender quota in Norway was however not consistent with this line of argument (see Chapter 4 for a more detailed discussion on the illustration with Norway) although it continues to underscore the opposition to quotas. See Storvik A, 'Women on Boards: Experience from the Norwegian Quota Reform' (2011) 9(1) *CESifo Dice Report* p. 34.

and equality of all.⁸⁴ This view holds that quotas could be discriminatory to those not benefitting from it.⁸⁵ In the case of gender quotas aimed at increasing female gender representation on boards, the male gender may be seen as being discriminated against, in favour of females. Interestingly, pro-quota arguments also rely on the efficiency of quotas in promoting justice and equality, as justification.⁸⁶ The use of gender quotas in seeking to redistribute justice however does not take into account contextual differences such as political and cultural practices that perpetuate discrimination in a society or organisation. Being a hard law instrument, quotas are characterised as a ‘one size fits all approach’ and due to its inflexibility, are not always suitable in varied or changing environments.

Certain exceptions have however been made by the Court of Justice of the European Union (CJEU) where gender quotas cannot be construed as discriminating against the over-represented gender.⁸⁷

⁸⁴Seierstad C, ‘Gender Quotas on Corporate Boards in Norway, Necessary but not Ideal’ in Machold S, Huse M, Hansen K, and Brogi M, (eds.) *Getting Women on to Corporate Boards: A Snowball Starting in Norway* (Cheltenham, UK: Edward Elgar Publishing, 2013) p. 138. This line of argument against quotas is also used to argue for gender quotas that are aimed at eliminating discrimination against women and promoting equality, highlighting the double-edged feature of gender quotas. The many attempts (including the proposed Directive to put more women on boards of large EU companies) by the EU to promote women in the workplace and decision-making positions have been underlined by the need to foster equality and eradicate discrimination within Member States. See for example, European Commission, *Roadmap for Equality between Women and Men (2006-2010)* COM (2006) 92 final, Available at: http://www.eurosfairer.prd.fr/7pc/doc/1301469460_ke3110702enc_002.pdf. Accessed 20/04/16 and *The European Pact for Gender Equality 2011-2020*, Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/119628.pdf. Accessed 20/04/16.

⁸⁵Reynolds W, ‘Affirmative Action and its Negative Repercussions’ in Orleans H and O’Neill B, (eds.) *Affirmative Action Revisited. Annals of the American Academy of Political and Social Science* (Newbury Park, CA: Sage, 1992) p. 38-49; Lynch, F. *The Diversity Machine* (New York: Free Press, 1997) p. 33.

⁸⁶European Commission, *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Gender balance in business leadership: a contribution to smart, sustainable and inclusive growth* COM (2012) 615 final 14.11.2012, p. 5.

⁸⁷See discussion below.

vi. Undue Burden under Gender Quota Regimes

The undue burden which legislative gender quotas may impose on business/enterprise and on the State (in respect of SOEs) as a result of monitoring costs and an intrusion on business autonomy, which could compromise their economic objectives are some of the common reasons why gender quotas are still a subject of constant debate rather than a popular solution to female under-representation on boards.⁸⁸ Invasion of corporate autonomy may not be an issue for SOEs given the State's control over certain strategic areas regarding SOE operations,⁸⁹ including the appointment of directors which is the prerogative of the sponsoring Minister.⁹⁰ In addition, monitoring costs for the State may also not be considered a significant factor in the case of SOEs because given the close relationship between the two it is expected to be a cheaper process for the State.⁹¹ The monitoring role of the State may however be compromised as a result of a conflict of interest arising from the ownership interest of the State and the public interest. A focus on meeting the mandatory requirements could also incur indirect costs that include diverting the attention of the board and management from other strategic issues relating to commercial objectives of the company.⁹² For SOEs in Ireland where commercial objectives have equally become as prioritised as social objectives,⁹³ it may be argued that such mandatory requirements imposed could detract from a concentration on commercial objectives. For example, if faced with the pressure of meeting a certain quota of

⁸⁸ In Norway for example, attempts to comply with the gender quotas meant an increase in board size for some companies. (See Chapter 4 for further discussion). Other examples of mandatory corporate governance requirements are those being implemented in USA and South Africa under the Sarbanes-Oxley Act and the King Committee on Corporate Governance respectively, which are said to have imposed high cost of compliance. See, Nedelchev M, 'Good Practices in Corporate Governance: One Size Fits All vs. Comply and Explain' (2013) 4(6) *International Journal of Business Administration* 75.

⁸⁹ Department of Finance, *Code of Practice for the Governance of State Bodies 2009*, Provision 2.1. Available at: <http://govacc.per.gov.ie/files/2012/03/codepractstatebod09.pdf>. Accessed 12/04/16.

⁹⁰ *ibid*, Provision 2.17.

⁹¹ Natividad (note 431 above).

⁹² Nedelchev (note 88 above) p. 77-78.

⁹³ See discussion on the Irish SOE sector in Chapter Two.

female representation within by a target date, the Minister and board Chair may pay less attention to other profit-oriented strategies.

Gender quotas could also be burdensome to SOEs particularly those operating in sectors where there is a dearth of qualified females.⁹⁴ It could be challenging to find suitable and available females to be appointed onto boards. The drawbacks with regard to creating undue burden notwithstanding, the economic and social benefits of gender balance on boards are believed to far outweigh those drawbacks.

vii. Gender Quotas as Positive Action

Positive action refers to any measure aimed at furthering the goal of equality between men and women.⁹⁵ A narrower description sees Positive action as only involving measures relating to preferential treatment for members of a disadvantaged or under-represented position.⁹⁶ The preferential treatment usually entails specified gender-based benefits for members of one gender. While not all measures aimed at benefitting women can be referred to as Positive action,⁹⁷ most of them, particularly those that aim to address discriminatory stereotypes and obstacles can be termed Positive action. They are commonly

⁹⁴These sectors may include technical related sectors where various research show that women are not easily identifiable in these sectors indicating that it may prove more difficult to find many available women for board positions. In Ireland, statistics on third level graduates show that the proportions of men that study in the sciences and engineering/construction fields far outweigh the proportion of women in those fields. In 2013 the figures stood at about 38% to 12%. Central Statistics Office, *Women and Men in Ireland 2013*. Available at: www.cso.ie. Accessed 20/04/16.

⁹⁵ Marc de Vos, *Beyond Formal Equality: Positive Action under Directives 2000/43 and 2000/78*, (Belgium: European Commission, 2007) p.12.

⁹⁶ Ramos Martin N, 'Positive Action in EU Gender Equality Law' (2013) *Working Paper 139* Amsterdam Institute for Advanced Labour Studies, University of Amsterdam, p.13.

⁹⁷ Some such as childcare policies and leave allowances are more like social policies.

used to ensure balanced participation of both genders including on company boards.⁹⁸ Gender quotas are therefore a form of Positive action.

(a.)Existing Framework for Positive Action

Notwithstanding the potential of Positive action to raise issues of discrimination of the other gender, it is still widely permitted internationally and at national levels. Art. 23 Charter of Fundamental Rights of the European Union provides that “the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex”.⁹⁹ Art. 157(4) Treaty on the Functioning of the European Union (TFEU)¹⁰⁰ and Art. 2(5) of the Equal Treatment Directive¹⁰¹ also have similar provisions that permit the use of measures to prevent under-representation of a particular gender. The United Nation Human Right Committee charged with the responsibility of interpreting the International Covenant on Civil and Political Rights (ICCPR), also recognised the need for Positive action under the Covenant:

“The principle of equality sometimes requires States to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant.....Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However as long as such action is needed to

⁹⁸ Selanec G and Senden L, ‘Positive Action Measures to Ensure Full Equality in Practice between Men and Women, Including on Company Boards’ (European Commission, 2012) p. 7.

⁹⁹ OJ C 326, 26.10.2012.

¹⁰⁰ Consolidated Version of the Treaty on European Union [2008] OJ C 115.

¹⁰¹ Council Directive 2000/78/EC of 27 November establishing a general framework for equal treatment in employment and occupation.

correct discrimination in fact, it is a case of legitimate differentiation under the Covenant".¹⁰²

Art. 4 (1) of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) also allows the use of special measures aimed at contributing to equality between men and women.¹⁰³ At the national level, permission to use Positive action is more commonly contained in equality legislation. For example the UK Equality Act 2010 does not prohibit any actions or measures aimed at addressing the disadvantage encountered by persons.¹⁰⁴ Positive action is similarly provided for in Irish law under the Employment Equality Act 1998¹⁰⁵ and Equal Status Act 2000.¹⁰⁶

As mentioned earlier, a common criticism of gender quotas is the fact that they undermine anti-discrimination laws on grounds of gender and is discriminatory towards the over-represented gender on boards by reserving positions specifically to be filled by the under-represented gender. It is on this basis that gender quota laws could potentially be challenged. In fact, in 2016 Ireland's electoral quota law was challenged on constitutional grounds by a person of the over-represented gender, following the outcome of the pre-election candidate selection process.¹⁰⁷ Brian Mohan, a Fianna Fail activist challenged the constitutionality of provisions of the Electoral (Political Funding) Act 2012 which implementation meant that his ambition to be selected as a candidate for his constituency (Dublin Central) was thwarted in favour of a woman in order that the party fulfilled the 30% female representation on the Act. He viewed the laws linking State funding of political parties to their achievement of gender quotas

¹⁰² Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994) 10, 13.

¹⁰³ CEDAW is Available at:

<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article4>. Accessed 27/04/16.

¹⁰⁴ s.158 (2) (a) & (b).

¹⁰⁵ s. 24 (1).

¹⁰⁶ s. 14(b) (i).

¹⁰⁷ The case is still ongoing at the time of writing. See Mary Carolan, 'Finna Fail Activist Challenges Law on Electoral Gender Quotas' *The Irish Times*, 19 January 2016.

when seeking candidates for election as “punitive” and “crude”.¹⁰⁸ While it may not be expected that a legislative gender quota directed at SOEs will be opposed/challenged by SOEs or directors given their relationship with the State, criticisms of the quota could emanate from the private sector, human right organisations and sectors of the society that oppose the principles of a quota system. Such criticisms could impact negatively by discouraging a subsequent adoption in the private sector to address a similar issue, as may be expected by the State and other pro-quota organisations.

viii. Court of Justice of the European Union (CJEU) and Gender Quotas

Being a common ground for challenging gender quotas, it has generated a lot of controversy and inconsistencies including at the Court of Justice for the European Union (CJEU). Nevertheless, certain decisions have highlighted that when certain conditions are included in the implementation of the law i.e. gender quota, the law may not be regarded as contravening anti-discrimination or gender equality laws. Positive action measures should be a necessary means towards achieving a legitimate aim, be proportionate to the aim and be justifiable.¹⁰⁹ In addition, CJEU requires that positive action measures meet the following standard:

- i. should only be used in cases where one gender is under-represented
- ii. cannot displace the requirement to assess objectively and consistently the suitability for appointment of each candidate
- iii. cannot give automatic and unconditional priority to female candidates over male candidates (or vice versa)

¹⁰⁸ *ibid.*

¹⁰⁹ Ramos Martin N, ‘Positive Action in EU Gender Equality Law’ (2013) *Working Paper 139* Amsterdam Institute for Advanced Labour Studies, University of Amsterdam, p.16.

- iv. can only be used to appoint on the grounds of gender where candidates are legitimately judged to be of equal merit.¹¹⁰

In deciding the *Kalanke* case,¹¹¹ the court held that the practice whereby women who were equally qualified with their male counterparts were given preferential treatment in promotion to sectors where they were under-represented, contravened the general principle of equal treatment on the grounds of gender, in spite of the Article 2(4) of the Equal Treatment Directive 1976 which provided that “ this Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women’s opportunities...”.¹¹² The facts of the case state that *Kalanke* contested a decision not to promote him in favour of a female applicant with similar qualification and work experience to his. Earlier, the national court had relied on the provisions of a national law which was to the effect that women should be given priority appointments where they have the same qualifications as men applying in sectors where they are underrepresented.¹¹³ At the European Court level the court held that Article 2(4) must be read restrictively. National rules/laws which guarantee women absolute and unconditional priority for appointment or promotion go beyond promoting equal opportunities and are outside the ambit of the exception in Article 2(4). Hence, Article 2(4) of the Directive precludes the national law. In subsequent decisions however, the ECJ adopted a more liberal approach in interpreting the use of gender quotas. In the case of *Marschall*,¹¹⁴ the court opined that the positive action measure implemented did not contravene the gender equality principle. In *Marschall* case, a regulation passed by a German State government was being contested. The

¹¹⁰ These standards can be identified from the decisions of the court in related cases including Case C-450/93 *Kalanke v Freie Hansestadt Bremen* [1995] ECR I-3051(iii); Case C-409/95, *Helmut Marschall v Land Nordrhein Westfalen* [1887] ECR I-6363 (ii & iv); Case C-158/97, *Badeck v Landesanwalt beim Staatsgerichtshof des Landes hessen* [1999] ECR I-1875(i & ii & iv).

¹¹¹ Case C-450/93 *Kalanke v Freie Hansestadt Bremen* [1995] ECR I-3051.

¹¹² Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

¹¹³ Bremen Law on Equal Treatment for Men and Women in the Public Service, para 4.

¹¹⁴ Case C-409/95, *Helmut Marschall v Land Nordrhein Westfalen* [1887] ECR I-6363.

regulation made provision for preferential treatment to be given to female candidates in employment to State service where an assessment had been carried out to show that they had equivalent qualification with the male candidate. The court held that the principle of gender equality was not violated based on the pre-assessment that needed to be carried out which gave the male candidate an opportunity to show he had superior qualification and thus be appointed. The ECJ also adopted the same view in the subsequent case of *Badeck*¹¹⁵ where a German State law also provided for preferential treatment for female candidates in a recruitment exercise following an assessment procedure. By these decisions, the ECJ thus appear to support the use of positive action that seeks to give preferential treatment to a disadvantaged gender in opportunities in so far as an assessment is carried out to ascertain a similar qualification between the female and male candidate. Such assessment ensures that the preferred candidate does not enjoy an automatic and unconditional advantage that is unmerited and which would imply discrimination against the other candidate and a violation of the principle of gender equality. This approach of applying positive action measures conditionally was adopted in the UK under the *Equality Law 2010* in respect of appointments to company boards (including SOEs)¹¹⁶ with particular reference to gender diversity. The law provides an avenue through which companies can address under-representation on boards by encouraging and enabling applications from the under-represented gender, provided appointments are based on a pre-assessment of merit.¹¹⁷ Failing this pre-assessment, such appointments will be considered in breach of existing anti-discrimination law on grounds of gender.

¹¹⁵ Case C-158/97, *Badeck v Landesanwalt beim Staatsgerichtshof des Landes hessen* [1999] ECR I-1875.

¹¹⁶ See s.149.

¹¹⁷ See s. 159 and 158.

D. Corporate Governance Codes as a Tool to Address Gender Imbalance on Boards of Ireland's SOEs

The success of soft law is largely dependent on the attitude of the regulated to compliance.¹¹⁸ 'Comply or explain' principle is a central element of Corporate Governance Codes/frameworks that serves to maintain the voluntariness and flexibility which characterises soft law regime of governance. As said earlier, much of the criticism for the soft law relates to the fact that its nature of voluntariness and flexibility, implemented through 'comply or explain' principle, encourages sub-optimal compliance or no compliance at all with rules.¹¹⁹ These criticisms notwithstanding, Corporate Governance Codes have increasingly become widely used as a tool for setting good corporate governance standards.

Aguilera and Cuervo-Cazurra have argued that Corporate Governance Codes compensate for the limitations in the legal system regarding the protection of minority shareholders and stakeholders.¹²⁰ In effect, the adoption of codes of conduct has usually been brought about by the need to enhance efficiency and secure legitimacy in corporate governance. The increasing attention to the need for improved gender balance on boards in light of contributions female directors can make to organisational effectiveness and legitimacy can therefore create a need for requirements to increase female representation on boards to be made or included in a Code.

The voluntary nature and flexibility of Governance Codes is said to instil a feeling of ownership in those it seeks to regulate as they feel they can exercise their

¹¹⁸Cini (note 9 above) p. 194; Roberts J and Sanderson P, 'Soft Regulation? Conforming to the Principle of 'Comply or Explain' *Full Research Report ESRC End of Award Report, RES-000-23-1501* (Sindon: ESRC, 2009) and Aguilera R and Cuervo-Cazurra A, Codes of Good Governance' (2009) 17(3) *Corporate Governance: An International Review* 383.

¹¹⁹Cini (note 9 above) p. 194; See also Keller H, 'Corporate Codes of Conduct and their Implementation: The Question of Legitimacy' in Wolfrum R and Roben V, (eds.) *Legitimacy in International Law* (Berlin: Springer, 2008); Also Available at: http://www.yale.edu/macmillan/Heken_Keller_Paper.pdf.pg.46-47. Accessed 23/04/16.

¹²⁰ See Aguilera and Cuervo-Cazurra (2004) (note 3 above) p. 427.

discretion and adjust the rules to suit their peculiarities.¹²¹ Such feeling of ownership aids compliance with the rules. Accordingly, in seeking to use such a Code to address gender imbalance on boards of Irish SOEs for instance, a tenable argument would be its potential usefulness in accommodating the heterogeneity of the companies (the availability of female candidates is not the same across all sectors) within the sector. For example, the availability of suitable female candidates for director positions could vary across sectors with some sectors such as those more inclined to technical expertise having fewer women with such expertise to appoint from.¹²² An exercise of discretion in applying the rules under such circumstance is likely to be lauded and thus elicit a high level of compliance. Compliance and monitoring of compliance however remain a major factor that undermines the effectiveness of soft law governance.¹²³

¹²¹ In their interview of directors from UK and Germany companies Sanderson et al (note 9 above) p. 13-14, found that UK directors were more willing to comply with the Corporate Governance Code as they felt their interests had been taken into consideration and the Code's flexibility indicated a recognition of company individualization. The German directors on the other hand viewed their Code as similar to hard law which had been externally created and imposed on industry without consultation. The willingness to comply was much less among Germany's directors.

¹²² For instance, a 2014 research has shown that there is a gender imbalance in people who study science and technology related subjects in Ireland leading to few women in related jobs. Out of 117,800 people working in science and technology, only 25% were women. Such imbalance could reflect on board roles particularly in relation to occupying expert positions on certain boards as it will result in men dominating science and technology expert positions, an outcome that will be viewed as marginalising women. See Accenture, *Powering Economic Growth: Attracting More Young Women into Science and Technology* (2014). Available at: https://www.accenture.com/ie-en/~media/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Industries_14/Accenture-STEM-Powering-Economic-Growth.pdf. Accessed 01/05/16.

¹²³ See Chapter Five for further discussion. See also MacNeil I and Li X, 'Comply or Explain: Market Discipline and Non-Compliance with the Combined Code' (2006) 14(5) *Corporate Governance: An International Review* 486; Keller (note 119 above); RiskMetrics Group, *Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States* (Brussels, Belgium: European Commission), 2009); Arcot S, Bruno V and Faure-Grimaud A, 'Corporate Governance in the UK: Is the Comply or Explain Approach Working?' (2010) 30(2) *International Review of Law and Economics* 193; Seidl D, Sanderson P and Roberts J, 'Applying the 'Comply-or-Explain' Principle: Discursive Legitimacy Tactics With Regard to Codes of Corporate Governance' (2012) 17(3) *Journal of Management and Governance* 791; Inwinkl P, Josefsson S and Wallman M, 'The Comply-or-Explain Principle: Stakeholders' Views on how to Improve the 'Explain' Approach'(2014) Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2331285 . Accessed 23/04/16.

i. Corporate Governance Codes and ‘Comply or Explain’ Principle (Flexibility)

Corporate governance code regimes characteristically rely on ‘comply or explain principle’ in their implementation. The principle affords the flexibility which such regimes seek to maintain in the interest of business individuality, autonomy and diversity. EU Directive 2006/46/EC mandates the use of comply or explain approach in the application of Corporate Governance Codes for all Member States in order to further flexibility with businesses.¹²⁴ Under the principle, the regulated persons or organisations can avoid compliance with the rules or aims of the regulation for reasons that may be cogent or not. In the absence of effective monitoring, rules of a binding nature and sanctions, the use of discretion in complying with the regulation which the principle allows encourages increasing occasions of non-compliance and low quality of explanations for non-compliance.¹²⁵ An exercise of discretion creates a wide gap between the aims of the regulation and the outcome of the regulation. The exercise of discretion under a soft law regime is not just used in avoiding compliance but also to achieve self-interested purposes and undermine the objective of the regulation.¹²⁶ To this extent the principle attracted more criticism following the corporate governance failures that were contributory to the global economic crisis as they illustrated a diversion from the recommendations and principles of

¹²⁴ *DIRECTIVE 2006/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings* OJ L 224, 16.8.2006, Article 46a. See Securities Market Association, *Finnish Corporate Governance Code 2010*, (Finnish Code) p.6; Financial Reporting Council, *UK Corporate Governance Code 2014* (UK Code) p. 4.

¹²⁵ Sanderson et al (note 9 above).

¹²⁶ *ibid.*

Corporate Governance Codes as a result of self-interested purposes or outright disregard for compliance by boards.¹²⁷

A further problem posed by the 'comply or explain principle' is the informative quality of the explanations offered. In the UK for example, a 2014 report noted that despite an increased rate of compliance with the UK Corporate Governance Code quality of explanations offered for non-compliance still varied in informative quality.¹²⁸ The drawback with the 'comply or explain principle' ultimately threatens one of the major tenets of the corporate governance code regime which is to encourage and enhance the provision of reliable information and transparency between companies and shareholders/stakeholders and one on which the aim to enhance gender balance on boards relies on: a disclosure and reporting regime. The provision of low quality explanations is a main source of criticism for the functioning of the 'comply or explain' principle.¹²⁹ A 2009 survey of several companies across the EU revealed a high level of sub-standard informative quality of explanations offered for deviations from Corporate Governance Codes.¹³⁰

Corporate Governance Codes are ultimately aimed at harmonising the information made available to shareholders and improving the quality of disclosure. In line with this, corporate governance disclosure requirements

¹²⁷ Nedelchev (note 88 above) p. 79. Drawing from agency and stakeholder theories, self-interest purposes may not only be viewed from an individual level perspective but could also include the interest of management as a group which is not in congruence with the interests of the shareholders and relevant stakeholders of the company. See Jensen M and Meckling W, 'Theory of the Firm: Managerial Behaviour: Agency Costs and Ownership Structure' (1976) 3(4) *Journal of Financial Economics* 305 and Freeman, R. 'A Stakeholder Theory of the Modern Corporation' in Hartman, L. (ed.) *Perspectives in Business Ethics* (Boston, Massachusetts: McGraw-Hill, 2001) p. 171-181.

¹²⁸ Grant Thornton, *Corporate Governance Review 2014: Plotting a New Course to Improved Governance* (2014) p. 14. Available at: http://www.grant-thornton.co.uk/Global/Publication_pdf/Corporate-Governance-Review-2014.pdf. 21/04/16.

¹²⁹ European Commission, *Green Paper, The EU Corporate Governance Framework COM (2011)164 final*, Brussels, 5.4.2011 (European Commission *Green Paper*). Available at: http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf. Accessed 21/04/16. See also discussion in Chapter 5.

¹³⁰ RiskMetric Group, *Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States* (note 123 above).

attempt to reflect high corporate governance standards including the extent of gender balance on boards. In Australia and the UK for example disclosure requirements have been extended to include more detailed specifics in relation to female representation on boards and other organisational levels.¹³¹ In 2014, the European Union (EU) introduced disclosure requirements including diversity disclosure, also aimed at enhancing transparency to shareholders and improving governance standards.¹³² Corporate disclosures in corporate governance publications are potentially a useful avenue under soft law regimes through which the objective of increased gender balance on boards could be achieved. The undermining of such disclosures therefore through the ‘comply or explain’ principle could jeopardise the objective of improving gender balance. The usefulness of such disclosures lies in their availability and informative quality which is not guaranteed under a ‘comply or explain’ approach given its flexibility in application and the non-binding nature of Corporate Governance Codes. Given this, and in the absence of severe sanctions, more effective monitoring will be required in order to ensure required disclosures are being made and where not made, the explanation given is of the highest quality. This could serve to put companies/boards at a higher standard of accountability. A lack of adequate and effective monitoring of compliance with Corporate Governance Codes including with the ‘comply or explain’ approach is observed to be a major drawback with Corporate Governance Code regimes.¹³³

¹³¹ See a more detailed discussion of these disclosure requirements in the discussion below.

¹³² *DIRECTIVE 2014/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups* L 330/1. 15.11.2014, 19.

¹³³ Aguilera R and Cuervo-Cazurra A, ‘Codes of Good Governance’ (2009) 17(3) *Corporate Governance: An International Review* 9; Horak H and Bodiroga-Vukobrat N, ‘EU Member States’ Experience with the ‘Comply or Explain’ Principle in Corporate Governance’ (2011) 7(7) *Croatian Yearbook of European Law and Policy* p. 199; Sergakis K, ‘EU Corporate Governance: A New Supervisory Mechanism for the ‘Comply or Explain’ Principle?’ (2013) 10(3) *European Company and Financial Law Review* 411.

ii. Monitoring Compliance, Deviations and Explanations under Corporate Governance Codes

The need for monitoring of compliance in terms of corporate governance stems from the separation of ownership and control of companies and dates as far back as the evolution of the modern corporation.¹³⁴ Monitoring is made more challenging as a result of the non-enforceability of corporate governance norms.¹³⁵ The need for sufficient and effective monitoring was highlighted in consultation responses to the *2011 Green Paper on the EU Corporate Governance Framework*,¹³⁶ and the *2012 Action Plan on European Company Law and Corporate Governance* also emphasised the need for high quality explanations.¹³⁷ In 2014 the European Commission published Recommendations for listed companies,¹³⁸ aimed at improving the quality of explanations provided when Corporate Governance Codes are not applied.¹³⁹ The European Commission's Recommendations also include the need for more State-level involvement in establishing effective monitoring as this will better motivate companies in compliance with Codes and giving better quality explanations in cases of deviation.¹⁴⁰ The activities of the EU towards ensuring improved quality of disclosures and explanations are testament to the potential drawbacks associated

¹³⁴ Fama E and Jensen M, 'Separation of Ownership and Control' (1983) 26(2) *Journal of Law and Economics* 301.

¹³⁵ Cuervo A, 'Corporate Governance Mechanisms: A Plea for Less Code of Good Governance and More Market Control' (2002) 10(2) *Corporate Governance: An International Review* 85.

¹³⁶ *European Commission Green Paper* (note 129 above).

¹³⁷ *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Action Plan: European company law and corporate governance-a modern legal framework for more engaged shareholders and sustainable companies/*COM/2012/0740 final*/.*

¹³⁸ Listed companies within the meaning of Article 4(1) (14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

¹³⁹ European Commission, *COMMISSION RECOMMENDATION* of 9 April 2014 *on the quality of corporate governance reporting ('comply or explain')* (2014/208/EU) April 2014, Section II and III.

¹⁴⁰ *ibid*, Section IV.

with Corporate Governance Codes regarding their capacity to influence an application of best practice successfully.

(a.)Monitoring Agents

Monitoring of compliance with Corporate Governance Codes is undertaken by listing authorities in most countries. In Finland, compliance with the Finnish Code of Corporate Governance is a requirement of the Helsinki Stock Exchange Rules for listed companies¹⁴¹ and is thus monitored by the NASDAQ OMX Helsinki. By virtue of the *2008 Act on the Financial Supervisory Authority, No. 878*, the Financial Supervision Authority also monitors the application of the Finnish Code. In the UK compliance with Corporate Governance Codes is monitored by the UK Listing Authority through the issuance of the Listing Rules and the Disclosure and Transparency Rules.¹⁴² Australia Stock Exchange (ASX) Listing Rules makes it mandatory for listed companies to disclose their corporate governance practices.¹⁴³ Listing rules are also applied on a comply or explain approach and thereby tend to further encourage non-compliance or low quality explanation.¹⁴⁴ A variety of sanctions including requesting for corrective action; issuing a reprimand for minor breaches; suspension of listing; imposition of fines and ultimately, delisting are applicable under these Listing rules which may only become applicable under particular deviations from the Rules.¹⁴⁵

Shareholders also constitute a source of monitoring compliance. The rights of shareholders include the right to question information provided by companies

¹⁴¹ NASDAQ OMX Helsinki Ltd, Rules of the Exchange 2 October 2013, (Helsinki Rules) Rule 2.2.5.

¹⁴² Financial Conduct Authority, Disclosure and Transparency Rule (DTR) 7.2.1 & 7.2.2. UK Listing Authority, Available at: <http://fshandbook.info/FS/html/FCA/DTR/7/2>. Accessed 18/04/16.

¹⁴³ ASX Listing Rule 4.10.3 (2014) Available at: <http://www.asx.com.au/documents/rules/Chapter04.pdf>. Accessed 18/04/16.

¹⁴⁴ See ASX Listing Rules, Listing Rule 4.10.3 (note 143 above); FCA, DTR 7.2.3(b) (note 136 above) and Helsinki Rules, Rule 2.2.6(note 141 above).

¹⁴⁵ ASX Listing Rules, Listing Rule 18.8; 17.3.1;17.12; FCA, Listing Rules (LR) 5.1.1 & 5.1.2; Helsinki Rules, Rule 9.2.3-9.2.5

with regard to their compliance with corporate governance requirements.¹⁴⁶ Shareholders may exert monitoring influence by taking action through their voting powers.¹⁴⁷ The extent of monitoring or supervision done by monitoring agents is limited.¹⁴⁸ The variety in the ownership structure of companies on Stock Exchanges e.g. institutional ownership, State ownership, individual ownership means that shareholders will have varied /differing interests in companies and suggests that there is a gap in the way shareholders monitor companies.¹⁴⁹ A 'free-rider' problem best summarises the situation whereby individual shareholders are not willing to bear the cost of monitoring on their own and may either choose to ignore the irregularity or exit by selling their shares.¹⁵⁰ Shareholders' interests are mostly limited to profit/returns and they are unlikely to scrutinise contents of explanations. Institutional investors are more suited and more interested to exert monitoring/control over companies as they have larger investments/higher stakes in companies and act as agents to those they represent. The passive approach of institutional shareholders to monitoring corporate governance is however a concern. In the UK for example, the passive attitude of UK institutional shareholders to monitoring companies was recognized and resulted in the introduction in 2010 of the Stewardship Code which is aimed at improving institutional investors' engagement with investee companies.¹⁵¹ The Stewardship Code recommends best practice standards in the monitoring of investee companies¹⁵² but is also implemented on a 'comply or explain basis'¹⁵³

¹⁴⁶ See for example, Securities Market Association, The Finnish Corporate Governance Code 2010, p.7; Australia Stock Exchange (ASX) Corporate Governance Council, *Corporate Governance Principles and Recommendations (3rd Edition)* Principle 6.

¹⁴⁷ For example, s.168 of the *UK Companies Act 2006* gives shareholders the ability to appoint and dismiss individual directors through an exercise of voting.

¹⁴⁸ *Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States* (2009) (note 123 above) p. 77. See also European Commission *Green Paper* (note 512 above) p.19.

¹⁴⁹ Jakobsson U and Korkeamäki T, 'Ownership and Governance of Large Finnish Firms' *Prime Minister's Office Reports 6/2014* (Finland: Prime Minister Office, 2014).

¹⁵⁰ Grossman S and Hart O, 'Takeover Bids, The Free-Rider Problem and the Theory of the Corporation' (1980) 11(1) *The Bell Journal of Economics* 42.

¹⁵¹ The Code was revised in 2012. See Financial Reporting Council, *The UK Stewardship Code (2012)* Available at: <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Stewardship-Code-September-2012.pdf>. Accessed 22/04/16.

¹⁵² *ibid.*

¹⁵³ *ibid*, p.4.

which may have encouraged the 'box-ticking' approach to the Code's Principles.¹⁵⁴ With almost 300 institutional investors indicating their commitment to the Principles of the Stewardship Code in 2014, considerable improvement was observed in the way they engaged with and monitored the corporate governance practices of investee companies though there was still a lot to be achieved as many Institutional shareholders still failed to follow through on their commitment to the Code.¹⁵⁵

In Australia, effective monitoring of corporate governance practices of investee companies by individual and institutional shareholders is also an area of concern for the State as it seeks to constantly reform and update shareholder engagement.¹⁵⁶ The inadequacy of shareholder monitoring in the EU is acknowledged in the European Commission's 2014 proposal to revise the current Shareholders Rights Directive (Shareholders Right Directive 2007/36) so as to address the low quality in shareholders and institutional shareholders' engagement with investee companies as well as other corporate governance related shortcomings in European listed companies.¹⁵⁷ In 2015 the proposal was backed by the European Parliament but is yet to become law at the time of writing this thesis.¹⁵⁸

¹⁵⁴ Financial Reporting Council, *Development in Corporate Governance and Stewardship 2014* (2015) p. 20.

¹⁵⁵ *ibid*, p. 17.

¹⁵⁶ Parliamentary Joint Committee on Corporations and Financial Services, *Better Shareholders – Better Company: Shareholder Engagement and Participation in Australia* (2008), Available at: http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/sharehold/report/report.pdf. Accessed 25/04/16; Australian Government CAMAC, *The AGM and Shareholder Engagement Discussion Paper* (2012), Available at: [http://www.camac.gov.au/camac/camac.nsf/byheadline/pdfdiscussion+papers/\\$file/agm.pdf](http://www.camac.gov.au/camac/camac.nsf/byheadline/pdfdiscussion+papers/$file/agm.pdf). Accessed 22/04/16.

¹⁵⁷ European Commission, *proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement*/* COM/2014/0213 final - 2014/0121 (COD) */.

¹⁵⁸ European Parliament (News), 'Give Shareholders More Say on Directors' Pay', Urge Legal Affairs Committee, MEP (2015). Available at: <http://www.europarl.europa.eu/news/en/news-room/content/20150504IPR49621/html/Give-shareholders-more-say-on-directors'-pay-urge-Legal-Affairs-Committee-MEPs>. Accessed 14/04/16. The approval of the Council of Member States is also required before it can become law.

SOEs may not however be susceptible to the drawbacks associated with the 'comply or explain' principle. Provisions of the Code of Practice for the Governance of State Bodies 2009 (Code of Practice), are mandatory in nature,¹⁵⁹ although peculiarities with certain SOEs could attract a waiver to compliance subject to specific supervisory controls.¹⁶⁰ This indicates a stark and significant difference between the Code of Practice and the traditional Corporate Governance Code for listed companies, indicating a definite difference in the extent of compliance under both instruments. It also puts the Code of Practice on a slightly higher pedestal in terms of regulatory enforceability. Monitoring under the Code of Practice is however also a concern. Monitoring the implementation of the Code of Practice faces even greater challenges as a higher standard of independence/autonomy is required in order to avoid any interference or influence from the State in the process.¹⁶¹ In effect, while the 'comply or explain' principle is said to provide an avenue for divergent practices thereby enhancing an environment of incoherence that could be detrimental to the aim of achieving a certain minimum proportion of women on boards, divergent practices may not occur with SOEs given the mandatory compliance requirement. Monitoring of compliance will however need to be effective and adequate.

iii. Corporate Governance Codes and Acceptance

As Corporate Governance Codes rely on the moral suasion or goodwill of the regulated to secure compliance, it is important that the objective of the regulation is accepted.¹⁶² Acceptance does not totally guarantee the presence of goodwill but it is more likely to be present where the regulation is accepted. Given the mandatory application of the Code of Practice, acceptance/goodwill for

¹⁵⁹ Department of Finance, *Code of Practice 2009*, provision 1.

¹⁶⁰ Supervisory controls include entering into an arrangement with the parent Department regarding the waiver and/or confirmation with the sponsoring Minister. See Department of Finance, *Code of Practice 2009*, provision 1.1 and provision 1.2.

¹⁶¹ See Chapter Five for further discussion.

¹⁶² See Cini (note 9 above) and Sanderson et al. (note 9 above).

the provisions of the Code may not be relevant for SOEs. With regard to a gender balance requirement in the Code of Practice, acceptance may particularly not be crucial in the short term but could become relevant in the long term with regard to sustaining the level of gender balance obtained. Effective monitoring would be necessary at this point to ensure compliance persists over time. Ireland's background in terms of appointing fewer women than men on State boards suggests that it will be unrealistic to assume that regulation requiring more female representation on State boards will be accepted voluntarily by the SOE sector. The current situation of gender representation on SOE boards where female director representation varies across SOE boards does reflect the attitude towards the Government policy of 40 percent target. It can however be expected that the inclusion of the requirement in the Code of Practice, thus making it a mandatory requirement, is likely to attract higher compliance. Acceptance of regulation can also be influenced by its conformance/similarity with existing regulatory practices.¹⁶³ Corporate governance of SOEs has been regulated through a soft law approach (more in relation to a lack of enforceable sanction), i.e. the Code of Practice for the Governance of State Bodies since 1992 and would likely be a more accepted instrument than gender quotas with severe sanctions in introducing new recommendations on gender balance.¹⁶⁴

iv. Corporate Governance Codes and Sanctions

Evidently, the absence of sanctions under a traditional Code is significant as it determines compliance and thus effectiveness of the regulation. However, while there are no express punitive sanctions, certain factors creating a punitive environment, could induce compliance under a soft law approach. This is particularly relevant for Ireland's SOEs as the Code of Practice, even though mandatory, lacks sanctions. By this, there is still some uncertainty as to if the Code of Practice will be complied with fully.

¹⁶³ Zerrilli (note 7 above) p. 12.

¹⁶⁴ It was issued in 1992 as 'State Bodies Guidelines'.

Pressure from external and internal sources could create a punitive environment that induces compliance.¹⁶⁵ Pressure in this sense, for SOEs, could arise from three perspectives: society, political influence and economic demands. Reputational and legitimacy needs and the need to continually be in receipt of Exchequer financial support are some common reasons why SOEs in Ireland would be expected to fully comply with Code provisions.¹⁶⁶ A non-complying SOE can be viewed negatively particularly where such non-compliance relates to an issue considered important to society. Given its increasing recognition, non-compliance with gender balance related provisions could attract negative publicity for the SOEs.

A demonstration/evidence that compliance with regulation will translate to improved business and financial practices and therefore to more efficient operation and increased returns could also motivate SOEs to fully comply.¹⁶⁷ For SOEs, support from the Exchequer is crucial to their operation and thus a threat to this financial support is likely to secure compliance. For example, SOEs such as Ervia, Bord Na Móna, CIÉ and Coillte do rely on significant support from the Exchequer despite being commercialised.¹⁶⁸

While the debate on hard law and soft law as alternatives or complements persists, most of the underlying arguments may be considered as limited to theoretical ideas which are formed based on the obvious difference in the nature of both approaches i.e. binding and non-binding; and sanction/no sanction. There is an inherent gap between regulatory theory and practice as the ideals of both

¹⁶⁵ See Sanderson et al (note 9 above) p. 32.

¹⁶⁶ Ashworth R, Boyne G and Delbridge R, 'Escape From the Iron Cage? Organizational Change and Isomorphic Pressures in the Public Sector' (2009) 19 (1) *Journal of Public Administration Research and Theory* 182.

¹⁶⁷ *ibid.* See also, Baldwin et al. (2012) (note 63 above) p. 237.

¹⁶⁸ Though SOE sectors are generally viewed as operating in a non-competitive environment given their access to State support, commercialisation and globalisation needs have caused SOE sectors to push boundaries into more competitive commercial environments. Accordingly, in an attempt to give all commercial enterprises operating within the EU internal market a fair advantage, EU State-aid rules have been developed and designed to ensure that such aid (to SOEs) can only be given where it is necessary and fair and must be compatible with the needs of the internal market. See European Commission, *EU Competition Law, Rules Applicable to State Aid* (As at April 2014) (Luxembourg: Office for Official Publications of the European Union, 2014).

forms of regulation are usually difficult to obtain in practical cases.¹⁶⁹ In practice, situations may present themselves such that regulatory actors i.e. policy makers may manipulate regulatory options to suit the specific objective and the institutional environment of the State.¹⁷⁰ This could mean the creation of an innovative approach that would be suitably applicable to Ireland's SOEs and with a potential to successfully increase gender balance which is the objective. In such a scenario, such as where characteristics of both approaches can be combined to achieve purpose, the inherent differences between both approaches become more of theory and less significant to practicality. As mentioned earlier in the chapter, the voluntary gender quotas adopted in the Netherlands and the inclusion of mandatory requirements in the German Corporate Governance Code are examples of such modification. The proposed EU Directive on increasing gender balance on boards of large listed companies in the EU also illustrates such a combination of both approaches modified so as to suit the dynamics of a multi-level governance system and the heterogeneity among Member States with regard to gender diversity levels on boards.¹⁷¹ While the proposed Directive if passed into law will be binding, implementation of the Directive by Member States is made flexible so as to accommodate the heterogeneity among States.

Given the gap between theory and practice, where the appropriate mechanism has been adopted and supposedly 'fit' with purpose, the implementation and enforcement stages of the regulatory process is considered to be a key determinant of what the outcome of regulation will be.¹⁷² The regulatory instruments discussed above could be influenced by other externalised factors within the regulatory arena that could compromise their effectiveness in attaining gender balance on SOE boards. The next section analyses both instruments from an institutional context, to highlight these potential influences within the SOE context.

¹⁶⁹ Sinclair (note 5 above) p. 535-536.

¹⁷⁰ *ibid.*

¹⁷¹ Baldwin et al. (2012) (note 63 above) p. 388.

¹⁷² *ibid.*, p. 131, 227.

E. Quotas, Corporate Governance Codes and Institutional Context

Aside from human-induced factors, other institutional, political, social and cultural factors are likely to impact the outcome of regulation to address gender balance even under an appropriate regulatory regime. Corporate governance systems are embedded in different national and local level institutions and are thus susceptible to different local and global influences.¹⁷³ Different institutional arrangements shape the possibilities for change or diffusion of practices from one country to another.¹⁷⁴ The contextual environment under which regulation exists or thrives could either engender its effectiveness or ineffectiveness. For example, it is said that where quota laws or Corporate Governance Codes are adopted and implemented under a certain kind of environment they result in faster and significant increases in female representation.¹⁷⁵ Such environment would be one where the political, institutional, cultural practices provide a supportive and conducive environment for the regulatory instrument to thrive. The impact of environment on regulatory instruments does offer some explanation for the uneven rate of success among countries even where similar regulatory instruments are used.¹⁷⁶ The individuality of countries suggests that the framework under which quotas or Corporate Governance Codes operate will also

¹⁷³ The difference in global influence could be as a result of membership of different international institutions such as the European Union and OECD. See also, Gugler K, Mueller D and Yurtoglu B, 'The Impact of Corporate Governance on Investment Returns in Developed and Developing Countries (2003) 113 *The Economic Journal* F511, Khanna T, Kogan J and Palepu K, 'Globalization and Similarities in Corporate Governance: A Cross-country Analysis' (2006) 88(1) *Review of Economics and Statistics* 69; Aguilera and Jackson (note 3 above).

¹⁷⁴ Aguilera and Jackson (note 3 above) p. 490; See also Teigen, M. 'Gender Quotas on Corporate Boards: On the Diffusion of a Distinct National Policy Reform' in Engelstad and Teigen (note 82 above). p. 125-126.

¹⁷⁵ Baldez, (note 79 above) p. 102.

¹⁷⁶ Mansbridge (note 35 above) p. 622; Terjesen, S. Aguilera, R. and Lorenz, R. 'Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors' (2014) *Journal of Business Ethics*. Available at: <file:///C:/Documents%20and%20Settings/pubadult/My%20Documents/Downloads/SSRN-id2327576.pdf>. Accessed 20/04/16; Huse M and Seierstad C, 'Getting Women on to Corporate Boards' *European Financial Review* 7 March 2014. Available at: <http://www.europeanfinancialreview.com/?p=572>. Accessed 23/04/16.

be individualised to certain extent. The success of both as a suitable solution in addressing gender balance on boards is dependent on the national context.¹⁷⁷

i. Legal/Regulatory Framework

The existing national legal framework of a country may be more or less conducive to the introduction of a new regulation. The legal framework is one to be considered particularly under hard law regimes as it may sometimes require major amendments that may involve a long process, so as to accommodate a new regulation. Existing frameworks could be suitable to accommodate new regulation or require amendment/update. In Norway for example, the existing *Norwegian Public Limited Liabilities Companies Act 2003* was suitable to include the gender quota law while in France amendments to the constitution were carried out so as to accommodate the new quota law.¹⁷⁸ The suitability or non-suitability of existing frameworks could impact on how quickly the issue of gender balance is addressed and could also influence what type of regulatory approach is adopted in Ireland. There may be a temptation to include new regulation in the existing *Code of Practice* for SOEs if existing legislation is unsuitable. Evidently, both types of regulation have varied and significant impact and thus the type of framework would need to align with the objective of introducing the regulation in the first place.

The type of law/framework used; the timescale within which the target number or percentage should be reached; the effective period of the law (i.e. when is the law expected to lapse); the nature of companies to which the regulation applies; the ownership structure of the companies to which the regulation applies; the sanctions, incentives or requirements which accompany the regulation in the event of non-compliance and the top management level positions (executive or

¹⁷⁷Jones M, 'The Desirability of Gender Quotas: Considering Context and Design' (2005) 1(4) *Politics & Gender* 646.

¹⁷⁸ Suk J, 'Gender Parity and State Legitimacy: From Public Office to Corporate Boards' (2012) 10 (2) *International Journal of Constitutional Law* 454.

non-executive directors) as in Germany, which are included under the regulation¹⁷⁹ are some of the varying factors captured under frameworks across countries that could potentially impact on regulation.¹⁸⁰

ii. Culture and Society

Cultural and corporate practices are perceived as major barriers to women's rise to leadership.¹⁸¹ The interplay of human behaviour and the social and economic environment within which an individual finds themselves (e.g. the organisation and the society as a whole) are factors which could determine his/her reaction to regulation and ultimately affect the regulatory outcome.¹⁸² Institutional theory suggests that a regulation's conformity to societal norms and practices (which form the culture of the society) contributes to the effectiveness /success of regulation.¹⁸³ Effective gender quotas and Corporate Governance Codes could bring about dramatic and innovative changes by altering the status quo of not just the situation on boards but also the wider society. Both instruments should therefore be analysed in terms of their compatibility with the wider existing cultural and social environment including the regulatory environment.¹⁸⁴ As mentioned before, the societal attitude to gender equality or views for women in high decision-making positions, women's attitude to work outside the home, work-life balancing provisions that are in place in the State are some factors that should be taken into account in effecting regulation. The adoption of gender

¹⁷⁹ For example, the German gender quotas will affect only supervisory boards of the affected companies, which consist of non-executive directors. Gesetz für die gleichberechtigte Teilhabe Von Frauen Und Männern an Führungs Positionen in der Privatwirtschaft und im Öffentlichen Dienst, Vom 24. April 2015.

¹⁸⁰ See Armstrong J and Walby S, *Gender Quota in Management Boards* (Brussels: European Parliament, 2012) p. 7.

¹⁸¹ Grosvold and Brammer (note 55 above).

¹⁸² Oliver C, 'Sustainable Competitive Advantage: Combining Institutional and Resource-Based Views' (1997) 18(9) *Strategic Management Journal* 699.

¹⁸³ Reynolds L, 'Foundations of an Institutional Theory of Regulation' (1981) Vol. XV (No.3) *Journal of Economic Issues* 643; Jolls C, Sunstein C and Thaler R, 'A Behavioural Approach to Law and Economics' (1998) 50(5) *Stanford Law Review* 1471.

¹⁸⁴ Baldez (note 79 above) p. 108.

quotas to improve gender balance on boards suggests that the country's national culture is not naturally receptive to women in high economic roles.¹⁸⁵ Attitudes to women's role in the society shape the kind of policies that are adopted and also influence their effectiveness.¹⁸⁶ The challenge therefore in implementing quota law or Corporate Governance Code requirements effectively given this cultural environment would be on finding ways to balance its legitimacy in society and its potency so as not to be undermined by the culture in the society.¹⁸⁷ Consistent with Inglehart and Norris's finding, cultural change would thus be necessary if the institutional change of increasing female representation on SOE boards is to be brought about by either regulatory instrument.¹⁸⁸ Developments have occurred over the years in making the Irish society more inclusive for both genders in various areas of economic and political participation however there is room for improvement. The important issue however lies with how much of the ingrained and long existing patriarchal culture of the Irish society can be eroded through man-made/unnatural initiatives.

Board gender balance regulations are more likely to be adopted and successfully effected in countries with a history of welfare and gender equality policies that encourage women's participation in the labour force.¹⁸⁹ Welfare policies such as maternity benefits, child care provisions/policies and leave pay are likely to encourage women in balancing work and family demands thereby enabling them to work. The significant presence of women in a country's labour force (as is the case with Ireland) also suggests that where such regulatory requirements to include more women on boards are adopted, qualified and ready women will be available to fill such positions. The existence and implementation of gender equality and welfare policies in a society indicate, though arguable, that the State is aligned to promoting gender equality and is therefore more likely to initiate

¹⁸⁵Grosvold and Brammer (note 55 above) p. 133.

¹⁸⁶Inglehart and Norris (note 1 above) p. 9; Kittilson (note 62 above) p. 643.

¹⁸⁷Mansbridge (note 35 above) p. 629.

¹⁸⁸Inglehart, and Norris (note 1 above) p. 9; Kittilson, (note 62 above) p. 643.

¹⁸⁹Terjesen et al (note 176 above).

laws to increase women's participation on boards where they feel the need to.¹⁹⁰ While these conclusions are largely theoretical and ideological, a pattern has been identified among countries where gender balance on boards has attracted a lot of debate that has led to quota laws being passed or being given serious consideration.¹⁹¹ A constellation of equality initiatives and women organisations which arose in Spain in the 1990s also served to place the issue of gender equality on the public agenda which culminated in a quota law being adopted.¹⁹² In contrast, countries such as the United States, Mexico and Slovakia where family-related and maternity policies are more or less insignificant, are among those noted to still be lacking in prioritising the issue of gender diversity on boards by regulatory means.¹⁹³ In Ireland, the discussion on gender balance on State boards has gained momentum over the years causing more media and public attention

¹⁹⁰ibid; Huse and Seierstad (note 176 above) . The discussion on Norway in Chapter 4 highlights illustrations of this theoretical suggestion.

¹⁹¹ For example, intense and prolonged debates were a precursor to the passing of gender quota laws in Norway (see discussion in Chapter 4) and Germany. Germany's gender quota law that was eventually passed in parliament in March 2015 was preceded by a long debate between two political factions regarding quotas for women on board. See Alison Smale and Claire Cain Miller 'Germany Sets Gender Quota in Boardrooms' *The New York Times*, 6 March, 2015. Available at: http://www.nytimes.com/2015/03/07/world/europe/german-law-requires-more-women-on-corporate-boards.html?_r=0. Accessed 15/04/16. See also Terjesen et al (note 176 above) p. 18.

¹⁹²Gonzalez M and Martinez G, 'Spain on the Norwegian Pathway: Towards a Gender-balanced Presence of Women on Corporate Boards' in Fagan, C., Gonzalez, M. and Gomez, S. *Women on Corporate Boards and in Top Management: European Trends and Policy* (Chippingham, UK: Palgrave, 2012) p. 169.

¹⁹³'Diversity' in U.S corporate governance rules is only included as a disclosure requirement. See <http://www.paulhastings.com/genderparitysupplement2014/countries/unitedstates.html> . Accessed 20/04/16. On December 16 2009, the U.S. Securities and Exchange Commission (SEC) approved new disclosure rules which include a requirement that public companies, for the first time, provide disclosure regarding Board diversity. See *Item 407(c)(2)(vi) of Regulation S-k*. The rules came into effect in 2010. See also U.S. Securities and Exchange Commission, *SEC Approves Enhanced Disclosure about Risk, Compensation and Corporate Governance*. Available at: <http://www.sec.gov/news/press/2009/2009-268.htm>. Accessed 20/04/16. 2014 global data on regulatory measures to increase gender diversity also show that Mexico and Slovakia are yet to initiate gender quota laws or include gender diversity related recommendations in their Corporate Governance Codes. See Catalyst, *Legislative Board Diversity* (2014). Available at: <http://www.catalyst.org/legislative-board-diversity>. Accessed 04/04/16.

on the issue.¹⁹⁴ The increasing attention is likely a reflection of the influence of EU membership and globalisation given the increased attention women representation in economic decision-making has attracted globally and at the EU level in the last few years.¹⁹⁵

iii. Political Ideologies/Actors

Political ideologies and actors could influence the outcome of regulation within a country.¹⁹⁶ Countries that have adopted gender quotas in addressing low female participation in politics are more likely to consider/adopt a similar approach in respect of economic decision-making. This argument is based on the suggestion that a government's inclination with regards to gender equality could determine its regulatory approach towards addressing gender imbalance on boards.¹⁹⁷ Consistent with this theory is the fact that in almost all the European countries where gender quota law has been adopted in respect of corporate boards/SOEs, a quota tradition (either at party level or legislated) had been in place in respect of women's political participation. Belgium, France, Iceland, Italy, Spain, Norway, Netherlands and Germany all had existing political gender quotas prior to their gender quota laws in economic decision-making.¹⁹⁸ Contrary to this argument however is the case of Portugal where despite a political gender quota that has been in place since 2006,¹⁹⁹ the country still lags in respect of women on boards

¹⁹⁴ Shane Phelan, 'Pressure on Coveney Over Lack of Women on State Boards'

Independent.ie, 1 January 2015; Anthea McTiernan, 'Women could Make up Half of State Boards if all Goes to Plan' *The Irish Times*, 5 February, 2015.

¹⁹⁵ See below, further discussion regarding EU influence on Ireland as a Member state.

¹⁹⁶ Suk, (note 178 above) p. 463; Teigen (note 557 above) p.126.

¹⁹⁷ Teigen (note 174 above) p. 127.

¹⁹⁸ *ibid.* See also, Freidenvall L, Dahlerup D and Johansson E, 'Electoral Gender Quotas and their Implementation in Europe' (Brussels: European Parliament, EU, 2013) p. 7.

¹⁹⁹ Organic Law No. 3, 21 August. In 2015, Women in Portugal occupied 31.3% of parliamentary positions. See *Women in National Parliaments (World Classification)*. (As at November 2015). Available at: <http://www.ipu.org/wmn-e/classif.htm>. Accessed 20/04/16.

and is yet to consider regulation as an option.²⁰⁰ The use of gender quotas in Belgium on the other hand has proliferated and is being used in relation to advisory boards; for electoral lists of candidates and for boards of listed companies and SOEs.²⁰¹ The different outcomes from Belgium (and France, Norway, etc.) and Portugal suggest that a correlation between political inclination to gender diversity may not always be the reason why gender quotas are implemented. Regulatory efforts to increase the participation of women could also be the outcome of internal pressure resulting from for instance, women's mobilisation towards this goal.²⁰² The electoral gender quota law introduced in Ireland in 2012 was the outcome of a constellation of factors including the mobilisation of women's societies aimed at lobbying relevant stakeholders to support a quota law; and pressure from international/EU institutions for Member States to adopt measures to address gender imbalance in politics; rather than an inclination of Ireland's political regime.²⁰³ A 2009 Report titled '*Women's Participation in Politics*' specifically recommended the introduction of a legislation that would require political parties to select a minimum proportion of women

²⁰⁰ Catalyst, 2014 Catalyst Census: Women Board Directors (2015). Available at: <http://www.catalyst.org/knowledge/2014-catalyst-census-women-board-directors>.

Accessed 20/04/16.

²⁰¹ Meier P, 'Quotas, Quotas Everywhere, From Party Regulations to Gender Quotas for Corporate Management: Another Case of Contagion' (2013) 49(4) *Representation* 453.

²⁰² Franceschet et al (note 73 above) p. 6. See also, Monteiro R, 'The Quota Policy in Portugal: The Role of Political Parties and State Feminism' (2012) 4 *RCCS Annual Review* 16. Women mobilisation is cited as one of the precursors to a gender quota law for corporate boards in Iceland. See Teigen (note 174 above) p. 140.

²⁰³ The National Council of Women in Ireland was very active in campaigning for women's participation in politics and thus putting the discussion out in the public and drawing government's attention to it. The Council organised and participated in several conferences and initiatives aimed at sensitising women, the government and the general public. See for example, *Irish Examiner*, 'Women's Group Call for End to Political Gender Gap' 30 July 2009. See also, Buckley, F. 'Women and Politics in Ireland: The Road to Sex Quotas' (2013) 28 (3) *Irish Political Studies* 343. International bodies such as the United Nations and Human Rights organisations are hugely invested in increasing women's political participation globally and through regular monitoring and publication tend to influence countries to keep up with changing developments. See for example the UN General Assembly resolution on women's political participation (2011) (A/RES/66/130). Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/130. Accessed 27/04/16.

candidates for elections.²⁰⁴ As at 2015 over 60 countries have adopted gender quotas (voluntary party quotas and legal quotas) aimed at increasing female political participation, with other countries also giving the option strong considerations.²⁰⁵ Though a welcome development in respect of female participation in Irish politics, the limitation to the effectiveness of the quota is apparent in the fact that the quota only addresses candidacy level rather than substantive representation and therefore cannot guarantee that female candidates if put forward, will be elected. Institutional drawbacks identifiable in the Irish electoral process could still be at play to hinder women's election despite the gender quota law.²⁰⁶ Given that the electoral gender quota came about as a result of pressure on the government suggests that the Irish government may have no natural inclination to quotas and therefore may not be open to applying a similar approach for SOE boards. The gender quota law is however indicative that the government could also be susceptible where there is pressure to apply same approach for SOEs.

Similarly, political actors belonging to parties that are more inclined to egalitarian objectives i.e. equality and distributive objectives, it is believed, will be more instrumental and open to laws that seek to improve gender balance in decision-making.²⁰⁷ In other words, the policies or laws of government could be influenced by the ideologies and beliefs of the ruling party. The adoption of legislated gender quota laws in Norway and Spain for example, were initiated and largely supported by socialist/egalitarian politicians/parties.²⁰⁸ The Social Democratic Party also

²⁰⁴ See Houses of the OIREACTHAS (Joint Committee on Justice, Equality Defence and Women's Rights), *Women's Participation in Politics* (2009) second report (PRN.A9/1468) p.19. This Recommendation did influence the Gender quota law of 2012 as the law is structured exactly as recommended. See *Electoral (Amendment) (Political Funding) Act 2012* s.42.

²⁰⁵ See www.quotaproject.org.

²⁰⁶ Buckley et. al (note 203 above) p.473.

²⁰⁷ *ibid.*

²⁰⁸ For Norway, see discussion in Chapter Four. In Spain, three political parties supported the initiation of the gender quota law in 2007: Socialist Workers Party; United Left Party and the Republican Left of Catalonia. All three parties were said to be egalitarian and thus pro-quota. See Teigen (note 174 above) p. 127. See also, Terjesen et al (note 176 above).

spearheaded the push for gender quotas in Germany.²⁰⁹ In Ireland, the political coalition of Fine Gael and Labour that was elected in February 2011 included the Recommendation of the 'Women's Participation in Politics' in their Programme for Government Report prior to the introduction of the gender quota law in 2012.²¹⁰

(a.) Path Dependence Theory

Existing path dependence in policy making may predict the regulatory route that will be adopted to address gender imbalance on boards.²¹¹ The path dependence theory is illustrated by a similar sequence/pattern/ideology by which policies and laws are created in a particular country.²¹² This theory is in line with the suggestion that countries with existing political quotas are more likely to adopt gender quotas for boards. The concept of 'path dependence' could reflect through the embedding of a particular ideology (such as gender equality/gender balance on boards/work-life balance) so that it influences and underscores policies. Impliedly, where a certain path (focus) has been adopted regarding policy decisions, future policies tend to be influenced by that path which is often difficult to deviate from.²¹³ Even where deviations (sometimes in an incremental manner) occur they are slight as any major deviations could be costly.²¹⁴ Previous government decisions/policies relating to certain issue could culminate in an

²⁰⁹<http://www.economist.com/news/business-and-finance/21636284-germanys-new-proposals-risk-damaging-gender-equality-workplace-regulation-too-far>. Accessed 20/02/16.

²¹⁰ Department of the Taoiseach, Programme for Government 2011-2016 (2011) p.17. Available at:

http://taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2011/?page=2. Accessed 27/04/16.

²¹¹ Teigen (note 174 above) p. 140; Terjesen et al (note 176 above).

²¹² Pierson P, 'Path Dependence, Increasing Returns and the Study of Politics' (2000) 94(2) *Political Science Review* 251; Hathaway O, 'Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System' (2001) 86(2) *The Iowa Law Review* 601; Page, S., 'Path Dependence' (2006) 1 *Quarterly Journal of Political Science* 87.

²¹³ Pierson (note 212 above) p. 252.

²¹⁴ Levi M, 'A Model, A Method and a Map: Rational Choice in Comparative and Historical Analysis' in Lichbach M and Zuckerman A, (eds) *Comparative Politics: Rationality, Culture and Structure* (Cambridge, UK: Cambridge University Press, 1997) p. 29. See also Greener, I. 'The Potential of Path Dependence in Political Studies' (2005) 25(1) *Politics* 62.

incremental policy like gender quota laws.²¹⁵ Where the ideology of gender equality/diversity is being promoted through government policies and decisions and fail to achieve the desired objective, the government may choose to implement similar measures though at an increased level e.g. gender quotas, so as to achieve results. Accordingly, a resort to legislated gender quotas following the inclusion of gender requirements in soft law measures can be considered an incremental pattern of path dependence. While the underlying theme of gender equality/gender diversity is maintained in the policies, the use or possibility of introducing higher impact/returns policies to achieve same objectives are utilised. Women's political and economic empowerment in Nordic countries is considered an incremental outcome following the social/cultural/political ideology of gender equality that has for many years, reflected in their policies.²¹⁶ The experience of Norway illustrates a classic case of how gender equality ideologies and laws could lead to gender quota law in respect of boards, as an outcome of incremental path dependence.²¹⁷ The notion of gender equality is also embedded in Spain's socio-political environment, dating back to the 1960s,²¹⁸ and could explain why a gender quota was also implemented there.

While evidence of the impact regulation can have in addressing gender balance the mantra 'one size does not fit all' should be taken into consideration when comparative conclusions are drawn.²¹⁹ When corporate governance practices are imported into a country they may need to undergo some modification and be aligned with local practices before they are adopted.²²⁰ By this process, certain aspects of the practice could be continued with while it could also lead to the creation of new or hybrid forms of the practice.²²¹ These possibilities in relation to

²¹⁵Bell J, 'Path Dependence and Legal Development' (2013) 87(4) *Tulane Law Review* 788; Terjesen et al (note 176 above).

²¹⁶Terjesen et al (note 176 above) p. 15. An incremental path dependent policy also illustrates the 'enforcement pyramid theory' discussed below.

²¹⁷See more discussion in Chapter Four, p. 177.

²¹⁸ See Gonzalez and Martinez (note 192 above) p.169.

²¹⁹ Aguilera and Jackson (note 3 above) p. 481.

²²⁰ibid, p. 487

²²¹ Buck T and Shahrim A, 'The Translation of Corporate Governance Changes across National Cultures: The Case of Germany' (2005) 36 *Journal of International Business Studies* 46; Aguilera and Jackson (note 3 above) p. 487.

regulation being modified to suit the objective or environment have been highlighted in the discussion above. To this end, the extent to which these different environmental and institutional factors, where present, play a role in the outcome of regulation will vary across countries and therefore their presence cannot be taken as conclusive suggestion to the fact that a certain regulatory route will be adopted or that the outcome of the gender quota in Norway will produce the same results in Ireland if adopted. Further, a regulatory type may be more suited to a particular country than it would be in another. Corporate governance codes may elicit adequate compliance in a certain location and there would be no need for more prescriptive rules.

iv. Impact of the EU on Government Action in Ireland

Historically, the EU has played a key role in the creation and legitimising of gender equality objectives that Member States have had to deal with.²²² In Ireland particularly, the influence/impact of the EU has been significant including in the area of gender equality. This influence has no doubt also impacted on gender equality policies relating to State institutions including SOEs. It can therefore be suggested that the EU's increased focus on gender balance on boards could influence any action in relation to gender balance on boards of Ireland's SOEs, albeit directly or indirectly.

Over the years, the EU has developed and published extensive and varied instruments in the form of Treaties, Directives, Legal Regulations, Communications, Recommendations, Reports and Council Conclusions,²²³ all aimed at defining, directing, guiding and at the same time constraining Member

²²² See discussion in Chapter One. See also Lombardo E and Forest M, (eds.) *The Europeanization of Gender Equality Policies: A Discursive-Sociological Approach* (Basingstoke: Palgrave Macmillan, 2012) p. 8.

²²³ Examples of EU Treaties include The Treaty of Amsterdam 1997; The Treaty of Rome 1957; The Treaty of the European Union (2009) (Article 2 and 3) and The Treaty on the Functioning of the European Union (TFEU) (Article 8) .See list of some EU Gender Equality related Directives and publications, Available at: http://ec.europa.eu/justice/gender-equality/law/index_en.htm. Accessed 15/04/16.

States' action in dealing with gender related issues. By these, the EU can be said to provide the external or 'non-domestic pressure' that may sometimes be necessary to influence or initiate change at Member State level.²²⁴ The variety of instruments at the disposal of the EU falls into the two broad categories of hard and soft law instruments and therefore could have different implications in application and its influential power. For example, Treaties are binding instruments and thus Member States are bound by the provisions while Communications and Recommendations, which are non-binding and flexible in nature, only serve as guidelines which Member States may choose not to apply. In effect, the influence of the EU on Member States is varied depending on the instrument the EU applies.²²⁵ The flexibility on which Member States can rely on in implementing the EU's soft law instruments may limit the intended outcome envisaged by the EU lawmakers. Soft law is also less likely to have great indirect influence on bodies which it does not target because the fact that the EU relied on a soft instrument could be perceived as a lack of serious commitment to the issue. Nevertheless, the EU has been significant in influencing the route which the discussion on gender equality and more particularly gender balance on boards has taken at Member State level and at a more globalised level; and also influencing the initiation of State action to address gender related issues.

Earliest recommendations of the Council on promoting the balanced participation of men and women in the decision-making process occurred in 1984²²⁶ and 1996.²²⁷ However more intensive efforts in this regard began to occur through the

²²⁴ Lopez-Santana M, 'Domestic Implications of European Soft Law: Framing and Transmitting Change in Employment Policy' (2006) 13(4) *Journal of European Public Policy* 482.

²²⁵ Beveridge F, 'Going Soft'? Analysing the Contribution of Soft and Hard Measures in EU Gender Law and Policy' in Lombardo and Forest (note 216 above) p. 28. See also, Rees N and Connaughton B, 'Europeanisation: A Catalyst for Change' in Rees N, Quinn B and Connaughton B, (eds) *Europeanisation and New Patterns of Governance in Ireland* (note 392 above) p.23.

²²⁶ COUNCIL RECOMMENDATION 84/635/EEC of 13 December 1984 on the promotion of positive action for women (OJ No L 331, 19. 12. 1984 P.34).

²²⁷ COUNCIL RECOMMENDATION (96/694/EC) of 2 December 1996 on the balanced participation of women and men in the decision-making process (OJ No L 319, 10. 12. 1996 P. 0011-0015).

European Commission from 2010 under the leadership of Viviane Reding, the then European Commissioner for Justice.

Other documents from EU level which addressed the issue of gender balance in economic decision-making and thus may have influenced State policies or actions include the *Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies (2010)*²²⁸ and the *Green Paper on the EU Corporate Governance Framework (2011)*²²⁹ which both identified the benefits of a gender diverse board to corporate governance. Following a public consultation, in 2012 the European Commission adopted an *Action Plan on Company law and corporate governance* that included taking steps to increase gender diversity in economic decision-making as one of its objectives.²³⁰ In 2014, *Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information by Certain Large Undertakings and Groups* was adopted to require companies to disclose non-financial information which includes board diversity.²³¹ Although increase across a greater number of Member States has remained relatively slow and uneven, higher levels of increase have occurred since 2010 following the adoption of the *Women's Charter* and the *Strategy for Equality*.²³²

The varied level of progress and types of instruments across Member States indicates a limitation to the extent of EU's influence on State action. Member States respond to community demands according to their domestic context.²³³ EU Member-State status does not rob Member States of their national identities and their domestic choices. Despite a strong hold on Member States stemming from their membership obligations, allowance still exists for Member States to

²²⁸ COM(2010)284 Final, Brussels 2.6.2010 (note 5.1.).

²²⁹ COM(2011)164 Final, Brussels, 5.4.2011.

²³⁰ COM(2012)740/2 12 December 2012.

²³¹ OJ L 330, 15.11.2014, Notes 18 & 19.

²³² Women representation on boards grew from 11.9% as at October 2010 to 20.6% by October 2014. See European Commission, *Gender Balance on Corporate Boards: Europe is Cracking the Glass Ceiling* (March 2015) p. 2. In 2015, women accounted for 22.7% of directors on boards of Europe's large listed companies.

²³³ Dona A, 'Using the EU to Promote Gender Equality Policy in a Traditional Context: Reconciliation of Work and Family Life in Italy' in Lombardo and Forest (note 222 above) p. 109.

make domestic choices.²³⁴ Also, according to the theory of mimetic isomorphism, State action could be influenced by international practice. The successful implementation of a regulatory instrument in one country could encourage its use in another, as was the case with Norway's gender quota approach diffusing into other countries.

Ireland is one of the countries where EU Influence in the area of gender imbalance on boards has been of lesser impact, evidenced by the very slow growth in female representation in economic decision-making.²³⁵ However, the case of Ireland's State boards, including boards of SOEs illustrates the assertion that other internal or external factors such as culture and globalisation could also be influential in how Member State's address issues. The 1993 40% target for gender representation on State boards, having been introduced long before the EU became particularly focused on gender in economic decision (before the introduction of *Strategy for Equality between Women and Men 2010-2015*),²³⁶ could rather have been influenced by other factors including the *Report of the Commission on the Status of Women*, and the desire of the Government at the time to ensure Ireland's competitive edge in line with the country's growing economy at the time.²³⁷ The lack of impact in Ireland and other similar Member States in respect of gender diversity levels does not however take away from the fact that the EU may have been influential in other policy sectors within Member

²³⁴ Laffan B and O'Mahony J. *Ireland and the European Union* (Basingstoke, UK: Palgrave Macmillan, 2008) p. 263. See also, Murphy M, 'Forty Years of EU Influencing Social Policy in Ireland- A Glass Half Full?' (2014) *Politics Power and Society Working Paper Series*, University of Maynooth, p. 7. Available at: [https://www.maynoothuniversity.ie/sites/default/files/assets/document/Murphy_MP_2_014_EU_influencing_social_policy_in_Ireland_\(2\).pdf](https://www.maynoothuniversity.ie/sites/default/files/assets/document/Murphy_MP_2_014_EU_influencing_social_policy_in_Ireland_(2).pdf). Accessed 28/04/16.

²³⁵ In 2014, data on 48 listed companies showed Ireland was second to last (Portugal) among the 14 European countries surveyed, with women accounting for only 10.3% of director positions on boards of these companies. See Catalyst, *2014 Catalyst Census: Women Board Directors* (2015) (note 583 above). See also EU Database: *Women and Men in Decision-Making Positions*, where data collected as at October 2015 on 19 listed large companies in Ireland, showed that women occupied only 15% of director positions on these boards. Available at: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/supervisory-board-board-directors/index_en.htm. Accessed 30/05/16.

²³⁶ Although the EU had long promoted gender equality as a basic tenet within the Union, the issue of women in decision-making had not started receiving particular attention.

²³⁷ See discussion in Chapter One and Chapter Two.

States²³⁸ and that it has ensured that gender diversity discourse is increasing in many States including Ireland.

While the EU's instruments so far have not directly affected Ireland's SOEs given that the instruments have mostly been targeted at large listed companies, Member States could choose to extend the requirements to other undertakings at their discretion. For example, the *Directive on Disclosure of Non-financial and Diversity Information* states that Member States should not be prevented from requiring disclosure of non-financial information from undertakings and groups other than those subject to the Directive.²³⁹ It is however a likely outcome that the EU's involvement in the issue of gender balance on boards has influenced greater commitment of the State towards the creation and development of strategies such as making the appointment of SOE board members a more transparent and inclusive process to include more women, so as to enhance gender balance on State boards.²⁴⁰ Membership of the EU since 1973 has had significant impact in several policy areas in Ireland including gender equality through EU Directives targeting for example, issues in relation to employment such as equal pay, work conditions and parental leave.²⁴¹

Accordingly, a suggestion that this influence will extend to the issue of addressing gender balance on SOE boards, is not out of place. EU influence/impact may not necessarily be direct through legally binding or non-binding regulations or through formal institutions but could also occur indirectly through usages and discourse of EU policies and actions.²⁴² Through community membership in the EU, ideas and practices can be promoted and diffused across States through discourses and relations among States. This is one informal source through which

²³⁸ Dona, (note 233 above) p. 117.

²³⁹ *DIRECTIVE 2014/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups OJ L 330, 15.11.2014* (Note 14).

²⁴⁰ See discussion in Chapter Six, p.325

²⁴¹ See for example, *COUNCIL DIRECTIVE 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation OJ L 303, 2/12/2000 P.0016-0022*. See also Laffan and O'Mahony (note 617 above) p. 255, 259 and Murphy (note 6177 above) p. 8. Parental leave is discussed further in Chapter Six, p.333.

²⁴² Dona, (note 233 above) p. 102.

policy-making in Ireland has developed over the years.²⁴³ The theory of usage and discourse explains how State level actors use discourses, ideas and policies within the EU as opportunities even in the absence of pressure to adapt.²⁴⁴ Europeanisation has essentially created opportunities for learning and innovation,²⁴⁵ which can be utilised in respect of regulating for gender balance on SOE boards even in the absence of a direct EU policy/Directive. Policy makers at the State level could re-appropriate and re-define EU resources to address their own social problems within their institutional constraints through a process of discourse,²⁴⁶ Thus, while EU policies and actions have so far not been applicable to Ireland's SOEs, policies and actions taken at State level could be influenced by the increasing action and discourse of gender diversity levels in economic decision-making at EU level and among Member States.

F. Regulatory Enforcement and Regulatory Effectiveness

The relevance of making a choice between legislated gender quotas and corporate governance codes could become insignificant where the aim of the regulation is distorted at the implementation/enforcement stage. The pros of either approach could be overshadowed and fall short in achieving the aim of regulation where enforcement is inadequate or improperly applied. The ultimate purpose of regulatory enforcement is to achieve the requisite compliance with the regulation.

²⁴³ Connaughton B, 'Political Institutions and Administrative Adaptation' in Rees N, Quinn B and Connaughton B, (eds.) *Europeanisation and New Patterns of Governance in Ireland* (note 225 above) p. 75.

²⁴⁴ Woll C and Jacquot S, 'Using Europe: Strategic Action in Multi-level Politics' (2010) 8 (1) *Comparative European Politics* 115.

²⁴⁵ Connaughton (note 243 above) p. 79.

²⁴⁶ *ibid*; Schmidt V and Radaelli C, 'Policy Change and Discourse in Europe: Conceptual and Methodological Issues' (2004) 27(2) *West European Politics* 186.

Accordingly, a major debate in the literature on regulatory enforcement is how best compliance can be secured through enforcement. In the light of perceived ineffectiveness and inefficiencies of the regulatory enforcement process (indicated by the wide perception of regulatory failure), a section of the literature focuses on analysing existing strategies or suggesting better enforcement strategies that could be adopted.²⁴⁷ A further debate identifiable in the literature on regulatory enforcement relates to the standard of compliance that is required given the fact that a compliance with the rules/standards laid down under the regulation may not necessarily be in congruence with the purpose/goal which the regulation seeks to achieve(creative compliance).²⁴⁸ In order to analyse how non-compliance or 'creative compliance' can be avoided or minimised so as to reduce the risk of the regulatory instrument not being effective in improving gender balance on SOE boards, two strategies commonly proposed that could be used to modify the enforcement process are relevant for consideration.

i. Responsive Regulation

The Responsive Regulation approach as put forward by Ayres and Braithwaite conceives of regulation from a sanctions perspective. Their major contribution to the debate suffices that regulatory culture should be dialogic, with regulators making it known to the regulated an intention to escalate the instrument of enforcement where lower impact instruments have failed to induce

²⁴⁷ Some of the literature includes Ayres I and Braithwaite J, *Responsive Regulation* (New York: Oxford University Press, 1992); Gunningham N and Grabosky P, *Smart Regulation: Designing Environmental Policy* (Oxford: Oxford University Press, 1998); Black J, 'Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a "Post-Regulatory" World' (2001) 54 (1) *Current Legal Problems* 103; Parker C, *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge: Cambridge University Press, 2002); Yeung K, *Securing Compliance: A Principled Approach* (Oxford: Hart Publishing, 2004) ; Scott C, 'Regulating everything: From Mega to Meta regulation' (2012) 60(1) *Administration* 61.

²⁴⁸ Yeung (note 247 above) p. 11.

compliance.²⁴⁹ The ‘responsive regulation’ theory is illustrated using a ‘deterrence’ or ‘compliance’ comparative model of regulation. A ‘deterrence’ model of regulation connotes a confrontational style of enforcement where sanctions are applicable for non-compliance.²⁵⁰ The ‘compliance’ model on the other hand emphasises cooperation rather than confrontation where conciliation is used rather than coercion in the event of non-compliance.²⁵¹ The ‘compliance’ model centres on achieving the aims of the regulation rather than sanctioning its breach.²⁵² Under a compliance strategy, the threat of coercive measures is said to exist in the background as a tactic or bluff to motivate compliance and will only be used in extreme cases.²⁵³ The compliance strategy appears to be the style adopted in the UK where the fact that the government would not hesitate to apply more prescriptive rules in the event that soft voluntary initiatives failed to get more women on FTSE boards, was frequently communicated.²⁵⁴

(a.) Enforcement Pyramid

Ayres and Braithwaite argue that the debate on effective enforcement strategy which focuses on the efficiency of either the deterrence or the compliance model is being eroded by the view which believes that enforcement is more successful where the strategy employs a balancing of both models.²⁵⁵ Regulators begin by

²⁴⁹Ayres and Braithwaite (note 247 above) p. 38-39. Other scholars have also endorsed this type of strategy. See Kagan R, ‘Regulatory Enforcement’ in Rosenbloom D and Schwartz R, (eds.) *Handbook of Regulation and Administrative* (New York: Dekker, 1994); Wright M, Marsden S and Antonelli A, *Building an Evidence Base for the Health and Safety Commission Strategy to 2010 and Beyond: A Literature Review of Interventions to Improve Health and Safety Compliance* (Norwich: HSE Books, 2004).

²⁵⁰Gunningham (note 247 above) p. 121.

²⁵¹See Hutter B, ‘Regulating Employers and Employees: Health and Safety in the Workplace’ (1993) 20(4) *Journal of Law and Society* 466; and Gunningham (note 247 above) p.121.

²⁵²Hawkins K, *Environment and Enforcement: Regulation and the Social Definition of Pollution* (Oxford: Clarendon Press, 1984) p. 106.

²⁵³Scholz J, ‘Voluntary Compliance and Regulatory Enforcement’ (1984) 6(4) *Law & Policy* 388.

²⁵⁴ See further discussion in Chapter Five.

²⁵⁵ Ayres and Braithwaite (note 247 above) p. 35-36.

applying cooperative measures (compliance strategies) and if compliance with the regulation is not satisfactory, move on to more coercive measures (deterrence strategies). Using an 'enforcement pyramid' theory, Ayres and Braithwaite illustrate how regulators can use this approach by employing cooperative measures such as advisory and persuasive measures at the bottom of the pyramid, progressing to mild administrative sanctions in the middle and finally more coercive sanctions at the top, where the need arises.²⁵⁶ The enforcement pyramid theory may be illustrated in practice where soft law instruments e.g. Corporate Governance Codes, which are persuasive in nature and lacking in sanctions, are used as a first step in regulation and in the event of non-compliance i.e. where the desired level of gender representation is not achieved, more coercive measures such as legislative gender quotas accompanied by sanctions will be resorted to. Compliance is said to be more likely, when the State displays an enforcement pyramid.²⁵⁷ The more variety of enforcement options the regulator is perceived to have, the more likely the regulated will be willing to cooperate so as not to attract more coercive measures.²⁵⁸ The positive response to the soft approach used in the UK in increasing women representation on FTSE boards is partly attributed to the underlying threat for more prescriptive measures by the government where the softer measures failed to work.²⁵⁹ Similarly, it has also been suggested that the significant increase in women on boards of Sweden's companies between 2000 and 2006 could be as a result of the threat of quotas made in the country in 1999 and 2002.²⁶⁰ Consistent with this suggestion, the rate of increase was also noted to have stalled when the idea of quotas was dropped in 2006.²⁶¹ The enforcement pyramid approach is particularly useful when targeted at organisations/industries.²⁶² In the industry context,

²⁵⁶ *ibid*, p. 36.

²⁵⁷ *ibid*.

²⁵⁸ Morgan B and Yeung K, *An Introduction to Law and Regulation* (Cambridge: Cambridge University Press, 2007) p. 197.

²⁵⁹ See Chapter Five p.272 for more discussion.

²⁶⁰ Heidenreich, V. 'Why Gender Quotas in Company Boards in Norway-and Not Sweden?' in Engelstad and Teigen (note 82 above) p.160

²⁶¹ *ibid*.

²⁶² Braithwaite J, *To Punish or Persuade: Enforcement of Coal Mine Safety* (Albany: State University of New York Press, 1985) p. 86.

government begins with allowing the industry to self-regulate (could be a soft law approach using a self-regulatory code of conduct) with a commitment that it will escalate to more coercive measures in the event of non-compliance.²⁶³

The enforcement pyramid approach is however criticised for its potential to create a situation where there is disregard for other obligations of the organisation that do not attract similar benefits/sanctions as a result of compliance or non-compliance.²⁶⁴ In other words, the regulation is complied with to the detriment of other obligations, which the organisation may hold. The instrumentality of the SOE to society could be undermined where the government adopts this approach. The objectives and role of the SOE is critical and relevant to far-reaching areas of the society and therefore cannot afford to neglect any of its responsibilities or obligations even whilst seeming to comply with an equally relevant regulation aimed at improving gender balance on their boards. Where such an outcome is therefore encouraged, it could be seen as jeopardising the usefulness of the SOE in the society. Another criticism of the pyramid approach is its susceptibility to political influence. Regulators and/or policy makers could find it difficult to show commitment to the escalation of enforcement techniques due to political or self-interest considerations (Capture theory).²⁶⁵ Reluctance of the Irish government to show more commitment towards improving gender balance across Irish boards by introducing more prescriptive measures such as mandatory quotas accompanied by sanctions is evident given the continued reliance on a soft approach in relation to State boards which although has been active for over two decades now has not led to an achievement of its 40% objective. Private sector boards have received no form of regulatory attention so far despite very low representation and slow growth. The government's reluctance could be the result of several reasons which could

²⁶³ Ayres and Braithwaite (note 247 above) Chap. 4.

²⁶⁴ Yeung (note 247 above) p. 42-43.

²⁶⁵ Scott, C. 'Regulation in the Age of Governance: The Rise of the Post-Regulatory State' in Jordana, J and Levi-Faur, D. (eds) *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance* (Cheltenham, UK: Edward Elgar Publishing Limited, 2004) p. 159.

as well even where more prescriptive rules are adopted,²⁶⁶ influence implementation/enforcement of the regulation. Ultimately, the law could exist but not be utilised effectively in the absence of political will.²⁶⁷

(b.) Proportionality Principle

The proportionality principle provides some guidance which could assist policy makers/regulators in implementing an enforcement pyramid. The principle is useful in ensuring that enforcement measures are commensurate to the issue being addressed. In other words, there should be a balance between means and ends. Under the principle, the government must consider the appropriateness of the measure in attaining its goal; the necessity of that measure as against other measures that may be less burdensome and; the proportionality of the measures in securing compliance.²⁶⁸ The more critical it is to achieve the goal, the greater the necessity for measures that will compel compliance. The measure, such as legislative gender quota may also be adopted temporarily to further avoid the risk of alienating other SOE objectives. While the need for improved gender balance on SOE boards is considered important, the decision to rely on a more coercive instrument such as quotas may however be a more complex process being that SOEs are instruments of the State and policies affecting them could have conflicting implications for the government and other agents of the government.

²⁶⁶ The government can resort to harsher laws as a result of international or domestic influence rather than its own conviction to improve gender balance. See Chapter Six, p.306 for more discussion.

²⁶⁷ See Chapter Six for more discussion.

²⁶⁸ Yeung, (note 247 above) p. 43.

ii. Smart Regulation

The Smart regulation theory is suggestive of a regulatory strategy that could enhance regulatory effectiveness. The theory came about due to the inability of traditional regulation by the State (more commonly the command and control style of regulation) and the market system in dealing with the complexities of an ever increasing and changing environment.²⁶⁹ The concept of ‘Smart Regulation’ as put forward by Gunningham and Grabosky,²⁷⁰ refers to a strategy whereby regulation involves a wider range of actors, i.e. businesses and other quasi-regulators such as professional bodies, interest groups, banks, insurers, consumers and suppliers and not just the State.²⁷¹ The Smart Regulation theory extends the traditional bipartite concept of regulation (between the State and the Regulated) by identifying that the behaviour of the regulated may also be influenced by other actors and other forms of control in several ways, and under different circumstances.²⁷² A multiplicity of regulatory signals has the potential to be mutually re-enforcing. According to the theory, these influences could come from external sources such as international standards organisations and internal sources such as industry associations, culture etc.²⁷³ Smart Regulation is thus centred on co-regulation as well as improving the effectiveness of direct State regulation. Co-regulation may be considered as variations of a soft-law approach regulation as it involves a watered down approach with the State not being in charge of regulation, and accordingly could face similar circumstances/challenges as discussed above, if used as a tool to increase gender diversity levels on SOE boards. The ‘Smart Regulation’ theory is embodied within the ‘Regulatory State’ phenomenon.²⁷⁴

²⁶⁹ Gunningham N, ‘Enforcement and Compliance Strategies’ in Baldwin R, Cave M. and Lodge M. (eds.) *The Oxford Handbook of Regulation* (Oxford, Oxford University Press, 2010) p.132.

²⁷⁰ Gunningham and Grabosky (note 247 above).

²⁷¹ Baldwin et al (2012) (note 63 above) p. 266.

²⁷² Gunningham (note 269 above) p. 131.

²⁷³ *ibid.*

²⁷⁴ See Scott (note 265 above) p.160.

The theory argues that the use of a broader range of regulatory actors and multiple policy instruments will make for better regulation.²⁷⁵ Smart regulation theory also includes a complementary combination of policy instruments and regulatory actors in addressing the variety of issues that result from a complex and changing environment.²⁷⁶ A combination of different actors from different sections of the society and the use of multiple policies is more probable to deal with issues arising from different sections and areas of the society according to their needs and in a suitable manner. Regulatory action aimed at increasing gender balance across countries is illustrative of this resource of Smart regulation as several countries where regulatory steps have been taken towards addressing gender imbalance are complemented by other policies and initiatives thereby involving a wide range of actors.²⁷⁷ Policies and initiatives become necessary as a support to regulation in areas such as supply of available women to take up board positions, training and mentoring of these women on board roles and are ultimately aimed at increasing the pace and quality of regulatory intervention.

(a.) Enforcement

Enforcement under the Smart Regulation also relies on Ayres and Braithwaite's 'Enforcement pyramid' but seeks to modify it in several ways. The 'enforcement pyramid' envisaged under Smart Regulation incorporates its regulatory pluralism focus by suggesting that in the event of non-compliance, escalation may not only go upward the pyramid but may be moved sideways i.e. to another form of regulation with similar weight.²⁷⁸ An example would be a move from a self-regulation regime where industry alone is involved to co-regulation where the government also plays a role.²⁷⁹ It is argued that this will make for flexibility in

²⁷⁵ Gunningham and Grabosky (note 247 above).

²⁷⁶ Gunningham (note 269 above) p.131.

²⁷⁷ See discussion in Chapter Four and Five in respect of some initiatives that existed alongside regulation in the case study countries.

²⁷⁸ Gunningham and Grabosky (note 247 above).

²⁷⁹ Baldwin et al (2012) (note 63 above) p. 266.

regulatory response and access to a wider variety of sanctioning tools. While the Smart regulation style may not be applicable to SOEs given that the government is traditionally involved in all regulatory activities that concern SOEs, a move from the existing environment where the 40% Government Policy is being employed to an inclusion of a similar 40% gender representation requirement in the Code of Practice may be considered an illustration of Smart regulation. Notwithstanding that the Government policy is not a regulation in the strict sense, in the case of SOEs given the government's control over them, it could be argued that the policy exerts similar influence on SOEs as other soft regulatory options could. However, the Code of Practice option is likely to exert greater influence albeit slightly, being that it is a formal and structured instrument. The greater influence that a Code of Practice option might exert is that which Smart regulation theorists envisaged. Smart regulation theory recognises that the sanctioning tools available to the government may not be appropriate in addressing the non-compliance and this gap could be filled under another source of regulation with a similar level of persuasion/coercion.²⁸⁰ Unlike the Responsive regulation pyramid which utilises a single regulator and instrument, the Smart regulation pyramid includes several non-state regulatory actors and a range of instruments.

Broadly speaking, under the Smart regulation theory the State assumes the role of a facilitator by creating an arena that is conducive for other actors to regulate/control/persuade. It is argued that this will reduce the State's regulatory burden whilst also encouraging an ownership feeling of regulation among the regulated and the society as a whole and could ultimately enhance compliance.²⁸¹ The government may not play a direct interventionist role but could however intervene by ensuring that the enforcement process is effective by filling any gaps that may arise or exist, as illustrated in the pyramid.²⁸² In the case of Ireland's SOEs, this view of Smart regulation can also be gathered from a certain perspective. Although the State is traditionally involved in the activities of SOEs,

²⁸⁰ *ibid.*

²⁸¹ Gunningham (note 269 above) p. 134, see also Sanderson et al (note 9 above).

²⁸² Gunningham (note 269 above) p. 134.

direct responsibility for SOEs in Ireland is shared between the Department of Finance, NewEra, sponsoring Ministers and the government departments.²⁸³

Just as identifying the type of regulatory approach does not guarantee effective regulation, the right kind of regulatory/enforcement strategy may also not offer a complete solution in achieving the ultimate goal of the regulation. While it is important to identify the right kind of enforcement/implementation strategy for the particular issue that needs to be addressed, the range of discretion within regulatory systems and more particularly with those where more regulatory actors are involved in the process, suggests an avenue for human error, manipulation and creativity²⁸⁴ that could compromise the regulatory objective.

Conclusion

This chapter has addressed the two common regulatory instruments used to address gender imbalance on boards from a hard law/soft law dichotomy theoretical perspective. Both instruments, i.e. legislated gender quotas and Corporate Governance Codes have been identified and analysed in terms of their pros and cons with regard to potentials in improving gender balance on Ireland's SOE boards.

The chapter has also dealt with regulatory effectiveness from an institutional perspective. Given the national contextual theme of this thesis, an institutional perspective was considered in terms of national context and how this may influence the outcome of either regulatory instrument. A national context approach highlights the fact that regulatory outcome will vary from one country to another to the extent that it is affected by national/local peculiarities and thus a reliance on comparison should be done bearing this in mind. The EU's potential influence (indirectly) on Ireland's prospects in regulating gender diversity on SOE boards is also considered theoretically, from an international perspective.

²⁸³ See discussion in Chapter One.

²⁸⁴ Morgan and Yeung (note 258 above) p. 153.

The chapter also addresses regulatory effectiveness from an enforcement perspective. This discussion seeks to highlight the significance of sanction to regulation in respect of increasing gender diversity on boards. The level of severity of sanctions applicable in enforcing regulation could be crucial in securing compliance and thus success.

Regulation is also considered from a multi-participatory angle, highlighting how multiple actors could be contributory to regulatory effectiveness and not just the government. This concept is significant for a discussion on regulating gender balance on boards as the experience in other countries has shown that progress was achieved through collaborative efforts including regulation and other independent and private-led initiatives.²⁸⁵

The theoretical underpinnings set out in this chapter set the background for further discussion in subsequent chapters. Hard and soft law regulatory approaches are considered from a practical perspective to further understand how either approach may be useful for Ireland's SOE Boards.

²⁸⁵ See discussion on country experiences in Chapters Four and Five.

Chapter 4: The Use of Legislative Gender Quotas to Improve Gender Balance on Boards: The Case of Norway

A. Introduction

The discussion in this chapter addresses legislative gender quota from a practical perspective. The chapter is aimed at analysing the implementation of legislative gender quotas from a practical point of view and identifying its effectiveness or otherwise as a tool to address gender imbalance on boards of Ireland's SOEs. Using Norway as a case study, some relevant theories of legislative gender quotas and gender quotas in general will be considered. This chapter ultimately seeks to relate the regulatory outcome in Norway with Ireland's SOE sector and thereby highlight the relevance and potentials of a similar gender quota law in Ireland.

As the first country to successfully implement legislated gender quota towards this goal, the experience of Norway affords a practical and classical presentation through which significant and relevant insights can be drawn. While gender quotas are universal instruments, their success is dependent on factors that could vary among countries. Countries vary in systems, traditions and cultures which could be significant to the potentials of gender quota laws in a location. The design of the quota laws could also have implications on the success of the law. For example, although Norway and France have achieved great levels of success in increasing gender diversity on boards through legislative gender quotas, different factors inherent in the design of the quota laws have contributed to their success. While the success in France is attributed partly to the applicable coercive sanctions accompanying the law,¹ in Norway, the law's coercive sanction

¹ Attendance fees for Directors on non-compliant boards of affected companies would be suspended pending when the composition of the board aligned with the requirement. See [Loi No. 2011-103 du 27 Janvier 2011 Relative à la Représentation Équilibrée des Femmes](#)

and other cultural, economic and political peculiarities of the Norwegian State played a significant role in the success of the law towards increasing board gender diversity levels.² For this reason also, the case of Norway affords a more buoyant background for comparison.

Given these variations, it is important to understand Norway's culture, background and institutions in relation to the gender quota law. For instance, gender egalitarianism is positively related to the adoption and outcome of gender quotas and Norway is among the world's leaders in gender egalitarianism and the use of gender quotas.³ Norway's attitude to addressing gender inequalities/gaps in the wider society is likely to have informed the decision of the State to implement gender quotas. A discussion on women on boards particularly in Norway would therefore be incomplete without understanding gender egalitarianism in Norway.

The proposal and subsequent adoption of gender quotas in Norway attracted significant attention i.e. criticisms, debates and scepticism from within and outside Norway. However, following its successful implementation, Norway's experience has served as a useful global reference with academics, policy makers in other countries, the EU and other international research and ratings organisations e.g. GMI Ratings and Catalyst. Given the variation in progress and practices across countries, it is pertinent to analyse Norway's progress from a perspective of the country's domestic/local peculiarities. The peculiarities of the

[et des Hommes au Sein des Conseils D'administration et de Surveillance et à L'égalité Professionnelle](#), art. 1, sect. II (2011). Accessed 28/04/16.

² Consistent with Aguilera R and Jackson G, 'The Cross-national Diversity of Corporate Governance: Dimensions and Determinants' (2003) 28(3) *Academy of Management Review* 447; Grosvold J, Brammer S and Rayton B, 'Board Diversity in the United Kingdom and Norway: An Exploratory Analysis' (2007) 16(4) *Business Ethics: A European Review* 344; Grosvold J and Brammer S, 'National Institutional Systems as Antecedents of Female Board Representation: An Empirical Study' (2011) 19(2) *Corporate Governance: An International Review* 116.

³ See Borchost A, 'Gender Equality Law' in Bergquist C, et al.(eds.) *Equal Democracies? Gender and Politics in the Nordic Countries* (Oslo: Scandinavian University Press, 1999) p. 191; Inglehart R and Norris P, *Rising Tide: Gender Equality and Cultural Change around the World* (Cambridge: Cambridge University Press, 2003) Inglehart and Norris p. 33; Krook M, 'Reforming Representation: The Diffusion of Candidate Gender Quotas Worldwide' (2006) 2 *Politics and Gender*, 307.

Norwegian society that may have contributed to the quota's success will be looked at from Ireland's perspective. A significant theme the chapter seeks to highlight is how the ownership and control structure i.e. extensive State ownership in Norway could have been an influential factor in the success of the law and thus a justification for its replication with Ireland's State-owned enterprises.

The chapter progresses in the following sequence. In the first part, the gender equality background of Norway is highlighted and related to the introduction and development of the gender quota. Some gender equality background of Ireland is also discussed in this part by way of comparison to Norway so as to highlight any/or no differences in both societies in this regard. The nature, evolution and implementation of the Norwegian gender quota is also analysed in this part. An analysis of the nature of the gender quota further highlights any peculiarities with the Norwegian gender quota that may have contributed to its success. The next part of the chapter identifies further extrinsic factors that may have contributed to the success of the quota in Norway. A comparative analysis is also included in this part by highlighting any similarities with these factors to practices in Ireland and more specifically in relation to the SOE sector. The final part of the chapter analyses the impact of Norway's quota on gender imbalance on boards of the affected companies by highlighting the impact/drawbacks of the quota in implementation/practice.

B. Norway and Gender Gaps

The historical attitude of the State toward gender inequalities across various sectors of the Norwegian society portrays a background that is suggestive of an adoption and success of the gender quota law. This attitude to gender balance in the society is evidenced in Norway's high global ranking in terms of gender

equality.⁴ Illustrative of this fact is the development of women's political empowerment. Norway was one of the first countries to grant women the right to vote as early as 1913⁵ and also one of the earliest countries to designate a cabinet position specifically to attend to the issue of gender equality. Gro Harlem Brundtland became the first female Prime Minister in 1981. Her inclusion on Norway's political scene also led to further development of female representation in politics when in 1986 she appointed a Government that included 8 women out of 18 cabinet members, an almost 50% gender balance which has remained at this proportion since then.⁶ In 2015, women accounted for 39.6% representation in Norwegian parliament.⁷ In 2003, Norway was commended by the United Nations as a "haven for gender equality".⁸ Norway is also one of the few countries to have had more than one female leader with Erna Solberg's appointment as Prime Minister in 2013.⁹ Significantly, under Erna Solberg's leadership, women made up 53 percent of Ministers heading key portfolios including the Finance, Defence and Trade and Industry ministries.¹⁰ An observable trend in Norway of more women being visible in key positions under

⁴ Skjeie H and Teigen M, 'Political Constructions of Gender Equality: Travelling Towards...a Gender Balanced Society?' (2005) 13(3) *Nordic Journal of Women's Studies* 187. Norway was ranked 1st by the World Economic Forum's (WEF) *Global Gender Gap Report* in 2008 and has ranked in the top three positions since then, ranking second also in 2015. <http://reports.weforum.org/global-gender-gap-report-2014/>. Accessed 22/04/16.

⁵ Gender in Norway, *Power and Decision-Making*. Available at <http://www.gender.no/Topics/14>. Accessed 22/04/16.

⁶ *ibid.*

⁷ *Women in National Parliaments (as at June 2015)*. Available at: www.ipu.org Accessed 20/04/16.

⁸ See United Nations, 'Norway Called 'Haven for Gender Equality', As Women's Anti-Discrimination Committee Examines Report on Compliance with Convention' (2003). Available at: <http://www.un.org/press/en/2003/wom1377.doc.htm>. Accessed 22/03/15. More recently in 2012, Norway along with other countries of the Nordic region was also commended by Michelle Bachelete of UN women for their exemplary gender equality policies. See 'Nordic Region Praised by UN Chief' Available at: http://www.norway-un.org/NorwayandUN/Big_Issues/Gender_Equality/Nordic-Region-praised-by-UN-chief/. Accessed 24/04/16.

⁹ European Parliament Research Service, *Women in Politics: Norway* (25/11/2013). Available at: <http://www.europarl.europa.eu/eplibrary/Norway.pdf>. Accessed 27/04/16.

¹⁰ *ibid.*

women leadership is consistent with the suggestion that women serve as role models and will attract other women to take up leadership positions.¹¹

Also illustrative of Norway's egalitarian inclination, is the low level in gender gaps in relevant areas of society. According to the *Gender Gap Index Report 2015* published by the World Economic Forum (WEF), of the 145 countries studied, Norway ranked first and third in economic and political participation respectively, and ranked second in the overall index.¹² Evidently, Norwegian women are largely visible in labour participation. The index shows that Norway has succeeded in reducing the gender gap in labour participation to below 5 percent and closing the gap in educational attainment.¹³ In 2015, female labour force participation in Norway stood at 68.8 percent¹⁴ while in education, women's visibility has been on the rise over the years surpassing that of men, with 33 percent of women having a tertiary education compared to 27 percent of men.¹⁵ Labour participation in Norway is however highly segregated with majority of the women taking up part-time employment and being more predominant in public sector jobs.¹⁶ In 2013, women accounted for 70.5 percent of Norway's public sector labour participation.¹⁷

Established family-friendly policies, such as affordable childcare and parental leave which seek to encourage women participation in the labour force and

¹¹ Singh V, Vinnicombe S and James K, 'Constructing a Professional Identity: How Young Female Managers Use Role Models' (2006) 21 (1) *Women in Management Review* 67. This is however inconsistent with the 'Queen Bee Syndrome' argument which suggests a lack of support from women leaders to other women. See Staines G, Travis C and Jayarante T, 'The Queen Bee Syndrome' (1973) 7(8) *Psychology Today* 55. See also Mavin S, 'Queen Bees, Wannabees and Afraid to Bees: No More 'Best Enemies' for Women in Management?' (2008) 19 (Issue Supplement S1) *British Journal of Management* S75.

¹² World Economic Forum, *The Global Gender Gap Index 2015- Norway*. Available at: <http://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=NOR>. Accessed 27/04/16.

¹³ *ibid*.

¹⁴ Statistics Norway, *Labour Force Survey, Q3, 2015*.

¹⁵ Statistics Norway, *Population's Level of Education, 1 October 2013*. Available at: <https://www.ssb.no/en/utdanning/statistikker/utniv/aar/2014-06-19#content>. Accessed 24/04/16.

¹⁶ Statistics Norway, *Labour Force Survey, Q4 2014*.

¹⁷ Statistics Norway, *Key Figures on Gender Equality*. Available at: <http://www.ssb.no/en/befolkning/nokkeltall/key-figures-on-gender-equality>. Accessed 24/04/16.

eradicate any discrimination in their career growth serve significantly as instruments of equal opportunities in the workplace and in society in general. The State's inclination to increase female labour participation and gender equality led to the establishing of a universal childcare system under which costs to families are largely subsidised.¹⁸ Day care for children in the age range of 1-5 years in Norway is institutionalised as a social right and is availed of by up to 90 percent of children in this age group.¹⁹ Full-time day care costs are also less costly in Norway.²⁰ Available and affordable childcare and other drivers of gender equality in Norwegian society, encourage more women to participate in the labour force.²¹

In Norway, parents are entitled to 1 year's paid leave (80% pay) following the birth of a child and a further 1 Year unpaid leave.²² Leave for the father was introduced in Norway in 1993 and from 1 July 2009, fathers are entitled to 10 weeks of the available 56 Week Parental leave. The Norwegian Parental law also allows parental leave to be shared between parents.²³ Norway's work-life balance policies which include policies on leave entitlements has had the effect of bringing more women and more particularly mothers of young toddlers into the labour market, albeit in part-time positions.²⁴ The decision to participate in part-time labour by women in Norway is said to be as a result of educational choices and type of job rather than a demand to balance family responsibilities.²⁵

Despite the robust facilities aimed at gender balancing, an imbalance still persisted within economic decision-making arena as boards of directors

¹⁸ Andresen M and Havnes T, 'Women and Children First? Labour Market Effects of Universal Child Care for Toddlers' (2014) http://www.sv.uio.no/econ/english/people/aca/martiea/womchifirst_20141027.pdf. Accessed 04/04/16.

¹⁹ Ellingsaeter A, 'Towards Universal Quality Childcare: The Norwegian Model' *Paper Prepared for the Conference Equal Access to Childcare: Providing Quality Early Years Education and Care to Disadvantaged Families, London 2012*.

²⁰ *ibid*, p. 8.

²¹ Andresen and Havnes, (note 18 above) p.21.

²² Directorate of Labour Inspection, *Act Relating to Work Environment, Working Hours and Employment Protection, Etc. (Working Environment Act)* (As subsequently amended last by the Act of 14 December 2012 No. 80) s.12-5 (1&2).

²³ *Working Environment Act* (note 22 above) s. 12-3 (1).

²⁴ OECD Better Life Index, *Work-Life Balance: Norway*. See also Statistics Norway; *labour Force Survey, Q4 2014* (note 16 above).

²⁵ *ibid*.

continued to be predominantly of male members. Given this outcome in Norway, it is evident that the establishment of egalitarian values or gender equality policies is not adequate in breaking the barriers preventing women from attaining board positions, hence the need for more coercive options like the legislative quota. The case of Sweden is another example that corroborates this suggestion. Notwithstanding an extensive environment of family-friendly policies and an identifiable history with eradicating gender imbalances, the use of legislative gender quota to increase gender diversity on boards of Sweden's companies is being considered.²⁶ The use of legislative quota in Norway and its consideration in Sweden is consistent with the argument that the adoption of gender quotas to address gender imbalance on boards is more likely to occur in a country where gender parity in society is prioritised.²⁷

Consequently, a more result-oriented and prescriptive instrument i.e. legislative gender quota was resorted to in an attempt to break the barriers that evidently could not be broken by more traditional methods.

C. The Norwegian Gender Quota Law for Corporate Boards

The quota law was passed in parliament in 2003 following a revision to the Companies Act. The quota requirement is contained in Article 6-11a for private sector companies; and Article 20-6 for State-owned enterprises, which set out

²⁶ EurActiv.com *New Swedish Government Mulls Quotas for Women on Boards* (01/10/2014). See also 'New Swedish Government Mulls Quotas for Women on Company Boards' October 1, 2014. Available at: <http://www.euractiv.com/sections/innovation-enterprise/new-swedish-government-mulls-quotas-women-company-boards-308834>.

Accessed 17/04/16.

²⁷ Terjesen, S. Aguilera, R. and Lorenz, R. 'Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors' (2014) *Journal of Business Ethics*. Available at: <file:///C:/Documents%20and%20Settings/pubadult/My%20Documents/Downloads/SSRN-id2327576.pdf>. p.238. Accessed 20/04/16

specific details on how gender representation should be achieved.²⁸ The quota mandates for a minimum representation of 40% for each gender on a wide range of Norwegian corporate boards, which also included companies incorporated by special legislation and inter-municipal companies.²⁹ The quota became applicable to affected companies at varied times. Implementation of the law for SOEs arose in 2004, for newly established public limited companies in the private sector, in 2006, and from 2008 all other public limited companies were expected to comply with the requirement.³⁰ The earlier implementation date for SOEs suggests that the least challenges were envisaged in their ability and willingness to comply. This was likely due to their direct relationship with the State. Notably also, the companies which were affected by the law are said to be the major players in Norway's economic scene and thus of significant economic relevance to the State and society.³¹ The importance of these companies to the Norwegian society could have influenced the decision to legislate for gender diversity on their boards. The economic relevance of those companies resonates with Ireland's SOEs given the significant areas in which they operate. *The Norwegian Code of Practice for Corporate Governance* (2014) which governs companies listed on the Oslo Stock Exchange including companies in which the State had significant shareholdings is collaborative to the law as it also requires that the composition of the board of directors in terms of the gender of its members must satisfy the requirements of the *Norwegian Public Limited Liability Companies Act*.³² The synergy of both instruments in this respect is no doubt also influential in the success recorded in

²⁸ *Norwegian Public Limited Liability Act, Act of 13 June 1997 No. 45* (as amended in 2003) For State-owned companies, the Act provides: *Requirement of representation of both genders on the board*: 1. Where there is two or three board members, both genders should be represented; 2. Where there is 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.

²⁹ Storvik A and Teigen M, *Women on Board, the Norwegian Experience* (2010) Friedrich Ebert Stiftung: Germany, p.4.

³⁰ *ibid*, Teigen M, 'Gender Quotas on Corporate Boards: On the Diffusion of A distinct National Policy Reform' (2012) 29 *Comparative Social Research* 142.

³¹ Teigen (note 30 above) p. 123.

³² The *Norwegian Code of practice* is available at: www.nues.no. See p.8. Accessed 24/04/16.

Norway and is indicative of the possible co-existence of hard law and soft law addressing the same issue.

Although the political society in Norway is perceived as being more gender-balanced than the economic society,³³ in reality, a gender equal society continues to be a major objective of the Norwegian politics and thus an on-going ambition yet to be attained.³⁴ Consistent with theory, the presence of women representation in Norwegian politics may have influenced an increased public debate on increasing the participation of women in economic decision-making in Norway.³⁵

i. The Political Process

The political process through which the law originated was unique and significant in many ways. From when the first government motion was submitted by the Ministry of Children and Equality to the relevant consultative bodies in 1999 to when it became fully implemented in 2008, the entire process is said to have lasted about ten years, indicating the extent of the controversy that surrounded the regulation.³⁶ However, having two unusual political figures proposing for the law is said to have dampened the opposition to the law.³⁷ Being the first country to have sought to implement legislative quotas for that purpose, the extent of controversy and opposition that occurred is not surprising. Subsequently, political environments in other States may not be too oppositional if such a law is

³³ Teigen M, 'Gender Quotas for Corporate Boards in Norway: Innovative Gender Equality Policy' in Fagan, C. Gonzalez Menendez, M. and Gomez Anson, S. (eds.) *Women on Corporate Boards and in Top Management: European Trends and Policy* (Basingstoke: Palgrave Macmillan, 2012) p.75.

³⁴ Skjeie and Teigen (2005) (note 4 above).

³⁵ Terjesen et al. (note 27 above) p. 243.

³⁶ Regulation in respect of board composition was initially proposed in 1999 by the Centre Government Coalition (Bondevik 1) as part of a major revision of the Gender Equality Act. See Storvik and Teigen (note 29 above) p.5.

³⁷ Storvik and Teigen (note 29 above) p.7.

proposed particularly as it has been successfully implemented in Norway without any significant negative outcomes to company performance.³⁸

The quota law was initially proposed in conjunction with a revision of the *Gender Equality Act* in 1999 by, the Minister for Gender Equality Valgerd Svarstad Haugland of the Christian Democratic Party (CDP).³⁹ The eventual realisation of the law is however attributed to the Minister of Trade and Industry, Ansgar Gabrielsen of the Conservative party.⁴⁰ Having both politicians belonging to anti-labour factions proposing the law may have served to allay oppositional views that were to be expected. Both sources of the proposal were considered innovative and non-traditional as such proposals would have been more usual with the Labour party in view of their pro-gender and pro-regulation ideologies.⁴¹ The conviction of a select group of political actors on the importance of gender equality measures did influence the response to regulating for gender diversity on boards.⁴² In addition, the fact that the proposal was spearheaded by a male (Ansgar Gabrielsen) is likely to have discouraged some of the opposition that may have occurred from the business society that was most probably dominated by men. The quota law when passed in parliament received majority political support with the exception of the Progress party.⁴³ The overwhelming support did not however completely suppress the counter-arguments that ensued in response to government's decision to impose gender quota laws. A similar factor may also have been contributory to the passing of the political gender quota law⁴⁴ in Ireland. The draft bill was introduced by Phil Hogan, the then Minister for the Environment, Community and Local Government.⁴⁵ Hogan was a recognised and

³⁸ See below in Chapter for discussion on the impact of the law on companies.

³⁹ Storvik and Teigen (note 29 above) p.5.

⁴⁰ See Storvik and Teigen (note 29 above) p.7; Teigen, (note 33 above) p. 79; Machold S, Huse M, Hansen K and Brogi M, *Getting Women on to Corporate Boards: A Snowball Starting in Norway* (Cheltenham, UK: Edward Elgar, 2013) p.5.

⁴¹ Storvik and Teigen (note 29 above) p. 7.

⁴² Storvik and Teigen (note 29 above) p.5; Machold et al (note 40 above) Chap. 1.

⁴³ *ibid.*

⁴⁴ *The Electoral (Amendment) (Political Funding) Act 2012* (Number 36 of 2012).

⁴⁵ Gavan Reilly, 'Gender Quota Legislation Passes all Stages of Oireachtas' 20 July 2012, Available at: <http://www.thejournal.ie/gender-quota-bill-approved-dail-seanad-527824-Jul2012/>. Accessed 14/04/16.

respected politician within and outside Ireland's political scene and this may have doused some of the opposition that could have occurred.⁴⁶

(a.) Arguments against the Norwegian Quota Law

The counter-arguments in Norway which were mainly from the business community were of the common themes in relation to the law bordering on unfairness, discriminatory, encouraging the appointment of less qualified and competent women; and a violation to shareholders and economic democracy.⁴⁷ The Confederation of Norwegian Enterprises (NHO) particularly argued that the quota would interfere with the autonomy of the company in protecting the interest of the shareholders.⁴⁸ The debates highlighted scepticisms as to the relevance of legislative intervention given the possible consequences it may have on the autonomy and performance of enterprise; and a lack of available and qualified women to occupy board positions.⁴⁹ Interestingly, the Government also relied on the need for fairness, anti-discrimination, justice, skills and democracy as justification for imposing the law.⁵⁰ Despite the counter-arguments the scepticisms for the law did dissipate when the law came into effect. Several reasons have been suggested for this change, mostly being attributed to the positive outcomes experienced in implementing the law more particularly with regard to its impact on corporate governance standards rather than the impact on company performance. The impact the quota law has had on affected companies and society in general is evident in two areas: its impact on company performance and its impact on the standard of corporate governance.⁵¹ While there has been no consensus in global literature on what impact having more

⁴⁶ Buckley, F. 'How Ireland Legislated for Candidate Sex Quotas to Increase Women's Representation' (2013). Available at: <http://www.democraticaudit.com/?p=1848>. Accessed 16/04/16.

⁴⁷ Teigen (note 33 above) p.81-82.

⁴⁸ Nergaard k., 'Govt Proposes Gender Quotas on Company Boards' (2016).

⁴⁹ Machold et al. (note 40 above) p. 4.

⁵⁰ Storvik and Teigen (note 29 above) p. 6-7; Machold et al (note 40 above) p.13.

⁵¹ See discussion below for Impact of the law on corporate governance processes on boards.

women on boards will have on a company's financial performance,⁵² evidence from the experience of Norway and Italy indicate no negative impact on company profitability.⁵³ The Norwegian gender quota was found not to lead to affected boards making less profitable business decisions⁵⁴ and findings from Italy show no evidence that the quota brought about any significant costs on companies or the stock market.⁵⁵

Ultimately, the Norwegian law served its purpose in increasing the level of female representation on the boards of the affected companies as by 2008 when the law became enforceable all companies were seen to have complied. Norway continues to maintain this level of gender balance in 2016 with women accounting for 41.6% of board positions in public limited companies.⁵⁶

D. Why Did the Norwegian Quota Law Succeed?

The word 'succeed' is used here loosely to refer to the impact of the quota on numerical gender representation. While the political and egalitarian environment of Norway at the time did play a role in setting the stage for the eventual adoption of a legislative gender quota and possibly its effectiveness, other intrinsic and extrinsic factors of the law have been identified as reasons why the law was successful in implementation. The ultimate severe penalty of company

⁵² See discussion in Chapter One, p. 39.

⁵³ There is however dissenting evidence showing negative impact on the stock market prices of affected companies. See Ahern K and Dittmar A. 'The Changing of the Boards: The Impact on firm Valuation of Female Board Representation' (2012) *The Quarterly Journal of Economics* 127.

⁵⁴ Matsa D and Miller A. 'A Female Style in Corporate Leadership? Evidence from Quotas' (2013) 5(3) *American Economic Journal : Applied Economics* p. 138.

⁵⁵ Ferrari G. Ferraro V. Profeta P and Pronzato C, 'Gender Quotas : Challenging the Boards, Performance, and the Stock Market' (2016) IZA Discussion Paper No. 10239.

⁵⁶ Statistics Norway, Board and Management in Limited Companies 1 Jan 2016. Available at: <https://www.ssb.no/en/virksomheter-foretak-og-regnskap/statistikker/styre/aar/2016-03-11#content>. Accessed 25/04/16. The figure for Norway may vary depending on the types of companies surveyed. For example, a selection of large listed companies may have a different representation. The above represents all public limited companies and is a more comprehensive and reliable figure.

dissolution accompanying the Norwegian law is particularly identified as the major determinant in the success of the law. The case of Norway thus illustrates the discussion in Chapter Three suggesting that the extent of severity of sanctions is a major determinant on the outcome of gender quotas.⁵⁷

i. Path Dependency

The gender quota law is not Norway's first attempt in enforcing gender quotas through legislation. Quotas and positive action were more significant in the development of gender equality in Norway's politics in comparison to other Scandinavian countries,⁵⁸ and quota procedures in the forms of preferential treatment; minimum representation rules and promoting procedures can be identified in other fields of society including in education and employment.⁵⁹ The *Gender Equality Act of 1978* that had the ultimate objective of improving the position of women prohibited all forms of discrimination on the basis of gender.⁶⁰ Further, all international agreements on the equality of men and women have been ratified by Norway. The *Gender Equality Act* incorporates the outcome of the *UN Convention on the Elimination of all forms of Discrimination against Women* (CEDAW). The Act was amended in 1981 to require that any public body, Board or council with four or more members should have at least 40% representation of each gender on their board.⁶¹

The need to maintain the autonomy of Norwegian businesses hindered earlier State legal intervention in reconciling the low representation of women in private

⁵⁷ A stark contrast is evident in Spain where though there were accompanying sanctions with the law, they were not severe but rather more of an incentive to encourage compliance.

⁵⁸ Borchost (note 3 above) p. 190.

⁵⁹ Principles of minimum representation exist in form of voluntary agreements in 5 Norway's political parties. Teigen, (note 33 above) p. 75.

⁶⁰ *The Act Relating to Gender Equality* (The Gender Equality Act) Chap.2 s.5. Available at: <https://www.regjeringen.no/en/dokumenter/the-act-relating-to-gender-equality-the-/id454568/>. Accessed 24/04/16.

⁶¹ *ibid*, Chap. 3, s.13 (e).

sector businesses with the gender equality image of the country.⁶² Gender equality policies concentrated mainly on the public sector and particularly in the areas of equal employment opportunities for both genders and promoting work-family balance through provisions for parental /maternity leave and child care. The introduction of gender quotas to regulate the gender composition of corporate boards in the private sector was therefore an innovative reform⁶³ that culminated from an identifiable progressive pattern of gender equality policies in the society.

Notably, a soft law approach had been relied on prior to the legislation in Norway. The reliance on a soft approach was likely in line with the reluctance not to interfere with the autonomy of private sector businesses. The fact that existing voluntary measures and initiatives to promote gender diversity on boards of businesses were not indicative of being effective also provided grounds for the imposition of the gender quota.⁶⁴ The quota had also been introduced to the business community on a non-binding basis prior to its becoming law and only became effective when the soft regulatory approach failed to bring about the needed change. The temporary introduction however encouraged the establishing of several initiatives that were to eventually positively impact on the legislative quota.⁶⁵ Evidently, although Norway followed its traditional path of legislation in order to enhance gender balance in society, in this case, it was relied on as a last resort as it appeared to be the only effective means. The reliance on quotas is illustrative of the significant difference between legislative gender quotas and soft law measures and represents the practical application of a 'carrot' and 'stick' approach. Legislative quotas are more likely than soft regulation to guarantee an increase.

⁶² Teigen (2012) (note 30 above) p.125.

⁶³ *ibid.* See also Lee, Alice 'Gender Quotas Worked in Norway, Why Not Here?' (2014) Available at: <http://www.newrepublic.com/article/119343/impact-quotas-corporate-gender-equality>. Accessed 24/04/16.

⁶⁴ Teigen (note 33 above) p. 77.

⁶⁵ One prominent initiative was the creation of a Database of qualified and available women, which companies could refer to in making appointments. (See below for more discussion on the Database).

The transition from a soft/voluntary regulatory environment to a mandatory one is increasingly gaining popularity in practice with countries like France, Netherland and more recently Germany towing a similar route.⁶⁶ Also, in countries where soft regulatory approach is being relied on like in the UK, Finland and Australia, the threat of a transition to more coercive legislative regulation hangs over in the event that soft/voluntary attempts have not delivered.⁶⁷ Delivery in this case could mean that though increase in gender diversity level is occurring, it is doing so at a slow pace, as was the case in Germany. Despite the inclusion of a Recommendation aimed at increasing gender diversity in the *German Corporate Governance Code in 2010*, a quota law was passed in 2015.⁶⁸ The inclusion in the German Code did lead to a higher level of increase in gender diversity though this was considered slow and not effective hence the quota law.⁶⁹ A similar outcome in delivery resonates with Ireland's State boards/SOEs where even though increase has occurred over the years (since the Government policy came into place) the objective of 40% is yet to be attained. This is suggestive of the need to transition to a more coercive legislative instrument to increase gender diversity level on SOE Boards.

⁶⁶ Senden, L. 'Comparative Study on Legal and Regulatory Approaches in Europe to Increase the Share of Women in Middle and Higher Management Positions' (*European Project Promoting Women in Leadership*) (2014) p. 18. See also Deloitte, *Women in the Boardroom: A Global Perspective- 4th Edition* . p. 48, 56. Available at: <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-cg-women-in-the-boardroom-a-global-perspective4.pdf>. Accessed 25/04/16. Although in the case of France the Recommendations were not given enough time to be effective having been included in 2010 and the quota law was introduced in 2011 and made the provisions in the Code redundant.

⁶⁷ See Discussion in Chapter Five.

⁶⁸ See Holst E and Schimeta J, 'Slightly More Women in Germany's Corporate Boardrooms- Especially in DAX 30 Companies' (2013) Available at: https://www.diw.de/documents/publikationen/73/diw_01.c.416658.de/diw_econ_bull_2_013-03-1.pdf. Accessed 24/04/16.

⁶⁹ A 1.6 percent increase in women representation on supervisory boards across Germany's top 100 companies occurred between 2010 and 2011 following the inclusion, compared to a slower rate of 2.6 percent in a longer period from 2006-2010. See Hoist and Schimeta (note 68 above) p. 4. See also, Government Commission, *German Corporate Governance Code* (as amended on 26 May 2010) Recommendation 5.4.1.

ii. Penalty/Sanctions for Non-compliance with the Law

There is wide consensus that a major factor that led to the achievement of the quota target in Norway was the applicable penalty in the event of non-compliance.⁷⁰ As the gender quota requirement was incorporated into the *Norwegian Public Limited Liability Companies Act*, the existing penalty that applied to companies in the event of non-compliance with the Act was also applicable in respect of not meeting with the board composition requirements of the quota. According to the Act, a non-compliant company faced the ultimate risk of dissolution after several warnings may have been issued.⁷¹ The penalty of dissolution could however be waived on the authority of the Minister for Trade and Industry on public interest grounds though the company may still suffer monetary penalties pending when it complies with the law.⁷² In addition, the Register of Companies reserves the right to refuse to register a company's (newly incorporated) board of directors that does not meet the requirement.

The inclusion of the gender quota law therefore benefited from an existing legal framework that proved appropriate in ensuring the quota was effective in achieving its target. This also explains why Norway has so far been the only country to apply such penalties. If the inclusion of such a penalty had been in the legal system for many decades and had been accepted, it is less likely to aggravate any hostilities to the law with regard to their being applicable. A similar acceptance may however not be had where it is newly imposed for the purpose of the quota as this would seem too harsh or not proportionate to the requirement. In the same vein, while the severity of the penalty is significant for having compelled compliance, there are speculations that it may have led to a

⁷⁰ European Women's Lobby, *Women on Boards in Europe: from a Snail's Pace to a Giant Leap?* (2012) p .15. Available at: http://www.cite.gov.pt/pt/destaques/complementosDestqs/Report_EWL.pdf. Accessed 14/04/16; Storvik and Teigen (note 697 above) p. 8.

⁷¹ *Norwegian Public Limited Liability Act* (note 696 above) s. 16-15; 16-16.

⁷² Storvik and Teigen (note 29 above) p. 8.

mass exodus of companies who in an attempt to avoid the penalty resorted to changing their legal status from public limited to private limited companies. About 100 companies re-registered from public limited to private limited companies in 2007.⁷³ However, while such style in avoidance may not be applicable to SOEs, a similar sanction may not be relevant for Ireland's SOEs but one severe enough to compel compliance. Withholding of State funding support may elicit the necessary compliance with SOEs as a significant number of them still depend on the State for all or a majority part of their funds and such penalty would greatly challenge their sustainability.

iii. Ownership/Control Shareholding of the State

As was discussed in Chapter two, the ownership and control relationship of the State with SOEs does import a different dimension in the discussion on regulation for SOEs from that of private sector companies. The experience of different countries has shown that the rate of compliance is much higher with SOEs. The fact that the State is both the policy maker and regulatory authority is likely correlated to this outcome. This was the case for Norway. The State in Norway is a prominent participant in corporate governance as it occupies majority shareholding positions in most of the large listed companies and SOEs, of which all of them were included in the law.⁷⁴ The controlling influence the State could exert on the SOE/listed company is sufficient to elicit compliance with the law. The State could choose to exercise its right by voting on its shares in a

⁷³ This conclusion is however speculative as there were also suggestions that the re-registrations could have occurred as a result of a change in the law covering trade with securities, in 2007. Following the change, financial companies trading in securities were no longer required to be registered as PLCs. See Heidenreich V, 'Consequences of the Norwegian Gender Quota Regulation for Public Limited Company Boards' in Machold et al (note 40 above) p.123.

⁷⁴ Kallevig Morten, 'Ownership Function of the Norwegian State' (2005) *OECD Russian Corporate Governance Roundtable Meeting, Moskva 2-3 June 2005*, p.3. Available at: <http://www.oecd.org/daf/ca/35175246.pdf>. Accessed 24/04/16.

shareholder's General Assembly or by the removal of a board of directors in the case of SOEs.⁷⁵

iv. Transparency /Openness Culture

The effectiveness of gender quotas may not only be measured by the achievement of the numerical target but is also determined with the achievement of an actual equal representation that includes a high number of women rather than a few making up the required proportion i.e. 40%. An illustration of the latter scenario is seen in the emergence of 'the Golden Skirts' in Norway. The term, which originated following implementation of the Norwegian quota refers to a situation where appointments to board positions are concentrated on a group of few women rather than across a greater number.⁷⁶ Evidently this outcome would negate the equality/democracy justification for the imposition of the quota. It can be argued that a transparent and open culture could discourage such superficial effectiveness of gender quota laws. As earlier stated, a major criticism of gender quota laws is the lack of available and qualified women to fill up the board positions. While statistics show otherwise as to availability of women, the 'Golden Skirt Syndrome' perception was a practical outcome of the implementation of gender quota law in Norway, evidencing that though educated and qualified women are in the society, they may either not be visible or may not make themselves available for board roles. While family related responsibilities could hinder women in this respect, a lack of transparency in the appointment process, board culture and a lack of confidence in the State's commitment to increasing female representation on State boards are some of the factors that could discourage women from coming forward. In Ireland, a non-transparent appointment process to State boards and the general board culture

⁷⁵ *ibid*, p. 4 & 7.

⁷⁶ 'Golden Skirt Syndrome' is discussed in greater detail below at p.214.

with regard to female directors are identified as major barriers to women's access to board positions.⁷⁷

The practice of a culture of transparency that transcends across almost all activities within the State is evident in Norway. This culture did have a collaborative effect on the success in Norway, under the quota regime. The culture dates far back and came about as a result of egalitarianism and collectivism for which Norway is associated with. The extent of the transparency is reflected in, for example, tax and income records for the Norwegian working class have been available to the public since 1863 and can still be accessed publicly through the Tax administrator's website.⁷⁸ Norway's commitment to transparency is also evident in its participation in the Open Government Partnership (OGP) initiative being one of the first countries to join since it began.⁷⁹ The initiative is aimed at getting participating governments to commit to promoting transparency, citizen empowerment, fight against corruption and promoting new technologies to strengthen the State's relationship with its citizens.⁸⁰ The initiative was created on the basis that governments' need to be more transparent, accountable and efficient to its citizens.

(a.)Availability of Databases

The availability of databases in Norway is an illustrative extension of the transparency and open culture inherent in the State. In line with this culture the

⁷⁷Institute of Directors, *Women on Boards in Ireland: Insights From Women Directors on the Progress Made and Obstacles Remaining (2013) (IOD survey)*. Available at: <https://www.iodireland.ie/assets/files/Women%20on%20boards%20in%20Ireland%20-%20Insights%20from%20women%20directors%20on%20the%20progress%20made%20and%20obstacles%20remaining%20FINAL.pdf>. Accessed 20/04/16.

⁷⁸Erlend E, Slemrod J and Thoresen T, 'Taxes on the Internet: Deterrence Effects of Public Disclosure' *Statistics Norway Research Department Discussion Papers No. 770, January 2014*.

⁷⁹The OGP formally launched in September 2011 with 8 founding governments: Brazil, Indonesia, Mexico, Norway, Phillipines, South Africa, United-Kingdom and United States. See U.S. DEPARTMENT of STATE *The Open Government Partnership* Available at: <http://www.state.gov/j/ogp/>. Accessed 23/04/16.

⁸⁰ *ibid.*

level of information made available to the public in Norway is very high. The development of a public database of female employees in Norway following the demands that came with meeting the quota target was therefore in line with transparency and received support and response from relevant parties. The creation of a public database in this regard suggests a high level of commitment by all parties involved and would serve to encourage more women to participate thereby increasing the talent pool. The availability of this database was supposed to make it easier for companies to access women who were qualified and available to take up board positions.⁸¹ Prior to the adoption of the gender quota law several other databases existed which were all aimed at developing and making women more visible for leadership positions.⁸² Evidently, it was a practice already in place. Following the passing of the law the largest employers association in Norway, the Confederation of Norwegian Enterprise (NHO) (one of the major oppositions to the law)⁸³ began to develop a similar database to be consulted by those companies who were required to comply with the law. Through the *Female Future* program the NHO sought the commitment of CEOs of participating companies to identify female talents within their organisations for further development and grooming through an 18-month training and networking programme so as to be ready to take up board positions. These women will then be included in the database. The programme is still in existence though the number of participating companies is greatly reduced.⁸⁴ The reduced usage of the database could have resulted following a reduction in demand for female directors as the quota target had been achieved. In addition, it could also be as a result of the developing perception that the 'Golden Skirt' Syndrome which was

⁸¹ The word 'supposed' is included here because the 'Golden Skirt' syndrome suggests that this was not the case. While the database in itself was not lacking, other factors led to the non-optimal use of the database. The fact that most appointments were made based on personal associations and career experience meant that the database was hardly consulted in the first place.

⁸² Four databases were established at national levels while a number were also developed at regional and sector levels. Of the four, including the one by the NHO, two were set up by the State while the other was by a lawyer's association. See Storvik and Teigen (note 697 above) p. 9. See also Machold et al (note 40 above) p.14, for other similar initiatives that collated names of available female directors.

⁸³ See p. 175.

⁸⁴ Storvik and Teigen (note 29 above) p. 10.

similar to the 'Boys Club' Syndrome the quota sought to eradicate, seemed to have developed among the high level corporate world despite the database suggesting that the database may have been ineffective in providing a wide range of available women. The 'Golden Skirts' however did not persist for long in Norway as none of the academic studies that investigated the outcome of the quota a few years after its implementation observed the 'Golden Skirts' as a significant outcome of the quota.⁸⁵

The *Female Future* Program has received international applause and a similar initiative has been replicated in several countries such as Uganda and Kenya.⁸⁶ In New Zealand where increasing the number of women on State boards and committees is prioritised, a nominations service through which women could register their interest and availability for board participation was successfully used to increase gender diversity levels on State boards from 12.1 % in 1981 to 41.7% in 2014.⁸⁷ The Nominations service was first established by the Women's Electoral Lobby in 1979 but later transferred to the Ministry for Women in 1986.⁸⁸ The database serves as a source for government officials and other organisations seeking qualified and available women for board members. In the UK, information on public appointments is also made public particularly to specific groups such as women, with the aim of encouraging members of these groups to apply for public opportunities. This approach was adopted to further the objective of equality of opportunities that is included in the Commissioner's Code of Practice on Public Appointments.⁸⁹ The Code is based on the principles of

⁸⁵ See the discussion on the impact of the quota below.

⁸⁶International Labour Organisation, *Female Future: Turning the Tide* (2011) Available at: http://www.ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS_165993/lang-en/index.htm Accessed 24/04/16. Federation of Uganda Employers, <http://www.fuemployers.org> ; Federation of Kenya Employers, <http://www.fke-kenya.org/femalefuture/images/FEMALE%20FUTURE.pdf>. Accessed 24/04/16.

⁸⁷See Ministry for Women, Gender Stocktake Result 2014. Available at: <http://women.govt.nz/news/gender-stocktake-results-2014>. Accessed 25/04/16. SOEs are however excluded from this program.

⁸⁸ OECD (Centre of Arab Woman Training and Research), *Women in Public Life Gender, Law and Policy in the Middle East and North Africa* (OECD Publishing, 2014) p. 139.

⁸⁹The Commissioner for Public Appointments, *Code of Practice for Ministerial Appointments to Public Bodies 2012*. Available at:

fairness, merit and openness. Overall, the response and support that the practice of public databases receives could be related to an existing transparent culture in the State, in the belief that it is for a credible purpose. It is significant for the success of gender quota laws as it seeks to address the non-availability of candidates for female directorships.

(b.) Employee Representation on Boards

Employee representation on boards is also a practice illustrative of a transparent and open culture. The practice of employee participation on Norwegian boards is linked to the success of the gender quota law to increase gender diversity on Norway's corporate boards.⁹⁰ Boards with an obligation to include employee representation are likely to be more tolerant of a quota for other groups and be more open to communication with them.⁹¹ The inclusion of employee directors on boards is indicative of industrial democracy that seeks to give employees a role and a voice in the decisions that affect them through direct participation on the board. Employee participation on boards is a widespread practice in Norway and is governed by several laws including the *Public Company Limited Act*.⁹² The law is applicable to companies with 30 employees and more including SOEs and applies variedly among companies.⁹³ The right to participate on boards for employee elected workers is however not automatic and is to be requested by the employees. There is however an obligation on the company to effect the requirement based on the request where the company meets the requirement threshold. Notwithstanding, the practice is widely implemented more especially among large companies. In light of this widespread practice and no significant

<http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/Code-of-Practice-2012.pdf>. Accessed 24/04/16.

⁹⁰ Sweigart, A. 'Women on Board for Change: The Norway Model of Boardroom Quotas as a Tool for Progress in the United States and Canada' (2012) 32(4) *Northwestern Journal of International Law and Business* 101A.

⁹¹ *ibid.*

⁹² Hagen I, *The Current System of Employee Representation in Norway* (Oslo: FAFO Institute for Applied Social Science, 2005).

⁹³ *ibid.*

opposition to the practice by Norwegian businesses, it can be assumed that the inclusion of employee directors on boards is accepted. It can also be argued that their acceptance stems from their positive and unique contribution to board decision and strategy making.⁹⁴ In effect, the gender quota law to increase the level of gender diversity on Norway's boards which implied the inclusion of more 'outsiders' on the board was not totally alien to boards and may have made it easier to be implemented by affected companies.

Research has linked the participation of women on boards with that of employee participation, as both constitute diversity on boards,⁹⁵ and are a common feature of a European model of corporate governance that is predicated on the 'stakeholder approach'.⁹⁶ Similar to arguments for gender diversity on boards, the inclusion of employees on boards is said to offer a different perspective in board discussion of which other directors have no knowledge of, and more importantly lend a contrary voice on the board to avoid 'groupthink'.⁹⁷ Their similarities with regard to impact on board processes and activities is also evident in the fact that a renewed interest in employee representation was ignited as a result of corporate failures like that of Enron where the absence of employees on boards was said to have contributed to the failure.⁹⁸ Also, similar criticisms have been used for both female directors and employee directors such as the view that employee directors are perceived as having insufficient competence in contributing to certain discussions such as financial and budget related matters.⁹⁹

⁹⁴Gold, M. "Taken on Board": An Evaluation of the Influence of Employee Board-Level Representatives on Company Decision-Making Across Europe' (2011) 17(1) *European Journal of Industrial Relations* 53.

⁹⁵ Huse M, Nielsen S and Hagen, I. 'Women and Employee-elected Board Members, and their Contributions to Board Control Tasks' (2009) 89 *Journal of Business Ethics* 581; Verma A and Weststar J, 'Token Presence or Substantive Participation? A Study of Labour Trustees on Pension Boards' (2011) 32 *Journal of Labour Research* 39.

⁹⁶Gordon J and Roe M, *Convergence and Persistence in Corporate Governance* (Cambridge: Cambridge University Press,2004) p. 50-51.

⁹⁷ Huse et al (note 95 above) p. 592.

⁹⁸Kochan T, 'Restoring Trust in American Corporations: Addressing the Root Cause' (2003) 7 *Journal of Management and Governance* 225.

⁹⁹Bohren O and Strom R, *The Value Creating Board: Theory and Evidence*, Research Report 8/2005 BI Norwegian School of Management, p. 36.

Having identified a historical trend of commitment to egalitarian values by the Norwegian State and high level of women's economic participation, which may have led to the State's inclination to use legislative quota, it is important to identify if a similar trend was/is present in the Irish society. With this, it could be suggestive of what the State's attitude to gender imbalance on SOE boards would be and the possibility or not of the State resorting to using a more coercive instrument like legislative quota to address such imbalance.

E. Searching For a Background for Legislative Gender Quota in Ireland

Is there a basis in Ireland that is suggestive and conducive for the Norwegian experience to be replicated in respect of SOEs? While Ireland may have come a long way since its independence economically and in development of society,¹⁰⁰ there is still a lot of improvement to be had particularly in relation to bridging the gender gaps in the Irish society.¹⁰¹ As can be identified with Norway, a positive and progressive attitude towards balancing gender gaps could indicate for Ireland, the possibility of addressing gender imbalance on SOE boards through legislative quotas. While the 2012 political gender quota may be temptation to surmise a political intent to use quotas, as mentioned in Chapter Three, there is no definite correlation between the use of political quotas among countries and the implementation of the same approach in respect of improving gender balance on boards.¹⁰² More so, Ireland's political quota is limited in its capability to effect actual change in female representation as it only addresses representation at candidacy level.

¹⁰⁰ See discussion in Chapter Two.

¹⁰¹ See World Economic Forum, *Global Gender Report 2015 – Ireland*. Available at: <http://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=IRL>. Accessed 23/04/16.

¹⁰² See also Sweigart (note 90 above) p. 99A.

i. Ireland and Gender Gaps

Ireland ranked 5th out of 145 countries in the WEF *Gender Gap Report 2015*, having climbed from 8th place in 2014.¹⁰³ However, the high ranking is mainly attributed to only two indices: the rate of life expectancy and women's access to third level education,¹⁰⁴ rather than a more active participation of women in the society. Access to third level education has not translated to increased participation for women in key areas of the society such as in politics, labour (employment levels and pay inequalities) and economic leadership positions. Given that a country also gets rated based on the number of years out of the past 50 during which it has had a woman as head of State, Ireland's two former female presidents: Mary Robinson and Mary McAleese, who only served in ceremonial capacities, would have contributed in putting Ireland in the top 10 ranking.¹⁰⁵ Women in Ireland also gained a conditional right to vote as early as 1918 as it was limited to women who had attained 30 years of age and were landowners.¹⁰⁶ Despite this condition being waived in 1928, women's political participation in Irish society did not improve.¹⁰⁷ Till date, Ireland is still not at par with Norway with regard to women's political empowerment.

However, in keeping with international practice and EU influence, the Irish State continues to put machineries in motion aimed at reducing and eradicating gender imbalance.¹⁰⁸ The introduction of a political gender quota law in 2012 to address the gender imbalance in political participation in Ireland represents an

¹⁰³ World Economic Forum, *The Global Gender Gap Index 2015- Ireland*. Available at: <http://reports.weforum.org/global-gender-gap-report-2015/economies/#economy=NOR>. Accessed 24/04/16.

¹⁰⁴ Anthea McTeirnan, 'Should We Be Celebrating Ireland's Gender Equality Result?' *The Irish Times* 28 October 2014.

¹⁰⁵ *ibid.*

¹⁰⁶ *Representation of People Act 1918*. Available at: http://archive.org/stream/representationof00frasrich/representationof00frasrich_djvu.txt. Accessed 25/04/16. See also Ireland's 90th Anniversary of Women's First Vote' *Irish Independent* 14 December 2008.

¹⁰⁷ *ibid.*

¹⁰⁸ See discussion on EU influence on Ireland in Chapter Three, p.149

innovative step in Irish Politics. Following the last general elections in 2016, during which the 2012 political gender quota was implemented for the first time, women now occupy a record position in the lower Parliament. Women now occupy 35 of the 158 TD seats in the Dáil Éireann,¹⁰⁹ accounting for 22%, a figure however still below the EU average of 26%.¹¹⁰ Ireland now ranks 14th out of 28 EU member countries.¹¹¹ Globally, these figures will put Ireland in 75th position out of 185 countries with Norway in the 15th position.¹¹² The figures for Ireland are considered a record development as they represent the highest figure ever attained for women participation in parliament in the country's history.¹¹³ In 2011 women occupied only 27 of the 166 seats in the Dáil, representing 16% at the time which was far below the then EU average of 28%,¹¹⁴ and placed Ireland in the 111th position out of 185 countries.¹¹⁵ While a definite correlation between the quota law and the increased representation is not certain yet,¹¹⁶ the number of first time female candidates in the 2016 election suggests that the quota law had an impact. Of the 35 women elected, 14 were first time candidates and 19 were entering the Dáil for the first time.¹¹⁷ Gender imbalance is also evident in

¹⁰⁹ Trinity College Dublin, *Irish Election 26 February 2016* (2016). Available at: https://www.tcd.ie/Political_Science/staff/michael_gallagher/Election2016.php. Accessed 24/04/16.

¹¹⁰ Thejournal.ie, *We Now Have More Female TDs Than Ever Before-But Do We Really Have Quotas to Thank? : A comprehensive analysis of the historic election of 35 women to the 32nd Dáil*, 1 March, 2016. Available at: <http://www.thejournal.ie/women-in-32nd-dail-election-2016-2630150-Mar2016/>. Accessed 24/04/16.

¹¹¹ Authors own calculation from information on European Commission, *Database for Women and Men in Decision-Making*. Available at: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/supervisory-board-board-directors/index_en.htm. Accessed 22/04/16.

¹¹² Based on the ranking table available on, *Women in National Parliaments* (note 675 above).

¹¹³ Thejournal.ie, *We Now Have More Female TDs Than Ever Before-But Do We Really Have Quotas to Thank? : A comprehensive analysis of the historic election of 35 women to the 32nd Dáil*, 1 March, 2016 (note 110 above).

¹¹⁴ European Commission, *Database for Women and Men in Decision-Making* (note 111 above).

¹¹⁵ *Women in National Parliaments* (note 7 above).

¹¹⁶ It is still too soon to conclude given that this was the first election following the introduction of the law.

¹¹⁷ Trinity College Dublin, *Irish Election 26 February 2016* (2016) (note 109 above).

the Seanad (upper Parliament) with women occupying only 18 of the 60 seats as at June 2015, (30%).¹¹⁸

Another significant historical development was the abolition of the 'marriage bar' in 1973.¹¹⁹ The bar which prevented women from continuing in public service employment after marriage was removed after Ireland joined the EU as a Member State.¹²⁰ The removal, coupled with women's increased access to third level education¹²¹ and the introduction of various EU equality initiatives¹²² have worked to give women better access to the labour market. As a result, the gender gap in labour participation was reduced, with female participation increasing further over the years as Ireland's economy improved. In 1973, the year Ireland joined EU, female labour participation was at 27 percent of the labour market and by 2008 at a 60.5 percent female employment rate, Ireland had surpassed the 60 percent target set by the EU to be achieved by 2010.¹²³ A rise in female labour participation is also observed in the period of 1994-2007 that represents a period of economic boom in Ireland where demands for labour were at a high.¹²⁴ Notably, the increase was not as a result of any action or policy by the State. A rise in female labour participation at this time did not however translate to eliminating gender inequalities/gaps as women were still segregated by roles in low-paid work which included part-time work.¹²⁵ While this observation may not necessarily apply to all countries, it is a more likely outcome in countries such as Ireland where the economic role of women was traditionally

¹¹⁸ *Women in National Parliaments* (note 7 above).

¹¹⁹ Connolly E, 'Durability and Change in State Gender Systems: Ireland in the 1950s' (2003) 10(1) *European Journal of Women's Studies* 65. See also Russell H, McGinnity F, Callan T and Keane C, *A Woman's Place: Female Participation in the Irish Labour Market* (Dublin: Equality Authority, 2009) p.19.

¹²⁰ *ibid.*

¹²¹ Russell et al. (note 119 above) p. 34.

¹²² For example, *Roadmap for Equality between Women and Men 2006-2010; Strategy for Equality between Women and Men 2010-2015* and *European Women's Charter*. All three initiatives emphasised equality in labour participation and economic independence for women and men as a strategic goal towards gender equality. See a more detailed discussion of the impact of EU policies in Ireland in Chapter Three p.149.

¹²³ European Commission, *Lisbon Strategy for Growth and Jobs* (Com (2005) 24).

¹²⁴ Russell et al (note 119 above) p. 34.

¹²⁵ In 1994 women accounted for 54% of low-paid workers increasing to 59% in 2000 though it further dropped to 55% by 2005. See Russell et al (note 119 above) p. 47.

segregated as of a lower status to that of men in the society.¹²⁶ In 2013, men worked an average of 39 hours a week compared to women working 31 hours in the same time.¹²⁷ In 2015, 7% of men in Ireland worked 50 hours or more a week compared to 2% of women.¹²⁸

The fact that women are more predominant in these jobs which are usually unlikely to impact positively in their career progression could also explain the gender imbalances in decision-making positions in Ireland despite women's high employment participation. This trend is similar to Norway as despite a high rate of female participation women are also more predominant in part-time employment or less demanding jobs like public sector positions,¹²⁹ which also reflected in the level of gender diversity on boards in those countries. Sex/gender segregation in labour whereby there is an inherent separation of roles based on gender may be resistant to egalitarian and family-friendly policies hence the need for legislation.¹³⁰ Ireland may therefore also need to go on a similar legislative route to address the gender imbalance on SOE boards given that such systemic irregularity i.e. role segregation in labour participation could be contributory to the imbalance and therefore change may not occur voluntarily. It may be argued however that role segregation could also occur as a result of a conscious choice where women choose less well-paid jobs so as to balance work-life demands, as these jobs are less demanding. Making the choice to work in these roles is also as a result of a systemic problem with childcare or adequate leave policies for women, which also needs to be addressed.¹³¹ A further illustration of role segregation is evident in the predominance of women in specific service inclined

¹²⁶A 2011 Report found that men are more likely than women to be in the labour force while women are predominantly in domestic roles at home. Central Statistics Office, *Women and Men in Ireland 2011*.

¹²⁷ Central Statistics Office (QNHS), *Women and Men in Ireland Report 2013*.

¹²⁸ OECD Better Life Index, *Ireland (2015)*. Available at: <http://www.oecdbetterlifeindex.org/countries/ireland/>. Accessed 14/04/16.

¹²⁹ Charles M and Grusky D, *Occupational Ghettos: The Worldwide Segregation of Women and Men* (Stanford, CA: Stanford University Press, 2004).

¹³⁰ Fine-Davis M, *Gender Roles in Ireland: Three Decades of Attitude Change* (Abingdon: Routledge, 2015) p. 39.

¹³¹ See more discussion on this below in p. 193 and also in Chapter Six, p.329.

sectors such as health and education sectors while the men dominated construction, transport and agriculture sectors.¹³²

The drop in female labour participation following Ireland's economic crisis that began in 2008, and the subsequent rise by 2014 when the economy had begun its recovery process shows that the gender gap/balance is not a function of State action but rather a function of economic demands.¹³³

A commitment to equality may however be reflected in the public sector where women hold certain key leadership positions. In 2014, women accounted for 30% of Supreme Court judges in Ireland and for the first time in the State's history, the offices of the Chief Justice is occupied by a woman as well as the positions of the Attorney General, the Director of Public Prosecution, the Chief State Solicitor and the Commissioner of An Garda Síochána.¹³⁴ While candidates for these positions are drawn from both the public and private sector it could also be suggested that the high visibility of women in the public sector employment may also have enhanced women's opportunity in being appointed to these positions. Thus suggesting that there is a correlation between women's visibility in these roles as a reflection of the State's action commitment to reducing gender inequalities may be rather presumptuous.¹³⁵

The introduction of the *National Women Strategy 2007-2016(NWS)*¹³⁶ could also be an indication of the State's commitment to promote gender balance. The Strategy provides the major framework for the achievement of gender equality in all areas of the society. Some Reports published by some of those initiatives are significant for this thesis as they all serve to highlight some common existing

¹³² Central Statistics Office (QNHS), *Women and Men in Ireland Report 2013*. See also Korpi W and Englund S, 'Egalitarian Gender Paradise Lost? Re-examining Gender Inequalities in Different Types of Welfare States' (2009) *Paper Presented at the EMPLOY_FAMNET Workshop in Berlin*, May 11-12.

¹³³ Central Statistics Office (QNHS), *Women and Men in Ireland Report 2013*.

¹³⁴ Department of Justice and Equality, *Women in Public Sector/Civil Service* (2014). www.genderequality.ie. Accessed 25/04/16.

¹³⁵ McGinnity F, Murray A and McNally S, (Department of Children and Youth Affairs) *Mothers' Return to Work and Childcare Choices for Infants in Ireland, Report 2* (Dublin: Stationery Office, 2013) p. 12.

¹³⁶ Department of Justice, Equality and Law Reform, *National Women's Strategy 2007-2016* (Dublin: Stationery Office, 2007) (*NWS*).

factors that engender gender imbalance in decision-making in Ireland including on boards of SOEs.¹³⁷ While a lack of conscious commitment of the State can be assumed given the concentration of women in leadership positions in the public sector positions,¹³⁸ the gender gap in Ireland may also have persisted as a result of lack of adequate policies to address or eliminate both traditional and artificial barriers that serve as obstacles in women's career progression or labour participation in the first place. The establishment of family-friendly policies in Norway was an illustration of the State's commitment in eradicating gender inequalities. The existence of such policies in Ireland will also be viewed in the same way.

(a.) Accessibility to Childcare in Ireland

Inaccessibility of childcare is popularly noted as one major setback to achieving gender balance in the workplace, in decision-making and in Ireland generally.¹³⁹ To this end, it was considered a priority in the attainment of gender equality objectives.¹⁴⁰ Ireland ranks in the bottom in accessibility of childcare and is considered to have one of the highest childcare costs in Europe.¹⁴¹ The inability to access childcare as a result of inadequate availability and high cost greatly influences the decision of women in Ireland in seeking for employment or returning to employment during and after childbearing stage. Ireland's historical

¹³⁷ HOUSES OF THE OIREACHTAS JOINT COMMITTEE ON JUSTICE, EQUALITY DEFENCE AND WOMEN'S RIGHTS, *Second Report-Women's Participation in Politics, October 2009*; DEPARTMENT OF JUSTICE AND EQUALITY, *Towards Gender Parity in Decision-Making in Ireland (An Initiative of the National Women's Strategy 2007-2016) 2013*; McGinnity et al (note 135 above).

¹³⁸ Department of Justice and Equality, *Women in Public Sector/Civil Service (2014)* (note 795 above).

¹³⁹ *ibid.* See also Galligan Y, 'Encouraging Greater Participation of Women in Public Life' *Briefing Document for Constitutional Convention 16-17 February 2013*. See further discussion on 'Accessibility to Childcare in Ireland' in Chapter Six, p.329.

¹⁴⁰ See NWS, (note 136 above) Objective 5A..

¹⁴¹ European Commission Directorate General-Justice and Fundamental Rights, 'Use of Childcare in the EU Member States and Progress Towards the Barcelona Targets' *Short Statistical Report No. 1, Contract Ref. No JUST/2011/GEND/PR/1081/A4 April 2014*. p. 17-18.

patriarchal culture tended to place the women as the paramount care giver in the family, causing a lot of women to be saddled with this responsibility and therefore unable to take up full employment or any kind of employment at all.¹⁴² As mentioned earlier, the inability to access adequate childcare also accounts for the gender gap in work roles as the need to provide care for children also led many women to take up part-time employment.¹⁴³ The non-availability of affordable and adequate childcare is also an indicator of the level of the State's commitment in enhancing the participation of women. It is also suggestive of the fact that a resort to a more coercive instrument i.e. legislative quota may not be a likely option for the State to tackle the unbalanced level of gender diversity on boards of SOEs.

(b.) Parental Leave Policies in Ireland

Ireland's policies on leave issues such as maternity, paternity and parental leave are inadequate and may have contributed to the persisting gender gap in labour participation. The inadequacy is equally indicative of the State's attitude to addressing gender gaps in the society. Given the traditional perception of the Irish woman's role in the society, the consequences of inaccessibility to adequate leave entitlements inadvertently rests on the woman and her ability to take up employment thereby perpetuating gender imbalance.¹⁴⁴ The ultimate objective for instituting adequate leave policies is for women and men to be able to share family responsibilities and thus give both similar opportunities in the workplace.¹⁴⁵ Parental leave in Ireland is covered by the *Parental Leave Act 1998* as amended by the *Parental Leave (Amendment) Act 2006*. According to the Act,

¹⁴² See European Foundation for the Improvement of Living and Working Conditions (EuroFound), *Childcare Services in Europe* (Denmark, 2009), Available at: https://eurofound.europa.eu/sites/default/files/ef_files/pubdocs/2008/95/en/1/EF0895EN.pdf. Accessed 24/04/16.

¹⁴³ *ibid.*

¹⁴⁴ Library of the European Parliament, *Work Life Balance, Measures to Help Reconcile Work, Private and Family Life* (May 2013).

¹⁴⁵ See further discussion in Chapter Six, p. 333.

men and women are individually entitled to 14 weeks unpaid leave from employment in order to provide care for their children.¹⁴⁶ Following the *European Union (Parental Leave) Regulation 2013*, parental leave allowance was increased from 14 weeks to 18 weeks.¹⁴⁷ As it is an individual entitlement, the statutory parental leave cannot be shared between parents in Ireland.¹⁴⁸ However, under the Civil Service Agreement and subject to approval, 14 weeks of the 18 weeks parental leave may be transferred between parents as long as they are under a single employer.¹⁴⁹ The option of a paid paternity leave for new fathers is to take effect from the last quarter of 2016.¹⁵⁰

While Ireland may not be at par with Norway in addressing issues of gender imbalance in the society, there is some on-going commitment towards that goal. The challenge however is that a greater part of commitment that is tied to practical implementation is yet to be realised. The objectives of the *NWS* remain in focus and are monitored by the Department of Justice. The provision of a Talent Bank is an objective of the Government which is yet to materialise.¹⁵¹ Newly structured Parental leave entitlements and childcare system will commence from the last quarter of 2016.¹⁵² As discussed earlier in Chapter One, Ireland has indicated a commitment to ensuring that gender imbalances in decision-making are addressed by committing to the ideals of the *Beijing Platform for Action* and *CEDAW* which both emphasise on the equality of women in decision-making. *CEDAW* entrusts the responsibility of ensuring equal

¹⁴⁶ *Parental Leave (Amendment) Act 2006 (Number 13 of 2006)* s. 6 (1).

¹⁴⁷ *Amendment of section 7 of the Principal Act.*

¹⁴⁸ *Parental Leave* (Note 146 above) s. 6(6a & b).

¹⁴⁹ Department of Public Expenditure and Reform, *HR Management in the Civil Service*.

¹⁵⁰ Kirstin Campbell, 'Fathers Have their Day as Paternity Leave on the Way Next Year' *The Irish Times*, 6 November 2015. Available at: <http://www.irishtimes.com/business/work/fathers-have-their-day-as-paternity-leave-on-the-way-next-year-1.2418335>. Accessed 25/04/16. See further discussion in Chapter Six, p.334.

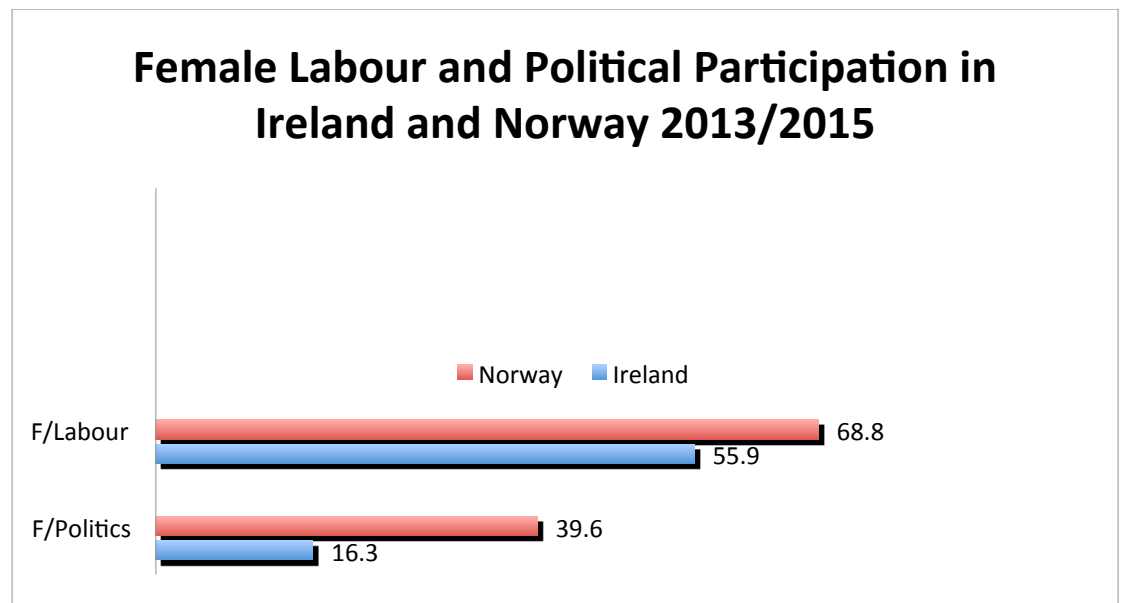
¹⁵¹ See discussion below at p. 202.

¹⁵² Department of Finance, *Budget 2016*, Available at: http://www.budget.gov.ie/Budgets/2016/Documents/Budget_2016_leaflet_pub.pdf. Accessed 30/04/2016.

participation for women in public and political decision-making, in the State.¹⁵³ One of such steps could include establishing legislative gender quotas. Ireland's *Equal Status Act of 2000* is predicated on the principle of equal participation for all in the society.¹⁵⁴

The State's resolve to impose a legislative gender quota in the candidate selection process was informed by actions of civil society groups e.g. NCWI and a political reform discourse which were in reaction to the economic crisis and highlighted low levels of gender diversity in Ireland's political representation.¹⁵⁵ A similar discourse has also developed for gender diversity on State Boards as Ireland's economic crisis also revealed the drawbacks to the system and economy associated with the lack of gender diversity on State boards including SOEs.¹⁵⁶

Figure 2.



¹⁵³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, Article 2(e, f).

¹⁵⁴ (No. 8 of 2000).

¹⁵⁵ See House of The Oireachtas, Joint Committee on Justice, Equality Defence and Women's Rights, *Second Report-Women's Participation in Politics*, October 2009 (PRN. A9/1468) (Annex C) (note 798 above).

¹⁵⁶ Clancy P, O'Connor N and Dillon k, *Mapping the Golden Circle* (Dublin: TASC/New Island, 2010); Murphy M, *Gender, Governance and the Irish Crisis* (Dublin: TASC, 2012).

Source: *Women in National Parliaments 2015*; Central Statistics Office (QNHS) *Labour Force Participation*; Statistics Norway: *Labour Force Survey 2015*; Eurostat *Labour Force Survey 2003-2013*.

ii. Transparent and Open Culture in Ireland

Ireland may certainly be moving in the direction of better transparency between the State and the Public it serves having chosen to join the membership of the OGP initiative in 2014. The process that led up to Ireland becoming a member of the initiative highlighted a relationship between the State and its citizens that lacked in transparency, accountability and higher levels of citizen engagement.¹⁵⁷ A realisation of the aims of the initiative into the Irish society could positively influence the level of gender diversity on SOE boards particularly as they are institutions of the State and have a direct relationship with the public. Three of the four core principles of the OGP: accountability, citizen participation and transparency can be implemented by creating SOE boards that are more representative of the society.

(a.) Employee Representation on SOE Boards

Ireland's perspective on employee representation on boards is more limited than that of Norway. In Ireland, employee participation (more commonly referred to as worker participation in Ireland) on boards is being practiced only within the SOE sector and a number of State agencies. SOEs such as ESB, An Post, RTÉ Coillte, Bord na Móna, Dublin Airport, Dublin Port and Ervia, have employee directors on their boards. Other public sector institutions e.g. Courts, are also covered by laws

¹⁵⁷ Haughey N, *Report of a Consultation with Civil Society Representatives and Citizens on Ireland's Participation in the Open Government Partnership*, October 2013 (Transparency International Ireland) Available at: http://www.ogpireland.ie/wp-content/uploads/2013/10/13-10-02-OGP_ConsultationReport_FINAL.pdf. Accessed 21/04/16.

that entitle employees to a position on the board.¹⁵⁸ In Ireland, the practice is governed by the *Worker Participation (State Enterprises) Acts 1977 and 1988*, and has therefore been a feature of SOEs for over 30 years. According to the Worker Participation Acts, a third of board of directors of SOEs should be made up of employee elected directors.¹⁵⁹ The application of the law to mainly SOEs in Ireland is consistent with the conceptual view of SOEs as a social institution given its relationship with stakeholders i.e. employees, customers and the wider society.¹⁶⁰ While privatisation of SOEs may have led to a reduced prevalence of employee directors on these boards, the instituting of social partnership arrangements served to increase the inclusion of other directors such as community, business and trade union representatives on State boards.¹⁶¹ In effect, Ireland's SOE boards also does consist of those that may be referred to as 'outsider' directors, an unconscious way by which women could also be viewed by the board given that they don't belong to the 'boys club'. Several other pieces of Irish legislation that underpin employer involvement in the workplace indicate the importance the State places on the contribution of employees in matters that affect them and also their contribution in relation to the sustenance and growth of the SOEs they work for. For example, *Employees (Provision of Information and Consultation) Act 2006* provides for the establishment of a framework which sets out minimum requirements for the right to information and consultation of employees in undertakings with at least 50 employees.¹⁶² It can be argued therefore that SOE boards are traditionally not a closed circuit consisting of directors belonging to a specific network and thus the imposition of a law to include more women on their boards may not be imposing something unusual.

¹⁵⁸ See *Labour Services Act 1987 s.3(7)* and *Court Service Act 1998 s.11(1)*.

¹⁵⁹ s. 23 of *Worker Participation (State Enterprises) Act 1977 (Number 6 of 1977)* and s. 21 *Worker Participation (State Enterprises) Act 1988 (Number 13 of 1988)*

¹⁶⁰ TASC, *Good for Business? Worker Participation on Boards* (July 2012)(TASC Survey).

¹⁶¹ For example, the *Labour Services Act 1987* also provides for appointment of such representatives in An Forfas. An example of Social Partnership Agreement in Ireland includes *Partnership 2000* that was issued by the Department of the Taoiseach. Change was also as a result of EU, through the publication of European Commission, *Partnership for a New Organisation of Work Green Paper* (Supplement 4/97) (Brussels: Bulletin of the European Union, 1997).

¹⁶² Other applicable legislation include; *European Communities (European Cooperative Society) (Employee Involvement) Regulations 2007 –S.I. No. 259 of 2007*.

Early reports on the implementation of the *Worker Participation (State Enterprises) Act 1977* with regard to worker/employee directors show conflicting response/attitude both from the employee directors and the non-employee directors. While the non-employee directors and management had initial concerns as to conflict of roles and confidentiality that could arise from employee directors, the Reports identified that the idea of including employee directors was embraced by the Management of the SOEs and the non-employee directors also having made significant contributions in board discussions.¹⁶³ Employee directors however perceived some resentment and marginalisation from certain board discussions.¹⁶⁴ Over the years however, the arrangement has come to be accepted and a harmonious relationship can be said to exist on SOE boards between employee directors and non-employee directors. According to a 2012 Report based on the survey of a wide and diverse range of employee and non-employee directors, barring their exclusion from membership of sensitive board committees such as audit and remuneration committees, employee directors express a general feeling of belonging and significance on SOE boards.¹⁶⁵ The perception is mutual as the survey also found non-employee directors to have positive views of the arrangement. Over half of the non-employee directors in the survey agreed that employee directors contributed positively to board tasks in the area of corporate governance, strategic direction of SOEs and ultimately in the performance of SOEs.¹⁶⁶ Specifically, their contributions were said to be unique and provided contrary opinion which served to avoid groupthink and

¹⁶³ The Report was compiled only two years after the Act became effective and was based on a study of only five SOEs. Although seven SOEs were active at the time only five of them i.e. had conducted elections at a reasonable time after the Act and thus could be studied for impact. In all, 20 worker directors had been elected across the five SOEs. See EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS, *Colloquium on the Worker Director and His Impact on the Enterprise-Expectations, Experience and Effectiveness in Seven Irish Companies:(Evaluation Report of the Employers' Group) (1981) p.2-3.*

¹⁶⁴ These may however have occurred as a result of the employee directors' sensitivity due to being in a new role and environment and also the concerns on the part of the non-employee directors regarding conflict of role. See Murphy, T. and Walsh, D. *The Worker Director and His Impact on the Enterprise- Expectations, Experience and Effectiveness in Seven Irish Companies (Summary Report, Contract no. EF/SC/79/22/WO)* (Dublin: Irish Productivity Centre,1980) p. 15, 18.

¹⁶⁵ *ibid.*

¹⁶⁶ TASC Survey (note 160 above) p. 29.

increase diversity on the board and also, they provided necessary information that assisted the board in the area of industrial relation.¹⁶⁷ In addition, contrary to initial reservations, employee directors were seen to act in the overall interest of the organisation rather than being dominated by specific interest of employees. Significantly, the non-employee directors in the survey called for a possible spread of the arrangement to the whole public sector. However there is need to consider the perspective that, employee directors on these boards are predominantly men. Acceptance may be less likely in a situation where there is a difference in gender.¹⁶⁸ It may be the case that most of the employee directors may also have been male which could have also contributed to their acceptance by other board members. For example, the four worker directors on the board of CIE are all male while three out of the four on that of An Post are also male.

Nevertheless, it can be assumed that the trend of initial hostility or resistance to a quota law would also occur in terms of legislating to increase gender diversity on SOE boards. This trend is also consistent with the Norwegian gender quota law that was initially opposed and later became accepted at implementation stage.¹⁶⁹ Female directors that were appointed on boards following the quota were likely to have been exposed to discriminatory attitudes from male directors at the initial stages. While it may be argued that the eventual acceptance occurred because of SOEs' relationship to the State and thus compliance more likely, the 2012 survey revealed that the dynamics on the board also reflected the success of the law and not just with the attainment of the figure. In other words, the employee directors, according to the earlier mentioned TASC Survey in Ireland, were actually seen to be making useful contributions and included in board activities. Compliance was therefore not only with the letter of the law but the spirit of the law was achieved.

¹⁶⁷ *ibid.*

¹⁶⁸ Oakley J, 'Gender-Based Barriers to Senior Management Positions: Understanding the Scarcity of Female CEOs' (2000) 27(4) *Journal of Business Ethics* 324.

¹⁶⁹ See discussion on Norway's quota in Chapter Four from p.174

(b.) Availability of Databases

The practice of database is not synonymous to Ireland. The creation of a database of qualified and available women for positions on State boards is an objective of the State in line with its commitment to achieving a 40% female representation on State boards since 2007.¹⁷⁰ To this end, the action plans as contained in the *NWS* include; 1) the development of a database of women who might be considered for State board positions and 2) the development of training programs to prepare suitably qualified women to participate on State boards.¹⁷¹ The need for a database of women and training programs in Ireland to support the 40% target was further reiterated in 2013 in a report prepared by a Sub-Committee of the *NWS* Monitoring Committee which includes a wide range of representatives of civil servants, trade unions, National Women’s Council of Ireland (NWCI) and Irish Business and Employers Confederation (IBEC).¹⁷² Among its recommendations, the Sub-Committee made specific recommendations for State boards (including SOEs);

1. a Talent Bank of women suitable for consideration for appointment to State boards be developed and maintained by the Gender Equality Division of the Department of Justice and Equality or its agent, in consultation with relevant organisations as appropriate. The Talent Bank should also include a provision for self nomination;
2. that active steps should be taken to identify suitably qualified professional women who can offer their expertise in particular to the more economically focused State boards where there is significant gender deficit at present;

¹⁷⁰ Department of Justice and Equality, *Government Approves New Measures to Promote Gender Diversity on Boards* (2014). Available at:

<http://www.justice.ie/en/JELR/Pages/PR14000203> . Accessed 20/04/16.

¹⁷¹ *NWS* (note 136 above) Objective 14 (144 & 145).

¹⁷² Department of Justice and Equality, *Towards Gender-Parity in Decision-Making in Ireland* (2013) (note 137 above) .

3. that all Government Departments and nominating bodies be recommended to consult the Talent Bank in their selection processes and when making nominations to the relevant Minister, where the Minister is responsible for the appointment; and
4. that all Government Departments and the Agencies under their aegis be required to submit material on the steps they are taking to 'ensure that all State Boards have at least 40% of each gender' in line with the commitment of the Programme for Government, as part of their annual return on State Board figures to the Gender Equality Division, Department of Justice and Equality. This material may be published.¹⁷³

However, three years after the last proposal to which the State showed commitment, a Talent Bank is yet to become fully implemented, at the time of writing.

In addition, a limitation can also be perceived from the way the Talent bank will be operated as the recommendation does not indicate if it will be published publicly. While a lack of transparency may not hinder the success of the initiative in getting more women on SOE boards given that the appointments are made by the Minister and he or she can still easily access it through the ministry, it could be argued that this lack of transparency could suggest a lack of total commitment by the State to the goal and not encourage more women to indicate their interest and availability. Knowledge of those that have indicated interest or have been appointed through the initiative could also attract more interested women. Hence, the aim of increasing the talent pool may not be achieved. The effectiveness of a gender quota law may thus be compromised with not enough available women to take up board positions.

¹⁷³ *ibid*, p. 62.

(c.) Appointment to SOE Boards

A lack of transparency is the major criticism for the process of appointing members of State boards in Ireland. The non-transparent process is particularly viewed as responsible for preventing more female directors from accessing board positions.¹⁷⁴ The process of appointment to Ireland's State boards is seen as tainted with 'cronyism', 'patronage' and 'sexism',¹⁷⁵ and acts as a barrier for women. However following a reform of the process in 2014, greater transparency could potentially be had in the appointment of board members.¹⁷⁶ Although it is still early to assess any impact of the reform, there are potential weaknesses in the new process that could undermine improved transparency. These weaknesses stem from the peculiar relationship of the SOE and the State, where the Minister, acting on behalf of the State as a shareholder still has the ultimate decision in making appointments.¹⁷⁷ The absence of a formally structured appointment or voting process as in private sector companies could mean the process will still be shrouded by some non-transparency.

iii. Regulatory/Legal Framework of Gender Quota

The regulatory framework of the quota is significant to its effectiveness/outcome. The regulatory framework within which Norway's quota was included did

¹⁷⁴ Institute of Directors, Women on Boards in Ireland 2015 Survey 2015.(IOD Survey 2015) Available at: <https://www.iodireland.ie/sites/default/files/documents/Women%20on%20Boards%20In%20Ireland%202015%20FINAL.pdf>. Accessed 20/04/16.

¹⁷⁵ National Women's Council of Ireland (NWCI) 'A Clear and Transparent Process is Critical in State Boards Appointments' 26 January 2015. See also IOD Survey 2015 (note 174 above). See more discussion in Chapter Six p.312.

¹⁷⁶ Department of Public Expenditure and Reform, *Guidelines on Appointments to State Boards (2014)*. Available at: <http://www.per.gov.ie/>. Accessed 28/04/16. (*Guideline for Appointment*). The Guidelines are applicable to all State boards including SOEs. The Guidelines are however subject to specific arrangements in relation to appointments on boards of NewEra Companies; ESB, Irish Water, EirGrid, Bord na Móna and Coillte. Exceptions also apply in the case of appointment of worker directors on boards of SOEs.

¹⁷⁷ See further discussion in Chapter Six on the Minister's final discretion in appointment.

contribute to its success as the existing framework, i.e. Norwegian Public Limited Liability Companies Act, provided the severe sanctions that attracted a high level of compliance.

A replication in this regard for Ireland's SOEs may be a complicated process given the variety in classification of SOEs based on their legal status. The SOE sector includes organisations statutorily created by statutes, e.g. ESB, Ervia and those incorporated under the Companies Act, e.g. Eirgrid and Bord Na Móna. This variety will mean that not one existing regulatory framework can suffice for all SOEs. Different regulatory frameworks have different accompanying penalties/sanctions. For example, while the Companies Act makes provision for a range of penalties including options of imprisonment and monetary fines relating to a wide range of offences/default, ¹⁷⁸ the *Electricity (Supply) Act 1927* includes no such penalties. ¹⁷⁹ The *Code of Practice 2009*, which governs the corporate governance of SOEs is also silent in respect of penalties. In order to apply the quota uniformly across all SOEs, the State would need to consider creating alternative regulatory framework that would incorporate similar severe sanctions and other designs such as the nature of legislation in terms of being temporary like the Italian, Dutch and Spanish quota laws ¹⁸⁰ or permanent like the Norwegian law. There is the risk that target may not be attained under a temporary law particularly where compelling sanctions are not included. As in the Dutch board quota, given that as at 2015 women accounted for 7.8 % and 21.3 % in executive and non-executive board positions out of the 30 % required by the law for both positions, ¹⁸¹ it is doubtful if the 30 per cent target can be achieved by January 2016 when the quota terminates. Newly introduced severe sanctions could however attract adverse response to the quota. However, given that the SOE's

¹⁷⁸ *The Companies Act 2014*, Part. 14 Chap 7, s. 871. A company may however be dissolved for failing to file annual returns. See Companies Registration Office, Missed Deadlines. Available at: <https://www.cro.ie/Annual-Return/Missed-Deadlines>. Accessed 23/04/16.

¹⁷⁹ See *Electricity (Supply) Act 1927-2014*.

¹⁸⁰ See discussion in Chapter Two.

¹⁸¹ Luckerath-Rovers M, *The Dutch Female Board Index 2015* p. 8. Available at: <http://www.tias.edu/docs/default-source/Kennisartikelen/femaleboardindex2015.pdf?sfvrsn=0>. 20/04/16.

relationship to the State makes it more liable to comply notwithstanding, an adverse reaction to the quota where the sanction is considered too severe may only result in hostility for the law which could reflect in the attitude of other directors to those appointed through the quota and/or could also cause them not to appreciate the values of a gender diverse board. The introduction of severe sanctions could thus attract adverse response which could go contrary to the spirit of the law, where such sanction is a new imposition.

Another aspect of the legal framework that could impact the outcome of quota law for SOEs is in respect of timeline for achieving the target. While Norway did not adopt this approach, a number of countries such as Austria, France and Italy applied a tiered level approach, which involved attaining a lower target within a shorter time frame.¹⁸² Attaining a lower threshold target could be useful for avoiding outcomes such as the creation of 'Golden Skirts' and appointing of female directors without requisite experience or educational qualification, that could occur under pressure in a bid to meet with a higher threshold within a short time frame.¹⁸³ The avoidance of such unintended outcomes may have informed the use of a tiered target approach in Ireland's political gender quota.

G. Implications of the Quota for Corporate Governance in Norwegian Companies

The discussion and debate that preceded Norway's quota law reflected in a change in the practice of board member selection from a traditional informal process where social and professional networks were relied on to a more rational search process that prioritised the requirements of competence, qualification and gender of board members.¹⁸⁴ The extended debate period also created more awareness for corporate governance which led to greater improvement in

¹⁸² See discussion in Chapter Two on international developments.

¹⁸³ See below for more discussion on this from the Norwegian quota perspective.

¹⁸⁴ Huse M, *Boards, Governance and Value Creation* (Cambridge: Cambridge University Press, 2007) p. 95.

standards of board practice than were suggested in the debate. For example, an improvement was noted in the rate of attendance of meetings.¹⁸⁵ This does not however suggest that similar long debating and discussion periods should be encouraged or replicated in other locations but it highlights how discussions and debates could be influential in disseminating information and knowledge that would be useful in encouraging greater compliance with the spirit of the law. Board members could be led to re-evaluate their performance and make necessary adjustments in their processes or attitudes, in an attempt to avoid legislative intervention it could also change the attitude and practice in the selection and appointment of SOE board members.

i. Impact of Norway's Gender Quota

The Norwegian experience has served to set the general background as to the workings and eventual outcome to quotas, barring national differences. Ultimately, the gender quota law achieved the aim of increasing gender diversity levels on board though other outcomes of the law were also brought to the fore. While some of the outcomes of the law can be said to be common with quota laws and may thus occur always irrespective of country, peculiarities in the Norwegian environment did enhance or predict some outcomes. Accordingly, it can be suggested that the impact of the quota law in Norway needs to be considered within the context of Ireland so as to identify how a similar law might impact gender diversity levels on SOE boards and any other outcome it may have.

As a pace setter in this regard the impact of the gender quota law on company performance and corporate governance in Norway is relevant. While an analysis of a possible impact of the law on the financial performance of SOEs would be useful given the commercial objective of Ireland's SOEs, prior studies may be an unreliable source for such an analysis and could therefore lead to unjustifiable

¹⁸⁵ *ibid*, p. 94.

comparisons in the context of Ireland.¹⁸⁶ Existing analysis on the financial outcomes of the quota were based on limited and specific data and thus may be unreliable as a reference of general outcome. Sampling data used in these studies consisted of a limited number of companies among those that were affected by the law and therefore the conclusions drawn may not be of a general applicability particularly for SOEs;¹⁸⁷ and studies were carried out a few years after implementation of the law suggesting that observed or calculated outcomes could be short term effects and may not present a true picture.¹⁸⁸ In light of these, the impact of the law considered in this section will be limited to its effect on board composition and the dynamics of the board from a corporate governance perspective. While some of these outcomes can also be considered as short-term effects, their relationship to existing theories gives added justification.

(a.) Impact on level of Gender Balance

Perhaps the most obvious and significant outcome of the Norwegian quota is the dramatic increase in the number of female directors on boards of the affected companies. This outcome provides the base on which two important inferences can be made which are relevant in relation to increasing gender diversity on boards of Ireland's SOEs. An increase of 40:60 ratios in the level of gender diversity was highly significant because prior to the gender quota law, gender diversity level was in the ratio of 94:6 in favour of men. The extent of this increase may not seem relevant nor significant to Ireland's SOEs as gender diversity levels in the sector are not as low, with a ratio of about 75:25¹⁸⁹ and therefore it could

¹⁸⁶ Nygaard K, 'Forced Board Changes: Evidence from Norway' 24th *Australasian Finance and Banking Conference 2011 Paper*. P.3; Ahern K and Dittmar A, 'The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation' (2012) 127(1) *Quarterly Journal of Economics* 137.

¹⁸⁷ Ahern and Dittmar (note 186 above) p. 137.

¹⁸⁸ Nygaard (note 186) p. 6.

¹⁸⁹ Author's calculation based on information contained in SOEs 2014 annual reports. (See Table 1, Chapter 1).

be argued that Ireland may not require a similar quota law as the difference to be filled to attain the 40 percent target can be done more easily. However, despite a much higher level being recorded on Ireland's SOEs, some important facts provide grounds for the imposition of a similar gender quota law on SOEs in Ireland: The Government policy which sets the target of 40% minimum gender representation on Ireland's State boards has been in place since 1993 and over two decades later, the target has never been fully achieved. While recent Government commitments in the last four years may have increased the attention on this issue, female directors representation on State boards (including SOEs) have remained more or less static ranging between 35-36% despite the increased attention,¹⁹⁰ with female directors occupying on 23.8% on boards of SOEs specifically, a figure still far from the 40% target. In addition, a further analysis of the achieved figure reveals an uneven spread of gender diversity across boards. For example within the SOE sector as at 2015, female director representation on boards of SOEs such as ESB, TG4, Ervia, Eirgrid and RTÉ ranges between 33%-50% while in contrast, SOEs such as National Lottery Company, Dublin Airport Authority (DAA), CIÉ and Bord Na gCon (Irish Greyhound Board) having a lower proportion ranging from 14 % to 18 %.¹⁹¹ More significantly, some SOEs like Shannon Foynes Port Company, New Ross Port Company and the National Oil Reserves Agency Limited did not have any female directors on their board as at 2015. The achieved figure is therefore not a true picture as some boards are yet to implement the policy. Given the underlying argument for increased gender diversity levels which is to make use of all available talent and in particular for SOEs, to ensure that boards are representative of the society they serve, adequate levels of gender diversity need to be evenly spread across all SOEs in Ireland. The Norwegian quota law did achieve this objective of an even spread as all affected companies were seen to have complied with the 40% target by 2008. The existence of the law also ensured that companies were monitored against compliance with the target as the legislation will also make provision for how compliance is to be monitored. Lack of effective monitoring may also be

¹⁹⁰ Refer to discussion in Chapter One.

¹⁹¹ Author's analysis from information in companies' 2014 Annual reports.

contributing to the uneven compliance in Ireland that could be addressed where a law is put in place.

(b.) Impact on Quality of Board

The inclusion of female directors on boards only becomes justifiable where they are seen to effectively contribute to board tasks and discussions and thus improve the quality of the board.¹⁹² It is this need to ensure that the required contribution is got from them that has influenced gender representation target rates being set by countries to border on 30-40%, a figure that represents the requisite amount that is more likely to exert influence in a group. Barring the male dominance on boards, the same requisite amount is also applicable for men where they may be the minority in a group; hence, most gender diversity related regulation includes this as the requisite minimum representation for both genders. The 30-40% requisite amount is informed by the underpinnings of the theory of Tokenism that suggests that when women are in a minority position in a group they could be subject to discriminating behaviour from the majority group and are therefore unable to influence group decisions.¹⁹³ According to the theory, these problems that accrue based on a minority position should abate when their representation goes beyond the token limit. The theory suggests that the group becomes balanced where a ratio of 60:40 to 50:50 is reached.¹⁹⁴ However, with reference to boards of directors, the presence of at least three women has been shown to provide the necessary environment for them to be able to influence the board or be treated non-discriminately by male board members.¹⁹⁵ The failure of

¹⁹² Board effectiveness is dependent on the ability of the board to perform its task and its members to work together cohesively. See Forbes D and Milliken F, 'Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups' (1999) 24(3) *Academy of Management Review* 489.

¹⁹³ Kanter R, 'Some Effects of Proportion on Group Life: Skewed Sex Ratios and Responses to Token Women' (1977) 82(5) *American Journal of Sociology* 965.

¹⁹⁴ *ibid*, 966.

¹⁹⁵ Konrad A, Kramer V and Erkut S, 'Critical Mass: The Impact of Three Or More Women on Corporate Boards' (2008) 37(2) *Organizational Dynamics* 145; Torchia, M., Calabro, A. and Huse, M. 'Women Directors on Corporate Boards: From Tokenism to Critical Mass'

female directors to exert influence on boards could be as a result of their representative ratio on the board as a 'critical mass' is required for their impact to be felt.¹⁹⁶ Being a single female director on the board could present challenges such as; struggling to be heard, not being taken seriously even when heard, stereotyped as a typical woman and therefore a representative of women interests; exclusion from social relations among board members and private meetings among board members, ultimately affecting the performance of the person viewed as a token.¹⁹⁷ When a second and/or third woman joins the board, this dynamic tends to change and is said to give added confidence for all the female directors and makes them more likely to be taken serious by other board members as a relevant part of the board.¹⁹⁸ Single female directors could however also exert strong influence though this will be more as a result of personal attribute such as a strong character or tough exterior rather than being viewed in the capacity of a female director (a gender perspective).¹⁹⁹

An argument against the gender quota has also suggested that female directors who join a board as a result of quota requirements may tend to lack confidence because they view it as condescending, or be discriminated against due to lack of competence or experience and therefore discriminatory attitude toward the female director may not necessarily be an outcome of tokenism.²⁰⁰ While a lack of confidence by the female director or such discriminatory attitude towards her

(2011) 102(2) *Journal of Business Ethics* 299. See also Elstad B and Ladegard G, 'Women on Corporate Boards: Key Influencers or Tokens?' (2012) 16(4) *Journal of Management and Governance* 595.

¹⁹⁶ *ibid.*

¹⁹⁷ Huse M and Solberg M, 'Gender Related Boardroom Dynamics: How Women Make and Can Make Contributions on Corporate Boards' (2006) 21(2) *Women in Management Review* 113; Nielsen S and Huse M, 'Women Directors' Contribution to Board Decision-Making and Strategic Involvement: The Role of Equality Perception' (2010) 7 *European Management Review* 16; Powell G, *Women and Men in Management* 4th Edition (Los Angeles, CA: Sage Publications, 2011)p.24.

¹⁹⁸ Konrad et al (note 195 above) p. 146.

¹⁹⁹ *ibid.*

²⁰⁰ Quotas generally tend to reinforce negative stereotypes about women's capacities in decision-making and could elicit negative feeling in women. See Von Bergen C, Soper B and Foster T, 'Unintended Negative Effects of Diversity Management' (2002) 31(2) *Public Personnel Management* 242.

may be perceived,²⁰¹ this feeling or attitude may be unlikely to persist for a long time once the female director gets better acquainted with board activities. In addition, where three or four female directors are present on a board irrespective of how they got there, the Tokenism theory suggests that they are likely to draw strength from the presence of each other. Hence, under a gender quota law, the issue of lack of confidence may not even occur at early stages. This could explain why early studies of the Norwegian gender quota law did not reveal any lack of confidence displayed by the women on boards.²⁰² Societal ingrained pre-existing perceptions of women such as that which considers women to lack competence, career experience and relevant background for board roles could also engender such lack of confidence or discrimination when a female director gets on a board rather than as a result of the quota. Experience which the female director had encountered before joining the board that were as a result of these negative perceptions could have instilled a lack of confidence in her.

Going by the postulation of the theory therefore, the Norwegian gender quota law did make it possible for women representation on boards to go beyond the token limit and thus provided an environment for the expected positive outcomes of gender balance to be had. In effect, it suggests that corporate governance standards did improve with more diverse and unique contributions in discussions and decision-making. Evidence from Norway relays those boards with sub-optimal corporate governance arrangements prior to the law, benefited from the increased monitoring that occurred as a result of more female directors being included on boards.²⁰³

One of the major arguments against the quota in Norway was that it would encourage the inclusion of female directors who lacked the necessary competence and career experience therefore undervaluing the quality of the

²⁰¹ Miliken F and Martins L, 'Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups' (1996) 21(2) *The Academy of Management Review* 402.

²⁰² Although this discovery could be as a result of the suggestion that a specific qualified pool of women were being appointed to boards following the introduction of the quota, i.e. 'Golden Skirts'.

²⁰³ Nyagaard (note 186 above) p. 19.

board and could ultimately compromise company performance.²⁰⁴ This argument was however not validated in practice as average director experience on boards did not decline following the inclusion of female directors and as such overall performance of companies was not affected, at least not by a lack of adequate experience.²⁰⁵ Consequently, the argument dissipated after the law came into practice. Board competence may also have increased as a result of an increase in the average level of education on boards following the inclusion of female directors.²⁰⁶ Since the mid 1980s women in Norway have consistently outnumbered men in higher education.²⁰⁷ In 2008 when the quota law became implemented, 29% of women had higher education compared to 25% of men.²⁰⁸ The outcome after the implementation of the quota law was thus a mix of highly educated women and less educated men. A similar outcome may be expected if gender quota laws are implemented by SOEs in Ireland. The same perception of women with regard to competence and career experience can be assumed to exist in Ireland given the historical traditional role women have played in the Irish society. It can also be argued that this same perception played a contributory role to women's persistent under-representation in decision-making generally in Ireland over the years. Women in Ireland also attain higher education than

²⁰⁴ Hoel M, 'The Quota Story: Five Years of Change in Norway' in Vinnicombe, S., Singh, V., Burke, R., Bilimoria, D. and Huse M, (eds) *Women on Corporate Boards of Directors: International Research and Practice* (Cheltenham,UK: Edward Elgar Publishing, 2008) p. 86; Milne Richard, 'Skirting the Boards' *Financial Times* 14 June, 2009.

²⁰⁵ Matsa D and Miller A, 'A Female Style in Corporate Leadership? Evidence from Quotas (2012) 5(3) *American Economic Journal: Applied Economics* 136; Seierstad C, 'Gender Quotas on Corporate Boards in Norway, Necessary But Not Ideal' in Machold et al (note 40 above) p. 142-144.

²⁰⁶ Although there was some difference in fields of study with both genders, about half of both genders on boards had graduated in business management. See Teigen, (33 above) p. 85.

²⁰⁷ Statistics Norway, *Women and Men in Norway* (2010).

²⁰⁸ *ibid.* At this time also, women in the age group of 19-24 also outnumbered men in higher education being 39 percent in higher education at the time compared to 25 percent of men. This suggests a trend that will translate to more educationally equip in the society over the coming years. Women were however noted to dominate certain fields of study such as health, welfare and teaching subjects while the men were more in technical and natural science subjects.

men.²⁰⁹ In 2012, 58% of women in Ireland were seen to have completed their third level education compared to 44% of men.²¹⁰ As was the case in Norway, It can be expected that this high level of educational attainment will be reflected on SOE boards if gender diversity levels are increased through a gender quota law.

Notwithstanding the visible positive outcomes brought about by the Norwegian quota law, some unintended but notable drawbacks were equally observed with the law that indicated some paradoxical effects. While the quota law seemed to have increased the level of gender diversity on boards, it was noted that the achievement of the target figure did not translate to an attainment of equality, democracy and justice as the Government aimed to achieve as the outcome did not turn out to be widely inclusive.²¹¹ The 'Golden skirt syndrome' mentioned above was an observable trend that occurred following the implementation of the law, which reflected non-inclusiveness.

(c.) Emergence of 'Golden-Skirts'

The total number of directors sitting on more than one board rose from 91 in 2002 (pre quota law) to 224 in 2009 (after quota implementation).²¹² In 2002, only seven (7.7%) of the 91 directors with multiple directorships were female and by 2009 the number of female directors with multiple directorships had risen to

²⁰⁹ This is however a generalised outcome as a detailed analysis shows segmentation in courses as women's educational attainment is also limited to certain choice in the field of study likewise that of men. See www.cso.ie.

²¹⁰ According to Eurostat in 2012, 'Ireland tops the EU for third-level education attainment'. See http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_statistics. Accessed 23/04/16. In 2014, 58.6 percent of women (aged 30-34) attained Tertiary Education compared to 45.1 percent of men in the same age group. See Eurostat, Tertiary Educational Attainment by Sex, Age Group 30-34. Available at: http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=t2020_41&language=en. Accessed 23/04/16.

²¹¹ Seierstad C and Opsahl T, 'For the Few not the Many? The Effects of the Affirmative Action on Presence, Prominence and Social Capital of Women Directors in Norway' (2011) 27(1) *Scandinavian Journal of Management* 44.

²¹² *ibid*, p. 50.

107 accounting for 47.8% of all directors that held such multiple positions.²¹³ Directors at the time who held over seven positions were all said to be female directors.²¹⁴ This outcome does suggest that board positions were being filled up by a select few and therefore contradicting the intent of the law makers, which was to create an institution that included more women in the interest of greater equality, justice and democracy. While this is an obvious contradictory effect of the gender quota law, the emergence of 'Golden Skirts' can be justified and may also be beneficial in corporate governance. Given the short period of implementation of the law (2003-2008), the emergence of 'Golden Skirts' could have been as a result of limited time to carry out more extensive search for available women. It may have been a case of relying on existing female directors already known to them or visible female CEOs and thus they made use of a very limited talent pool. In addition, the strong sanctions to be effected in the event of non-compliance with the law could also have led to a rush in appointing female directors irrespective of whether they were already over burdened with other board commitments. It could also have been the case that since it was an innovative law, women may still have been sceptical to put themselves forward or as suggested in earlier discussion, were reluctant to be viewed as quota directors given the stereotyping that could come with that status.

Significantly however, the emergence of 'Golden Skirt' did not lead to less qualified boards in Norway given the managerial experience of the female directors. While there is no evidence from Norway of any negative effect of these multiple directorships on the competence of the female directors towards board contributions i.e. corporate governance, it has been argued that the monitoring role of directors holding multiple- directorships could be compromised given their busy schedule.²¹⁵ A lack of adequate monitoring of the CEO could ultimately affect company performance. As part of investigations into Ireland's economic crisis, a high level of multi-directorships was revealed to have existed among

²¹³ *ibid.*

²¹⁴ *ibid.*

²¹⁵ Fitch E and Shivdasani A, 'Are Busy Boards Effective Monitors?' (2006) 61 (2) *Journal of Finance* 689.

corporate boards, including SOEs, in Ireland and was said to have compromised the level of monitoring required from board members.²¹⁶ A conflict of interest is also a possible outcome of multiple-directorships even though directors are required by law to declare a conflict of interest as it arises.²¹⁷

While *The Norwegian Companies Act* and *The Norwegian Code of Practice* do not set any limit as to how many directorships a single director can hold, the *Code of Practice* recognises that it could compromise the director's capacity to perform his/her roles.²¹⁸ Given Ireland's background with multi-directorships and its connection with Ireland's economic crisis, it appears imperative that the 'Golden Skirt' Syndrome needs to be avoided under a similar gender quota law for SOEs so as to avoid creating the same phenomenon the law would seek to avoid. However, multi-directorships are not always a negative outcome and can also be beneficial to the board in performing its tasks. Fama and Jensen suggest that multiple-directorships can be useful in developing the director's reputation and knowledge that would enhance the director's monitoring capabilities.²¹⁹ The risk it could present to corporate governance however suggests that it would be best if an adequate balance is achieved. In effect, multi-directorships where it occurs should be monitored carefully so the drawbacks do not compromise the benefits it could yield.²²⁰

Notably, the 'Golden Skirts' in Norway did not also replicate the 'old boy's network' that the quota sought to overcome. There were very limited interlocks between the female directors with many of them not knowing the other female

²¹⁶ Clancy et al (note 156 above) p.20.

²¹⁷ In Ireland for example, directors on boards of SOEs are required by law to disclose certain interests that may influence the director in the discharge of his/her role. See Department of Finance, *Code of Practice for the Governance of State Bodies 2009* s.6 (i); *Ethics in Public Office Act 1995*, s.17(1) and *Standards in Public Service Act 2001*, s.6.

²¹⁸ *The Norwegian Code of Practice* (note 32 above) Chap 8.

²¹⁹ Fama E and Jensen M, 'The Separation of Ownership and Control' (1983) 26(2) *Journal of Law and Economics* 301.

²²⁰ The issue of potential multi-directorships on SOE boards is addressed further in Chapter Seven.

directors.²²¹ Few of the board members appointed following the quota were from among families and friends.²²² The quota thus resulted in the creation of more independent directors who were less likely to be connected to management or the owners, on the board despite the 'Golden Skirt' syndrome. Independence is considered an important characteristic for the role of board monitoring.²²³ Following the implementation of the quota, 84 percent of female directors were found to be independent compared to 50 percent of men.²²⁴ However, except where the gender quota law specifically makes a direct and mandatory provision for a limited number of board roles directors can take, the 'Golden Skirt' Syndrome is very likely to always occur under a quota regime with a short time frame for implementation as was the case with Norway.

The period in which the 'Golden Skirts' were said to have emerged is also relevant. It could have been a temporary outcome of the quota law and therefore would have eased out after some years.²²⁵ The more women get assured that the Government is committed to change we can expect that more women will be available. The appointment of the female directors following the quota would have served to encourage other women, seeing them as role models and also a reflection of the Government's credibility and commitment to the cause. More proper searches can also be conducted given more time, in order to identify available women. Female directors could become visible and be lured for other roles in the society. Going forward after the implementation of the law, the issue of the 'Golden Skirts' on boards lost prominence in discussions and criticisms given the new face the inclusion of these women gave to boards. The

²²¹ Huse M, 'The Golden Skirts': Lessons from Norway about Women on Corporate Boards of Directors' in Groschl, S. and Takagi, J. (Eds) *Diversity Quotas, Diverse Perspectives: The Case of Gender* (Surrey, England: Gower Publishing Limited, 2012) p.19.

²²² *ibid.*

²²³ Bhagat S and Black B, 'The Uncertain Relationship between Board Composition and Firm Performance' (1999) 54 *Business Lawyer* 921; Adams R, Hermalin B and Weisbach, M. 'The Role of Board of Directors in Corporate Governance: A Conceptual Framework and Survey' (2010) 48(1) *Journal of Economic Literature* 58.

²²⁴ Bohren O and Staubo S, 'Female Directors and Board Independence: Evidence from Boards with Mandatory Gender Balance' *Working Paper* (BI Norwegian Business School, 2013).

²²⁵ Though no specific reason was offered, by 2010, some female directors who had the highest number of directorships had reduced their level of commitment.

'Golden Skirts' were seen to consist of four categories of women: 'young, smart and clever women'; 'ambitious and pragmatic'; 'experienced women from top-level politics' and 'women with business and board membership experience prior to the law'.²²⁶ The possible drawbacks of having 'Golden Skirts' on the board evidently paled compared to the competence and experience they were bringing to the board.

(d.) Impact on Board Tasks and Spill Over

The underlying objective of gender quota laws to regulate board composition are not just to increase the representation of female directors but also to ensure that they have an influence going by the usual minimum required representation of 30-40 percent which is aimed at avoiding tokenism. While this minimum requirement could encourage their influence, the appointment of women in certain position wielding more influence and authority on the board such as the position of Chairman of the board or CEO, and inclusion as members of strategic board committees like the nomination, audit and remuneration committees, may provide a more assured way through which female directors could be more influential on boards.²²⁷ The Chairperson of the board as the 'driving force'

²²⁶ Huse, (note 221 above) p. 19.

²²⁷ Fondas N, 'Women on Boards of Directors: Gender Bias or Power Threat?' in Burke R and Mattis M, (eds) *Women on Corporate Boards of Directors*(The Netherlands: Kluwer Academic Publishers, 2000); Huse and Solberg (note 197 above) p. 124; Peterson C and Philpot J, 'Women's Roles on U.S Fortune 500 Boards: Director Expertise and Committee Memberships (2007) 72(2) *Journal of Business Ethics* 177; Joy L, 'Women Board Directors in the United States: An Eleven Year Retrospective' in Vinnicombe S et al, *Women on Corporate Boards* (2008)(note 204 above) p. 19. As discussed with regard to employee directors above however, the segregation to certain non-strategic committees is not limited to women only but a practice common towards minorities on boards/groups. See WestPhal J and Milton L, 'How Experience and Network Ties Affect the Influence of Demographic Minorities on Corporate Boards' (2000) 45(2) *Administrative Science Quarterly* 366. See also, European Women on Boards, *Gender Diversity on European Boards-Realizing Europe's Potential: Progress and Challenges* (2016) p.28. Available at: <http://european.ewob-network.eu/ewob-publishes-landmark-report-on-the-progress-of-women-on-the-boards-of-major-european-companies/>. Accessed 13/05/16.

determines to a large extent, the culture and attitude of the entire board.²²⁸ Consequently, a male Chair or male CEO could negatively impact the influence and contribution of female directors.²²⁹ The Norwegian quota law did not make any specific provision for these positions or committees to mandatorily include women but it may be useful to include such modification given the outcome in Norway in this respect. The significance of including women on board committees was however recognised in the UK. The Lord Davies Report urged Chief Executives to review the percentage of women they aim to have on their executive committees in 2013 and 2015.²³⁰ The peculiarities of Ireland's SOEs given their structure make it such that remuneration and nomination matters are not handled directly by the board. The remuneration of board members and executive management of SOEs are governed by various guidelines and Government policies²³¹ while nomination issues are the prerogative of the Chairman of the board and the relevant Minister. The Irish *Code of Practice 2009* however provides that;

‘the Board of any Body with more than 20 employees should establish an Audit Committee of at least three (in the case of smaller State bodies two) independent non-executive Directors with written terms of reference which deal clearly with its authority and duties’.²³²

The significant role audit committees have on board tasks on SOEs,²³³ indicates it will be a suitable avenue through which the influence of women on boards can be harnessed by ensuring that female directors participate on this committee in a membership or Chairperson capacity. Other committees such as Health and

²²⁸ Van den Berghe L and Levrau A, ‘Evaluating Boards of Directors: What Constitutes a Good Corporate Board?’ (2004) 12(4) *Corporate Governance: An International Review* 465.

²²⁹ Nielsen S and Huse M, ‘The Contribution of Women on Boards of Directors: Going Beyond the Surface’ (2010) 18(2) *Corporate Governance: An International Review* 136.

²³⁰ Lord Davies, *Women on Boards* (Department for Business, Innovation and Skills, 2011) p. 19.

²³¹ Dey, *Code of Practice 2009* Provisions 7.1.; 7.5.1; and 7.6.

²³² Department of Finance, *Code of Practice 2009*, Provision 10.2.

²³³ OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises 2015 Edition* (Paris: OECD Publishing, 2015) Annotation to Chapter VII (G) p. 73.

Safety Committee, are also utilised across SOE boards. Figure 1 in Chapter One however shows that women's participation on SOE board committees occurs to a large extent. In Norway, although some positive correlation was noted between the gender quota law and female directors in board leadership positions,²³⁴ an internal segregation was still observable in board roles with the proportion of boards being chaired by female directors marginally increasing by less than 1 percent after the quota was implemented.²³⁵ Similarly, CEOs were still predominantly male with less than 2% being women.²³⁶ Progress in leadership positions appears not to be moving at the same pace with their role as female directors. This low representation in key positions still persisted several years after implementation. A closer analysis of the board and Management of wholly-owned and partly-owned SOEs in Norway that have a commercial ambit and are also affected by the gender quota law, showed that in 2014, women occupied Chair positions in only 10 of the 26 (38.5%) companies looked at.²³⁷ Deputy Chair positions were occupied by female directors in only three of the companies while six out of the 26 (14 %) CEOs were women. Evidently more progress is required in this regard if the gender quota law can be said to have been more effective in changing values. Given that the companies considered were susceptible to State influence, it could be expected that a greater reflection of gender balance would be seen in these positions. The position of the board Chair is a very important role and influences board discussions and decisions significantly.²³⁸ The highly

²³⁴ The identification of a positive correlation may not be taken as a reliable and generalised outcome of the gender quota law as they were based on a limited number of sample companies. See for example, Wang M and Kelan E, 'The Gender Quota and Female Leadership: Effects of the Norwegian Gender Quota on Board Chairs and CEOs' (2013) 117(3) *Journal of Business Ethics* 449.

²³⁵ Seierstad and Opsahl (note 211 above) 12; Storvik and Teigen (note 29 above) p. 11.

²³⁶ Storvik and Teigen (note 29 above) p. 11.

²³⁷ Author's analysis. The companies surveyed were selected based on their similarity with Ireland's SOEs. The partly owned SOEs were unlisted companies while the wholly owned were listed companies operating in economically significant sectors in which the State had over 30 % ownership. The partly owned companies operated mainly in areas such as Manufacturing, Telecommunication, Agriculture and Oil Production and Distribution. The idea was to also identify if the influence of the State made any difference to how the law was implemented. (See Appendix II for list of Norwegian SOEs surveyed.)

²³⁸ Roberts J, 'Building the Complementary Board: The Work of the Plc Chairman' (2002) 35(5) *Long Range Planning* 493; Huse and Solberg (note 197 above) p. 124.

controversial governance practice whereby the role of Chairman and CEO are combined is also suggestive of how influential and important the CEO position is. Evidence that the increase in the representation of female directors in Norway did not translate into these influential positions raises concerns as to the true effectiveness of gender quota laws.²³⁹ It could mean that the law was being ‘creatively’ complied with and therefore the requirements applied literally, indicating a lack of true acceptance of the regulation and also a possible risk to the new status quo being sustainable. Although by 2015 Norway still led globally, the 40% female representation attained seemed to be dwindling. In 2014, female representation on boards of Norway’s large listed companies stood at 37%.²⁴⁰ The gender quota law may therefore need to remain law perpetually if the seeming success achieved with board membership is to be maintained. It also goes to question the fate of countries such as Italy where the gender quota law that was passed in 2011 remains effective for only 3 board renewals.²⁴¹ The proposed Directive for EU-wide gender quota is also terminal as it is expected to expire in 2028 following implementation in 2020 if it becomes law.²⁴²

The success of the Norwegian quota law was also not reflected at other management positions, or other levels within the organisation.²⁴³ A lack of women in these positions i.e. middle management positions raises concerns with regard to a creation of pipeline. The absence of women in the pipeline being groomed to occupy director positions in the future is also consistent with the argument above that the success of quota laws may not be sustainable in the future where the law ceases to exist and also that a seeming success with achieving the target required has not translated to a change in values of women being recognised as a valuable resource in economic decision-making. Gender

²³⁹ Teigen (note 33 above) p. 83.

²⁴⁰ Catalyst, 2014 Catalyst Census: Women on Boards. Available at: <http://www.catalyst.org/knowledge/2014-catalyst-census-women-board-directors>. Accessed 23/04/16.

²⁴¹ Law no. 120 ‘Gender Balance on the Boards of listed companies’.

²⁴² See discussion in Chapter One, p.6.

²⁴³ Bertrand M, Black S, Jensen S and Lleras-Murey A, ‘Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labour Market Outcomes in Norway’ (2014) *NBER Working Paper No 20256*.

diversity levels at middle management levels in the companies that were affected by the law remain very low. In 2014, women accounted for only 5.5% of these positions.²⁴⁴ However, among the 26 State-owned companies further analysed, a higher level of women at senior management levels is evident in some companies as the representation ranges from 12% to 50 %.²⁴⁵ There could be some influence of State ownership on these higher figures. The true effectiveness of the gender quota law may also be questioned in the fact that the success of the law has not reflected in the wider Norwegian society such as in unlisted private companies that were not included in the law.²⁴⁶ Gender diversity on boards of Norwegian private limited companies is in favour of men with female directors accounting for 18% of the positions and only 15.7% of manager positions.²⁴⁷ Evidence from Norway could thus lend credence to the argument that gender quotas are effective for achieving numerical changes rather than attitudinal change regarding women representation.²⁴⁸ While the fact that the Norwegian gender quota law is not termed implies that the achieved increased levels on boards would persist, it is obvious that its effectiveness may be limited to a change in numerical representation of genders on board rather than the absorption of the egalitarian values for economic decision-making in Norway.

The evidence from Norway could still be beneficial for Ireland if a similar law was to be replicated here for SOEs. As Norway's experience shows, where the gender quota law does not make specific provisions regarding gender diversity in other key positions and levels, any success that may be achieved may not reflect the true intent of the law makers. For Ireland's SOEs, gender diversity is also lacking in these key positions on the board and Management levels. In 2014, women

²⁴⁴ Statistics Norway, *Board and Management in Limited Companies 1, January 2015* (note 14 above).

²⁴⁵ Author's computation based on information in 2014 Annual reports and Company websites. See list of SOEs studied in Appendix II.

²⁴⁶ Teigen (note 33 above) p. 83.

²⁴⁷ Statistics Norway (note 14 above).

²⁴⁸ Jefferey A, 'Should Corporate Governance Guidelines Be Legislated? Don't Do It.' (2008) Available at: <http://www.mervynking.co.za/pages/publications.htm>. Accessed 20/04/16.

occupied only five out of 32 (15%) of SOE board Chair positions.²⁴⁹ Without a modification to the gender quota law in Norway, it could be expected that a similar law for SOEs in Ireland may not lead to an increase in the level of gender diversity level at board leadership level. Such consideration should also extend to the case of female directors being appointed to audit committees and other committees that the SOE is required by law to have. Introducing a similar law in Ireland without a cessation date could also be a step towards seeing a longer lasting change in Ireland. While gender quotas may not bring about a change in culture/attitude, at least the numerical figures will be sustained over time and the influence of women on SOE boards will be a benefit for Ireland. The lack of gender diversity at middle management levels in Norway's companies may have been encouraged by the poaching of women at this level to take up positions in a bid to satisfy the quota requirement. The situation may be aggravated in Ireland due to the non-availability of more effective family-friendly policies that encourage more women to take up more demanding roles in the workplace.²⁵⁰ While women are predominant in public sector employment and thus more likely to be available for SOE middle and senior management positions, a lack of a conducive environment to balance work and family life could encourage less women still being in employment by the time they get to these levels. More efforts could be put into providing better support for families so as to give more women opportunity at the workplace. This will increase the availability of women in these roles and if they are poached for board roles it will not lead to a dearth at middle management. Also, with the new Guidelines for appointment to State boards, the advertisement and publication of board vacancies on www.stateboards.ie could result in more women applying for board roles thereby increasing the pool of women to choose from.²⁵¹ If however the time frame for implementation of the law is short, as was the case in Norway, an attempt to meet up with the date could also result in women being poached from middle

²⁴⁹ Author's calculation based on list of board of directors in the SOEs' 2014 Annual General Reports and websites.

²⁵⁰ See discussion on work-balancing policies in Ireland above in p.194 -195 and in Chapter Six p, 329-334.

²⁵¹ See further details on this in Chapter Seven.

management positions. Another way to avoid such an occurrence even under a quota regime with short implementation period will be to engage the services of search agents to identify appropriate women in society. The Talent Bank that is currently under creation will also be useful to ensure Ireland's SOE sector avoids this impact of the quota.

G. Monitoring under the Norwegian Quota Law Regime

A significant outcome in the implementation of the Norwegian quota law is that it requires minimal monitoring of compliance and is ultimately cost free. The Register of Business Enterprises and applicable sanctions exert adequate pressure that ensures compliance with the requirements of the law. The company is required to report to the Register of Business Enterprises a board of directors that satisfies the requirements of the quota failing which the company could be dissolved.²⁵² The type and potency of sanctions accompanying gender quota laws is therefore also significant as it will reduce the need or make it completely unnecessary to set up an independent monitoring under the law. To this extent, the usefulness of the existing framework which the law was included in is also evident as it provided for the sanction and the use of the Register of Business Enterprises.

Nevertheless, legislative quotas require adequate and independent monitoring to monitor compliance. Independent monitoring is even more crucial for SOEs given their relationship with the State. In addition, political will and commitment will be necessary to support monitoring activities particularly in terms of any outcome of the monitoring exercise that may require government action. In the absence of such will and commitment, monitoring activities could become frustrated and after a while the law could go into oblivion.

²⁵² *Norwegian Public Limited Liability Act* (note 696 above) s. 16-15(2).

Conclusion

This chapter has analysed the legislative gender quota from a practical perspective using Norway's experience. The analysis also includes a comparative perspective using Ireland's SOE sector in context. The discussion highlights several important points. Legislating for gender balance on boards could be more likely to occur where other gender equality objectives are backed by legislation. The egalitarian background of the Norwegian State has been used to illustrate that the State's attitude to addressing gender inequalities could reflect the regulatory outcome in relation to addressing low gender diversity levels on boards of directors. The priority placed on reducing gender gaps across areas of the society suggested that a more results oriented regulatory approach i.e. legislative gender quotas to address gender imbalance on boards was a likely option. While Ireland is not yet at par with Norway on reducing gender gaps, the discussion on reducing the gender gap on State boards has definitely gained national and public attention. Significantly, Norway had also followed a voluntary/soft approach prior to adopting the law, similar to the approach Ireland is using now through Government policy. Further, the design of the legislation may be crucial to its effectiveness particularly in relation to accompanying sanctions and the severity of the sanctions.

The chapter has identified minimal similarities between the Norwegian background and the Irish SOE background that points directly to a successful replication of Norway's experience. One area of convergence in both environments however relates to the extent of State influence in the companies under consideration. The Norwegian State had about the same extent on influence on most companies as the State would have over SOEs. Nevertheless, more potential areas of convergence are identified such as the availability of databases for female talent, which is gaining recognition in Ireland.

In light of the impact of the quota in Norway on gender balance on boards, the persistent gender imbalance in Irish society and more particularly on SOE boards suggests that a legislative gender quota could be a more reliable option to bring about the necessary change in the shortest time. If the objective sought is in terms of instilling an attitude change towards female representation on boards however, the quota may not be the solution.

Based on discussions in Chapter Three and this chapter, it is evident that theoretical underpinnings may not always occur in practical implementation as other factors which theory does not take into consideration could occur. Peculiar differences in the institutions of a country could influence the adoption and implementation of a gender quota law. While the legislative gender quota route could be useful for Ireland, the differences in both countries need to be taken into consideration in adopting a similar law. The effectiveness of gender quota laws in achieving numerical targets is undoubted. However, other unintended and contradictory effects could occur.

The practical experience of Norway does provide an important template on which a law with better and more far reaching results can be designed for Ireland. The accompanying sanctions and the duration of the law are critical factors that need to be carefully considered as they could have a significant impact on the outcome of the quota law. Of equal significance too is the need for other government led initiatives that will boost the potentials of the quota law. As discussed in the chapter, some of such initiatives like the Talent Bank and the Guidelines for appointment are already in process and could therefore aid a gender quota law if adopted. More effective family-friendly policies are however still required in Ireland as these will increase the talent pool of women for director positions and also create a pipeline for future purpose.

One important difference between both countries that could affect the adoption and implementation of legislative gender quota could however lie in the source of influence as to their commitment to achieve this change. The influence for Ireland could be traced to its EU Member State status given the EU's commitment to increase the gender balance on boards of large companies including SOEs in

Member States and gender equality in general (See discussion in Chapter Three). Ireland's commitment may thus be argued to be superficial and a response to the likely imposition of the proposed EU-wide gender quota if passed into law. In effect, where the EU Directive does not become reality, what would Ireland's commitment to this change be? Also, the influence of EU could lead to Ireland adopting a watered down gender quota like the proposed Directive which contains no sanction, leaving it to the discretion of Member States. Where this happens, the effectiveness of the gender quota may not be different from the current Government target. A watered down gender quota law could more or less have the impact of a soft law approach. Unlike Ireland, Norway is not a Member of the EU. Being the pace setter in the use of gender quota law for this purpose, Norway's commitment could be perceived as being influenced by the historical egalitarian background of the State and therefore a more profound and deeply ingrained commitment to change.

Chapter 5: The Potential for Soft Law/Corporate Governance Code to Impact on Gender Balance on Boards

A. Introduction

This chapter discusses the use of Corporate Governance Codes as a soft law instrument to increase gender diversity levels on corporate boards. The chapter seeks to identify and critically analyse relevant Corporate Governance Code Recommendations/Principles/Provisions in Australia, Finland and the UK,¹ so as to identify how/if a similar practice can be replicated for SOEs in Ireland.

Unlike quota laws that are established in response to address a particular issue, Corporate Governance Codes are existing frameworks which are relied on to regulate the governance of businesses. Also unlike the case of gender quota laws where their adoption or passage into law is likely to generate much opposition and debates as was the case in Norway and Germany, in countries where Corporate Governance Codes are being utilized towards increasing gender diversity levels on boards, the recommendation/code provision was usually included in the Code without resistance. The different attitudes or response to both instruments with regard to addressing low gender diversity levels on boards may be indicative of the perceived impact both might have on those it seeks to regulate. While gender quota laws are mandatory and likely to include sanctions for non-compliance, Corporate Governance Codes usually lack similar characteristics hence their slowness in achieving change. However,

¹ Finland, Australia and the UK have been chosen as case studies because all three countries present a unique aspect in the implementation of corporate governance codes to increase gender diversity. Finland's Code illustrates how ambiguity in the wordings of the Code can detract from its effectiveness, the UK in addition to ambiguity through the couching of words also illustrates the potential impotence of a soft law instrument where other initiatives or action may attract greater compliance. The UK and Australia's Code further illustrate the usefulness of diversity and gender reporting in soft law regime and though it may not translate to achievement of the law's objective. For more discussion see 'Methodology' in chapter One.

notwithstanding any drawbacks of Corporate Governance Codes, Finland, Australia and the UK have shown significant progress in recent years in increasing gender diversity level on boards under such regime. Their global positioning in this regard suggest they may present a good case for analysis and possible replication of practices for SOEs in Ireland in increasing gender diversity levels on their boards. The corporate governance environment in Australia offers a more robust case for analysing how reporting and disclosure requirements contained in Corporate Governance Codes could impact on gender representation on boards. The inclusion of Principles and Recommendations in Australia's Code that were aimed at addressing gender imbalance in the workplace including boards of listed companies, was significant as it marked the pivotal point in how the issue of gender diversity in companies was now addressed in Australia.

While the Corporate Governance Codes being analysed are being implemented for listed companies in all three countries, it can be argued that although Ireland's SOEs are not listed companies, their relevance and significance to the Irish society given the services they provide and their important role in Ireland's economy, suggest that their board composition as it relates to the effective governance of the SOEs is equally as important as that of listed companies particularly in terms of accountability to the public and sustenance.² The level of accountability expected of SOEs to the public/community could be equated to that of listed companies to their shareholders. The crucial need to ensure the sustainability of SOEs particularly those involved in the provision of essential services to the wider society can be equated to the need to ensure that listed companies are being effectively governed to ensure their sustainability for the benefit of shareholders/stakeholders.

Incidentally, the Corporate Governance Code regime in all three countries implement other initiatives that could be said to have played a significant and complementary role in the success recorded in all three countries and therefore require consideration. Initiatives include disclosure and reporting requirements which are included in legislative instruments but employed to support and

² See earlier discussion on the significance of SOEs to society in Chapters One and Two.

increase the effectiveness of Corporate Governance Codes. Evidently, these requirements may impart a more compelling element under a soft law regime. An example is the UK's Narrative Reporting on a company's gender diversity metric, which is included in the UK Companies Act.

The discussion in this chapter will adopt a thematic approach, identifying common themes in all three countries' approaches that can be related to Ireland's SOEs. In light of the fact that listed companies and SOEs differ in ownership structure and objectives, not all themes may be applicable in this discussion hence the need to identify applicable themes. A specific approach adopted is the identification of a correlative relationship between compliance/application of board gender diversity related Principles, Recommendations and Code Provisions as the case may be, contained in Corporate Governance Codes and gender diversity levels on boards of the companies. The aim is to identify if application of the Code Recommendations/Principles does influence increased gender diversity on boards. A positive correlation suggests the usefulness of the Code. Application of/compliance with Code Recommendations/Principles is also considered from an engagement perspective in order to identify any other outcomes that could be suggestive of a culture change, an outcome commonly associated with Corporate Governance Codes. The existence of a pipeline of female talent and the occupation of influential positions on boards by female directors are two possible scenarios that could suggest the occurring of a board culture change with regard to gender diversity.

The Chapter proceeds in the following sequence: the first part discusses generally the impact of Corporate Governance Codes on the level of gender diversity on boards of listed companies in the countries under study, giving an indication as to level of progress achieved since the introduction of the gender related Recommendation/principle in the Code. 'Comply and explain principle' which is a fundamental feature of corporate governance code regimes and other incidental factors that could impact on the effectiveness of Corporate Governance Codes are also critically discussed in relation to the countries under study. The next part

addresses the comparative critical analysis of application of Corporate Governance Codes' Recommendations/Principles and their practical reflection on gender diversity levels on boards. The third part of the Chapter discusses and analyses relevant existing initiatives in relation to their impact on gender diversity levels on boards in the countries under study. This discussion will highlight their collaborative significance under the corporate governance code regimes being discussed and further corroborate the argument in this chapter in relation to the drawbacks of Corporate Governance Codes in increasing gender diversity levels. The discussion in this part also serves to identify the relevance of such measures to Ireland in the event that a soft law regulatory approach is adopted in improving gender balance on SOE boards. The Chapter also includes a critical analysis of the impact that the concept of board size and directors' board tenure can have on the objective of increasing women participation under corporate governance code regimes. The objective of this analysis is to also add to the critical discussion on the impact of corporate governance codes and the dissimilarity with gender quotas. The issue of having regard to board tenure and board size is normally not a consideration under a quota regime like that of Norway. The final part of the chapter juxtaposes the soft law regime in Ireland under which SOEs are regulated against existing practice in the three countries studied. The discussion includes a critical analysis on how the *Code of Practice for the Governance of State Bodies*³, can be utilised by introducing similar guidelines/principles aimed at improving gender diversity on boards into the Code of Practice 2009.

³Department of Finance, *Code of Practice 2009*

PART I: Impact of Corporate Governance Code on Gender Balance on Corporate Boards in the United Kingdom, Finland, Australia

B. Evolution of Gender Related Recommendations in Corporate Governance Codes in Case Studies

i. The United Kingdom

Gender related recommendation in respect of board appointments in the UK was introduced for the first time in the UK Corporate Governance Code 2010 (UK Code 2010).⁴ The UK's strong opposition to the introduction of a quota system was highlighted in Lord Davies' 2011 policy review Report where the introduction of a quota system was decided against and rather the adoption of voluntary targets encouraged.

Lord Davies was given a mandate by the UK Government in 2011

“to undertake a review of the current situation, to identify the barriers preventing more women reaching the boardroom and to make recommendations regarding what government and business could do to increase the proportion of women on corporate boards”.⁵

Lord Davies' Report which was published in February 2011 made 10 specific recommendations including that the UK Corporate Governance Code be amended to include certain boardroom diversity related requirements.⁶ In May 2011, the Financial reporting Council (FRC) issued a consultation document seeking views on whether the UK Corporate Governance Code should be amended following

⁴ Financial Reporting Council, *UK Corporate Governance Code 2010*, Principle B2.

⁵ Lord Davies, *Women on Boards* (Department for Business, Innovation and Skills, 2011) p.6.

⁶ *ibid*, Recommendation 3, p.19. See below in chapter for further discussion on the specific provisions.

Lord Davies' recommendation.⁷ Following this, the FRC implemented two amendments to the UK Corporate Governance Code⁸ which became applicable for financial years beginning on or after 1 October 2012.

Appointment of board members for SOEs in the UK is covered under the Public Appointment Service. Gender diversity on boards of SOEs in the UK is being addressed under Government's policy objective which was issued in 2013, and is aimed at ensuring that women constitute half of all appointments to boards of public bodies by 2015.⁹ Though progress is recorded in this regard for the UK,¹⁰ the policy, as in Ireland, is not regulated. Keeping with the aim of this thesis, the discussion in this section will therefore focus on how regulatory intervention i.e. through the UK Corporate Governance Code impacts on gender balance on boards of the UK's listed companies, FTSE 350.

ii. Finland

Finland was the first country to mention the representation of both genders on company boards in its Corporate Governance Code in 2003:

“...It is imperative for the board's work and its effective functioning that the board is composed of directors with versatile and mutually complementary capabilities and skills. The age mix and the proportions of

⁷ Financial Reporting Council, *Consultation Document: Gender Diversity on Boards* (The Financial Reporting Council, 2011).

⁸ UK Corporate Governance Code 2010 (note 4 above), Principle B2.4 and B6 (Supporting principle on board evaluation). Both amendments are discussed in more detail below in chapter.

⁹ See Cabinet Office, *Drive to Increase Number of Women on Public Boards*, 25 June 2013. Available at: <https://www.gov.uk/government/news/drive-to-increase-number-of-women-on-public-boards> Accessed 20/04/16.

¹⁰ Commissioner for Public Appointments, *Annual Survey of Ministerial Appointments and Reappointments by the Commissioner for Public Appointments 2014-15* (Commissioner for Public Appointments, 2015) p. 9.

both sexes can also be taken into account in the composition of the board”.¹¹

Perhaps in response to the Finnish Government’s growing attention on the issue of gender imbalance in decision-making, in 2008, the Finnish Code was amended to include stronger requirements regarding gender representation on boards:

“...The composition shall take into account the needs of the company operation and the development stage of the company..... Both genders shall be represented on the board”.¹²

The Government had responded to a provision of the Finnish *Act on Equality between Men and Women*¹³ by introducing a quota in 2004.¹⁴ The quota was targeted at SOEs and required a 40% female gender representation on all boards of wholly-owned SOEs and partly-owned SOEs in respect of the State’s nominees to the board.¹⁵ The *Act on Equality between Men and Women* which was further amended in 2005 sets a target quota for public sector bodies and requires that:

1. The proportion of both men and women in government committees, advisory boards and other corresponding bodies, and in municipal bodies and bodies established for the purpose of inter-municipal cooperation, but excluding municipal councils, must be at least 40percent, unless there are special reasons to the contrary.
2. If a body, agency or institution exercising public authority, or a company in which the Government or a municipality is a majority shareholder has an administrative board, board of directors or some other executive or administrative body consisting of elected representatives, this must

¹¹ The Central Chamber of Commerce of Finland, *Corporate Governance Recommendation for Listed Companies* (2003), Recommendation 15.

¹² Securities Market Association, *Finnish Corporate Governance Code 2008*, Recommendation 9.

¹³ Ministry of Social Affairs and Health, *Act on Equality Between Men and Women (No. 609/1986)* Section 4.

¹⁴ Ministry of Social Affairs and Health, *Government Action Plan for Gender Equality 2004-2007* (Ministry of Social Affairs and Health Publications: 2005).

¹⁵ *ibid.*

comprise an equitable proportion of both women and men , unless there are special reasons to the contrary.¹⁶

In Finland, the growth in female representation on boards of listed companies in which the State has majority shareholding such as Neste Oil, Telia Sonera, Sampo Group and Kemira, as a result of the Government quota, could have been persuasive leading to the amendment of the Code. The quota target was introduced in 2005 to be achieved in 2008.¹⁷

The amendment to the 2008 Finnish Code was retained in the 2010 edition of the Code. However, in October 2015 further amendment regarding diversity on boards of listed companies was introduced (Recommendation 9 of 2008 Code is still retained in the new Code as Recommendation 8). The 2015 Finnish Code now requires that “the company shall establish principles concerning the diversity of the board of directors”.¹⁸

iii. Australia

In 2010, the *Australian Stock Exchange Corporate Governance Principles and Recommendations* was amended to include Recommendations on gender diversity reporting and disclosure.¹⁹ This was the first time gender related recommendations featured in the Australian Code. Apart from likely global pressure given increased discussions on gender balance in economic decision-making, Australia’s *Gender Equality Blueprint Report 2010 (Blueprint Report)* published in 2010 also recommended that “a target of 40 % representation of

¹⁶ *Act on Equality Between Men and Women* (No. 609/1986) (Including amendments up to 232/2005) (note 13 above) section 4a.

¹⁷ *Government Action Plan for Gender Equality 2004-2007* (note 14 above) p.18.

¹⁸ Securities Market Association, *Finnish Corporate Governance Code 2015*, recommendation 9. The Code becomes applicable from January 2016. Given the timing of the change in relation to the writing of this thesis, the 2015 amendment is not taken into consideration in analysing the experience of Finland in this thesis.

¹⁹ Australia Stock Exchange (ASX) Corporate Governance Council, *Corporate Governance Principles and Recommendations with 2010 Amendments (2nd Edition)*.

each gender on all publicly listed Boards in Australia to be achieved over five years should be promoted....”.²⁰ The Report highlighted the need for women in leadership roles to be prioritised towards achieving gender equality in the State having identified a significant under-representation of women in those positions across all sectors.²¹ In corporate Australia for example, in 2010 54 percent of ASX 200 companies had no women on their boards;²² Government boards had a women representation rate of 33.4% and women representation accounting for only 30.1% in the Federal Parliament.²³ The slow or insignificant change in women representation in leadership positions across sectors over several years indicated that a systemic change was needed if a greater level of gender balance was to be achieved.²⁴

The Recommendations of the *Blueprint Report* and the revelations of *EOWA Australian Census of Women in Leadership 2010*²⁵ may have served to awaken consciousness in the society as notable initiatives and changes began to occur following their publication. *EOWA Australian Census of Women in Leadership 2010* showed there had been no change in low female representation on boards of ASX 200 over several years.²⁶ In 2006 for example, women occupied 8.7% of board positions on ASX 200 and 2.0% of chair positions, by 2010 they occupied 8.4% and 2.5% in both positions respectively.²⁷ A fall in female directors had occurred and a marginal increase in chair positions.

²⁰ Australian Human Rights Commission, *2010 Gender Equality Blueprint* (Blueprint Report) Recommendation 7. Available at: http://www.humanrights.gov.au/sites/default/files/document/publication/Gender_Equality_Blueprint.pdf. Accessed 21/04/16. A similar recommendation was also made for Government boards. See discussion in Chapter Two.

²¹ *ibid.* p.16

²² Equal Opportunity for Women in the Workplace Agency, *EOWA2010: Australian Census of Women in Leadership* (2010). Available at: https://www.wgea.gov.au/sites/default/files/2010_census_tag.pdf. Accessed 21/04/16.

²³ *ibid.* p. 6.

²⁴ *ibid.* p. 9.

²⁵ *ibid.* p. 6.

²⁶ *Australian Census of Women in Leadership* (2010) (note 22 above) p.9.

²⁷ *ibid.* p.6. See also Equal Opportunity for Women in the Workplace Agency, *2006 eowa: Australian Census of Women in Leadership* (2006) p.5. Available at: https://www.wgea.gov.au/sites/default/files/2006_EOWA_Census_Publication_tagged.pdf. Accessed 21/04/16.

C. Overview

Under corporate governance code regimes, female director representation has undoubtedly increased in all three countries over the last few years. In Finland, the level of gender diversity on boards of listed companies increased from 7% in 2003 to 24% in 2015,²⁸ putting Finland above EU average of 23% for large listed companies.²⁹ Finland is considered a frontrunner at both European and global level in gender diversity on boards of listed companies and SOEs.³⁰ Similar progress has also occurred in the UK in relation to FTSE 100 companies with female representation on boards of FTSE 100 companies growing from 12.5% in 2010 (when 'gender' was first included as a consideration for appointment in the UK Code) to 25.8% as at March 2016.³¹ In fact the 25% target set by Lord Davies was achieved in the UK by the end of 2015.³² Appointment of female directors in Australia began to increase in 2010 following the inclusion of gender diversity related Principles and Recommendations with 25% of director appointments on boards of ASX 200 companies being women in 2010 compared to 8% and 5% in 2008 and 2009 respectively.³³ Evidently, increase in female appointments began to occur prior to when the Principles and Recommendations of the Australian

²⁸ Finland Chamber of Commerce (FINNCHAM) Women Leaders Program, *Promoting Women Business Leaders (2015)* p.8. (*Finland Women Leaders Report 2015*).

²⁹ See European Commission Database Women and Men in Decision-Making, Available at: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/index_en.htm Accessed 31/03/16. Note that Finland's figure of 24 percent represents all listed companies that include Mid and Small Cap companies for 2015. However, for large listed companies in Finland, women accounted for 29 percent positions. See European Commission, *Gender Balance on Corporate Boards: Europe is Cracking the Glass Ceiling* (2015) Available at: http://ec.europa.eu/justice/gender-equality/files/womenonboards/wob-factsheet_2015-01_en.pdf. Accessed 31/03/16.

³⁰ See Gladman K, and Lamb M, *GMI Ratings' 2013 Women on Board Survey* (GMI Ratings, 2013) p. 5; European Commission, *Gender Balance on Corporate Boards: Europe is Cracking the Glass Ceiling* (2015) (note 29 above).

³¹ See BoardWatch: Tracking Appointments of Women Directors to FTSE 100 and FTSE 250 Companies. Available at: <http://www.boardsforum.co.uk/boardwatch.html>. Accessed 31/03/16.

³² Women on Boards Davies Review: *Five Year Summary October 2015* (Department of Business, Innovation and Skill, 2015).

³³ Australian Institute of Company Directors (AICD), *Statistics, Proportion of Women Comprising New Appointments*. Available at: <http://www.companydirectors.com.au/director-resource-centre/governance-and-director-issues/board-diversity/statistics>. Accessed 09/03/16.

Code became applicable from January 2011. This was because the ASX Corporate Governance Council had encouraged an earlier transition to the amended Principles and Recommendations.³⁴ The increase in Australia has been progressive since then with female directors occupying 13.4 percent of ASX 200 board positions in 2011 and 23.3% as at March 2016.³⁵ A 2013 Credit Suisse survey of public company boards in 43 countries showed that by 2013, Australia had exceeded the global average of 12.7% with women accounting for 17.3% of board positions.³⁶ In 2014, the UK and Australia ranked 5th globally in level of gender diversity on boards of listed companies.³⁷ The achievement of all three countries is significant in light of the fact that other similar high-ranking countries like Norway and France have achieved significant progress only through the use of gender quota laws.

Despite the extent of progress in all three countries further analysis has shown that there is a need for more improvement in female representation so as to achieve 'critical mass' on boards and a deeper engagement with gender diversity in all three countries. The analysis in this chapter shows that several companies within the three countries are yet to achieve a 'critical mass' of female representation on boards.³⁸ A 30-40% achievement is still not the norm indicating that the value of gender diversity is still not achieved with women not occupying a level of representation through which they can be influential on boards.³⁹ The analysis also reveals an uneven spread of increased female representation across

³⁴ Australia Stock Exchange (ASX) Corporate Governance Council, *Corporate Governance Principles and Recommendations with 2010 Amendments* (note 19 above)p.7.

³⁵ Figure represents real-time position as at 31 March 2016 and therefore fluid. Sourced from real-time monitoring by the Australian Institute of Company Directors. See <http://www.companydirectors.com.au/director-resource-centre/governance-and-director-issues/board-diversity/statistics>. Accessed 30/03/16.

³⁶ Represents figure for ASX200. Credit Suisse, *The CS Gender 3000: Women in Senior Management* (2014) p. 8. Available at: http://30percentclub.org/wp-content/uploads/2014/10/2014-09-23_Research_Institute_Women_in_Business.pdf. Accessed 30/03/16.

³⁷ Egon Zehnder, '2014 European Board Diversity Analysis: With Global Perspective' Available at: http://www.egonzehnder.com/files/2014_egon_zehnder_european_board_diversity_analysis.pdf. Accessed 22/04/16

³⁸ See further analysis below in chapter.

³⁹ See discussion on Critical Mass and Tokenism in Chapter Four, p. 210.

boards as a significant number of boards in all three countries still have women in token representation or no female representation at all. In the UK for example, while some boards among FTSE 100 companies had as high as 45% female representation in 2015 a number of boards had far below this representation with women occupying 7% of positions on some boards.⁴⁰ In addition, the pace of increase noted in all countries has been slower when compared to increase under a gender quota law as in Norway. In France, greater level of increase was also achieved in less time than has been the case in the three countries being studied.⁴¹ In Finland for example, despite the recommendation that gender be considered in making board appointment was included in the Finnish Code in 2003, 12 years later, a 30% female representation is yet to be achieved.

The drawbacks with soft law instruments including Corporate Governance Codes are observed in this analysis to have detracted from the effectiveness of the Codes in all three countries in addressing gender imbalance on boards. Though a non-EU country,⁴² Australia's Corporate Governance Code also relies on a "comply or explain" approach termed "if not, why not approach" and is suggested to connote a higher obligatory impact than the 'comply or explain'.⁴³ Nevertheless, the principle still affords a flexibility in its application which simultaneously affords the Australian Code with the lack of a mandatory element that ultimately compromises the Code's effectiveness. The non-binding nature of Corporate Governance Codes, the flexibility in their compliance as characterised

⁴⁰ Intercontinental Hotels Group (45%) and Coca-Cola HBC AG. (Source: 2014 Annual Reports).

⁴¹ Following the 2010 law which requires French boards to be 20% female in 2014 and 40% in 2016, France demonstrated the largest percent increase of 3.9% in 2010-2011 in the world that year. See Gladman K and Lamb M, *GMI Ratings' 2012 Women on Board Survey* (GMI Ratings, 2012) p. 18.

⁴² EU Directive 2006/46/EC mandates the use of "comply or explain" approach in the application of Corporate Governance Codes for all Member States. See *DIRECTIVE 2006/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings* OJ L 224, 16.8.2006, Article 46a.

⁴³ Branson D, 'An Australian Perspective on a Global Phenomenon: Initiatives to Place Women on Corporate Boards of Directors' (2012) Working Paper No. 2012, *Legal Studies Research Paper Series* University of Pittsburgh, p. 28.

through comply or explain principle, lack of adequate monitoring, the use of general rather than specific words hence leading to ambiguity and the lack of severe sanctions in the event of non-compliance are some of the characteristic features of Codes that are identified to have undermined the effectiveness of Codes in Finland, Australia and the UK.⁴⁴ As is identified with the three countries being studied, the lack of a mandatory element has meant that in practice, companies could choose not to comply with gender balance related Principles/Recommendations and Code Provisions, but rather offer an explanation for non-compliance or worse still not explain the non-compliance. Offering explanations with low informative quality suggests a disregard for the Code provisions and ultimately the objective of the Code. These factors are significant enough to raise concern with regard to how a similar soft law instrument might be suitable to address gender imbalance on Ireland's SOE boards.

PART II: Analysis of Corporate Governance Code Provisions in Relation to Gender Balance

D. How Are Corporate Governance Codes Used to Advance Gender Balance on Boards?

Corporate Governance Codes principles and recommendations aimed at addressing gender imbalance on boards are contained under themes of board composition/appointment; board evaluation, and gender diversity reporting and disclosure practices. Reporting and disclosure practices include the publication of a diversity policy, measurable objectives and gender metric position of boards and/or the whole organisation. In aiming to retain a flexible and non-binding regulatory environment these Code Recommendations and Principles are couched in a way that lack specificity and thus convey ambiguity or lack the

⁴⁴ See discussion of these factors in relation to corporate governance codes in Chapter Three.

requisite force to compel compliance. The outcome is a misinterpretation of the Code's intent or a disregard for the regulation. It is argued here that the language or nature of these Recommendations and Principles suggest their incapability in achieving a quicker and uniform progress across countries where it is used. It is also argued that the non-binding nature, flexibility of 'comply or explain' approach and absence of severe sanctions detract from the effectiveness of Corporate Governance Codes in relation to compliance. In spite of a considerable level of compliance with some Code Recommendations/Principles there is no commensurate reflection on female representation on boards. In effect, compliance undermines the objective of the Code. Accordingly, this section critically analyses and identifies how gender diversity related Recommendations and Principles in the three countries being studied may be lacking as a reliable regulatory tool for this purpose.

i. Appointments to the Board

Finland's Corporate Governance Code 2003 provides:

"It is imperative for the board's work and its effective functioning that the board is composed of directors with versatile and mutually complementary capabilities and skills. The age mix and the proportions of both sexes can also be taken into account in the composition of the board".⁴⁵

Recommendation 9 of the 2008 edition of the Finnish Code also provides:

".....The composition shall take into account the needs of the company operation and the development stage of the company.....Both genders shall be represented on the board".⁴⁶

⁴⁵ The Central Chamber of Commerce of Finland, *Corporate Governance Recommendation for Listed Companies* (2003) (note 11 above) Recommendation 15.

⁴⁶ Finnish Code 2008 (note 12 above) Recommendation 9.

Among countries where the requirement for gender has been included in Corporate Governance Codes, the Finnish Code's Recommendations appears to have more precision given that it was couched as a requirement (using the word 'shall') rather than a recommendation by which such Codes are usually characterised. While the requirement still falls short of the proportional requirement of quotas, a specific mention that both genders be included on boards could make a significant difference in its implementation as opposed to the usual requirement that 'gender' be taken into consideration in appointing members of the board as is the case with the UK Corporate Governance Code.⁴⁷ Notwithstanding that the Finnish Code's Recommendation is couched in a language that gives equal opportunity for both genders to be on board in equal representation the language used lacks specificity in terms of proportion and thus connotes ambiguity. It could be interpreted to mean that the inclusion of both genders irrespective of proportion, translates to compliance with the Code. Interpreted in this way, the result does not guarantee an adequate level of gender diversity will be achieved. One gender could still dominate board membership. The uneven spread of progress across Finland's companies and token representation of women identified on boards indicate that this ambiguity in the Code's Recommendation influences compliance (Figure 1 below).

Shortcomings associated with the 'comply or explain' approach are evident in the application of Recommendation 9 of the Finnish Code. Notably, low quality explanations or lack of explanations identified in the application of the Code by listed companies occurs mostly in respect of non-compliance with Recommendation 9 of the Code.⁴⁸ Companies that failed to apply the Recommendation and have no female on their board are required to explain their non-compliance. The Finnish Code includes that:

⁴⁷ Financial Reporting Council, *UK Corporate Governance Code 2014*, Principle B2(UK Code 2014).

⁴⁸ Securities and Market Association (SMA), *Departure from the Recommendations of the Finnish Corporate Governance Code (Guideline)* (2012) (SMA Guideline).

“a company may depart from an individual recommendation of the Code due to; for example, the ownership or company structure or the special characteristics of its area of business”.⁴⁹

It thus created an avenue for non-compliance through the Recommendations. Explanations in respect of Recommendation 9 were observed to be of a general nature by not providing specific reasons for deviation and therefore not sufficient. Of the 13 listed companies that had no female director on their boards in 2014,⁵⁰ only two companies, Electrobit and Norvestia explained their non-compliance with Recommendation 9, albeit insufficiently.⁵¹ Both explanations cited company size as a reason for non-compliance and thus the reluctance to increase board size by including female directors.⁵² The explanations also included that the inclusion of both genders remained a long-term plan of the company but failed to present any identifiable solution for the short term. By laid down standards of explanations in relation to the Finnish Code, explanations offered are considered insufficient in informative quality.⁵³ The Swedish Corporate Governance Code’s Recommendation for explanation to be provided appears more robust and of greater informative quality:

“.....the company is to state clearly which Code rules it has not complied, explain the reasons for each case of non-compliance, and describe the solution it has adopted instead”.⁵⁴

Requiring companies to provide an alternative solution is not a common approach with other Codes and could place greater obligation on companies. The response to Recommendation 9 reflects the general approach to compliance with Corporate Governance Codes Principles and Recommendations given their non-

⁴⁹ Securities Market Association, *Finnish Code of Corporate Governance (2010)* (Finnish Code) Finnish Code 2010 p. 6.

⁵⁰ 13 of the 102 companies surveyed through Annual Reports.

⁵¹ Source: Companies’ 2014 Annual reports.

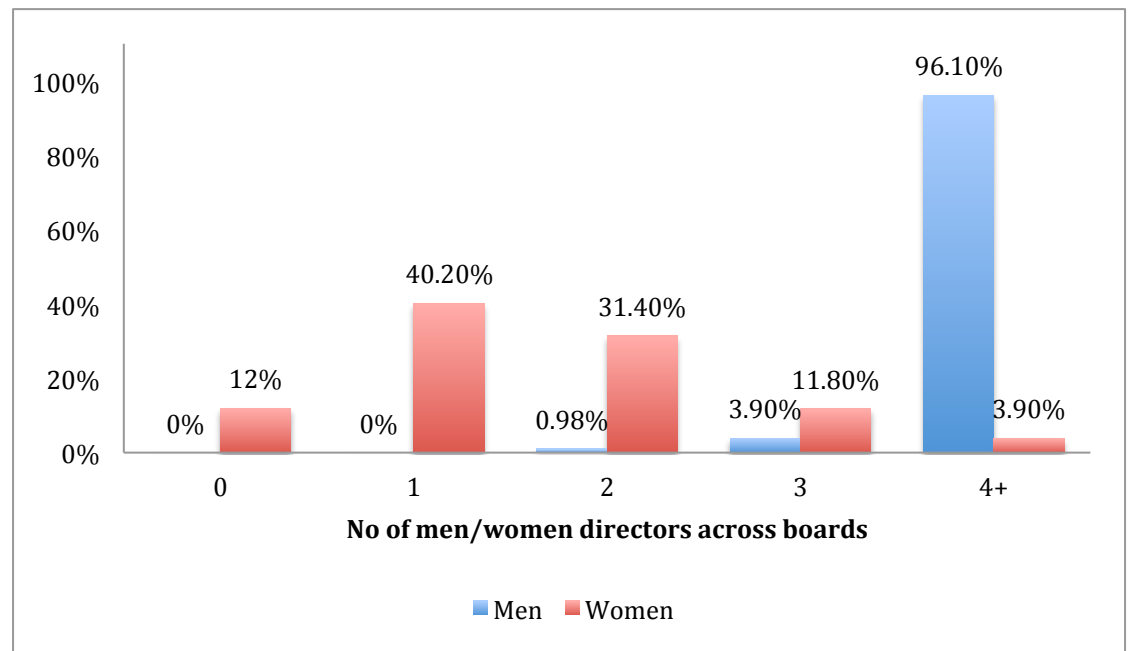
⁵² See for example, 2014 Annual Report for Elektrobit, (Corporate Governance Statement Reporting Period Jan. 1- Dec. 31, 2014) p.4.

⁵³ SMA Guideline (note 48 above) p.2.

⁵⁴ Swedish Corporate Governance Board, *The Swedish Corporate Governance Code 2010* rule 10.1.

binding nature. The introduction of a Guideline in respect of departures from the Recommendations of the Finnish Code in 2012 indicates that attitude to explanations was a concern.⁵⁵ The Guideline makes it mandatory to explain departures from the Finnish Code and sets out standards sufficient explanations should meet.⁵⁶ It is however doubtful to what extent the Guideline has been adhered to given that low quality explanations are still given in 2014 Annual Reports. Of the 13 companies that deviated from Recommendation 9, 11 did not mention the deviation and therefore offered no explanation.⁵⁷ This suggests an attitude of disregard for the Code as a regulatory instrument thereby undermining its capability in bringing about sustainable change in respect of gender balance on boards.

Figure 1. **Token Representation of Women on Boards in Finland in 2014**



Source: Author's compilation from 2014 Annual Reports and on companies' websites. (See list of companies in Appendix 1).

⁵⁵ SMA Guideline (note 48 above).

⁵⁶ *ibid*, p. 2.

⁵⁷ Examples include Revenio Group and Orava Residential (2014 Annual reports/Corporate Governance Statements).

Figure 1 illustrates that women occupied board positions in fewer numbers than men with men having the highest representation by being more than four on almost all boards.

In relation to board appointments, 2014 UK Code provides that:

“The search for board candidates should be conducted, and appointments made, on merit, against objective criteria and with due regard for the benefits of diversity on the board, including gender”.⁵⁸

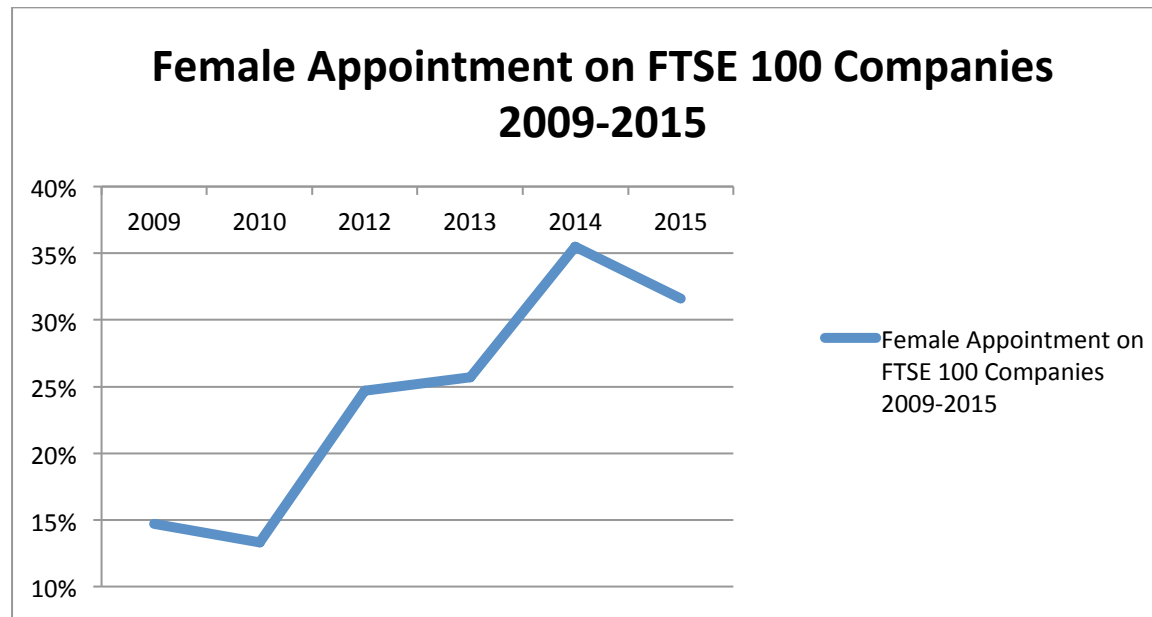
‘Due regard’ connotes ambiguity in interpretation. The clause ‘due regard’ lacks in specificity and therefore could pose a challenge in proving if ‘due regard’ for the benefits of gender has been applied. Also, the manner in which the requirement for ‘gender’ to be given consideration when board appointments are being made is couched appears not to prioritise the issue of gender and may have impacted negatively on its application. While it mentions gender as criteria to be considered, an interpretation of the Principle could also suggest that the broader definition of diversity if taken into consideration will suffice as application of the Principle. The reliance on “comply or explain” principle also suggests that a departure from the Principle will occur, hence a lack of women or low representation could be addressed with insufficient explanation or no explanation. While there is female representation on all boards of FTSE 100 companies as at 2014/2015, token representation of women is observed in a number of companies. In 2014, 12 companies on the FTSE 100 had a single female director on their boards and 31 companies had two female directors. Notwithstanding that a majority of FTSE 100 companies had a three to four representation of female directors, a token representation can still be inferred where the size of the board is large. For example in 2014, Prudential Plc had three female directors on a 16member board (18.8%) and WPP Plc had four females on a 17 member board. The inability to measure or identify if ‘due regard’ has been

⁵⁸ UK Code,2014(note 47) Supporting principle B2 .

taken in making appointments also suggests that explanations may not be enough to address non-compliance with the Principle.

It is difficult to attribute the progress recorded in the UK to the Principles of the UK Code as the country's progress has been as a result of a constellation of collaborative factors such as the State-initiated *Lord Davies Review of 2011* which made significant impact with regard to addressing gender imbalance on UK boards.⁵⁹ These collaborative factors began to occur shortly after the requirement for gender was included in the UK Code in 2010 and therefore an attempt to attribute progress to either factor independently would be incorrect. Figure 2 shows that appointment levels of female directors began increasing in 2011/2012 coinciding with the *Lord Davies Review* and the 2012 update of the Corporate Governance Code.

Figure 2.



Source: Information culled from *Female FTSE Reports* (Cranfield School of Management).

⁵⁹ Lord Davies Review is discussed in more detail below.

The Australian Code adopts a broad approach to diversity. The Code recommends that the board should:

“.....ensure that the board has the appropriate balance of skills, knowledge, experience, independence and diversity to enable it to discharge its duties and responsibilities effectively”.⁶⁰

it is important to note that the inclusion of the term ‘diversity’ as a consideration for appointments was included in the 2014 updated version of the Code. Prior to this update, the 2007 version of the Australian Code (which was updated to include the 2010 amendments) made reference to only ‘skills’ ‘expertise’ and ‘experience’ as considerations for appointment.⁶¹ The term ‘diversity’ was however included as a consideration in terms of board succession plans.⁶² It can be argued that while this may have been an unintended error in the production of the Code, it is likely that companies will choose to interpret it as ‘diversity’ being of lesser importance in making board appointments.

The inclusion of the term in the 2014 edition is also susceptible to an ambiguous interpretation in relation to ‘gender diversity’ owing to its broad approach. The use of the broader term ‘diversity’ rather than ‘gender diversity’ suggests that the Recommendation may not encourage a specific consideration of gender diversity in board composition. Diversity of board members in terms of age, race and experience would also suffice as compliance with the Recommendation. In fact, the Australian Code in an accompanying Commentary states:

“...it should be noted that while the focus of this recommendation is on gender diversity, diversity has a much broader dimension and includes matters of age, disability, ethnicity, marital or family status, religious or cultural background, sexual orientation and gender identity....”⁶³

⁶⁰ Australian Code (note 19 above) Recommendation 2.1 (b).

⁶¹ *ibid.* Recommendation 2.4 (Commentary)

⁶² *ibid.*

⁶³ Australian Code (note 19 above) Recommendation 1.5 (Commentary).

The Commentary further takes away from any prioritisation of gender against other forms of diversity. While the 2014 version became applicable for financial years commencing July 2014, it is possible to suggest that both versions of the Code were likely to impact companies in a similar way and thus it can be expected that the 2014 version made no difference in this regard. It is therefore not surprising that Corporate Governance Statements of ASX 100 companies showed majority of companies addressed diversity broadly in terms of race, skill and experience and gender. In this sense, gender diversity is not prioritised by the board. It can be argued that the more specific gender diversity recommendations included in 2010 had more impact on companies in terms of gender diversity given that significant increase in female director appointments began to occur at this time.⁶⁴ The more specific Recommendations in terms of gender diversity may have had far reaching impact on all board activities so as to douse the anomalies of the Recommendations in respect of board appointments. A complementary effect on gender diversity from all diversity related Recommendations cannot however be ruled out. The emphasis on the need for skills and expertise on the board while omitting diversity and the likely impact it had on gender diversity level is relatable to Ireland as the *Code of Practice* also prioritises skills and experience in terms of board appointment.⁶⁵ A specific reference to gender representation would serve to prioritise gender as an indicator of board diversity. Figure 3 shows that in spite of a high level of engagement with 'diversity' by majority of ASX 100 companies in 2014/2015, this did not translate to high level of female representation on boards of such companies.

⁶⁴ See discussion below on Diversity/Gender Diversity Reporting and Disclosure.

⁶⁵ See discussion below.

ii. Diversity and Gender Reporting and Disclosure Recommendations/Principles

Diversity and gender reporting and disclosure recommendations and principles contained in Corporate Governance Codes could be more potent in influencing more gender balance on boards given that they make more tangible demands that can be assessed. The possibility of assessment by shareholders could therefore encourage companies to apply them so as not to impugn their reputation.⁶⁶ The practice of diversity/gender diversity disclosure encourages individualised voluntary target setting and also enhances accountability and transparency as companies feel an obligation to attain the targets they set. A consistent reporting and disclosure practice could also translate to a culture change in the long term in respect of addressing gender representation. The non-binding nature and flexibility in the application of Code Recommendations could however undermine the usefulness in this approach. The Australian and UK Code contain diversity and gender diversity specific Recommendations/Code Provisions aimed at encouraging companies to make available gender related information to shareholders and the public in an attempt to increase accountability and transparency. Figure 4 and 5 shows that while these Code Recommendations/Code Provisions are being complied with, there is still room for improvement however improvement or fast improvement may not occur given the voluntary nature of the Corporate Governance Codes. Also of significance is that the application of these Recommendations/Code Provisions have failed to reflect adequately on the level of female representation on boards in line with the intent of the Code (see Figure 3 and 4). The diversity/gender diversity specific disclosure Recommendations and Principles as contained under the Australian and UK Code can be categorised under three themes: diversity policies; the setting of measurable objectives and the reporting of gender

⁶⁶ See Wu, Y. 'The Impact of Public Opinion on Board Structure Changes, Director Career Progression and CEO Turnover: Evidence from CalPERS Corporate Governance Program' (2004) 10(1) *Journal of Corporate Finance* 224.

proportions across all levels of the organisation. The Finnish Code does not include disclosure and reporting recommendations in this regard.

(a.) Recommendations/Principles for Diversity Policies

The 2012 update of the UK Corporate Governance Code Provision highlighted the issue of diversity policies. The Code Provision was retained in the 2014 version of the Code:

“a separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointment. This section should include a description of the board’s policy on diversity, including gender.....”.⁶⁷

The 2010 edition of the Code made no reference to diversity or gender to be included in the annual report.⁶⁸ The inclusion occurred following the Recommendations contained in *Lord Davies Review*.⁶⁹ The 2012 Code became applicable to accounting periods beginning on or after 1 October 2012. A legislative instrument i.e. Narrative Reporting Regulation⁷⁰ which was likely to encourage the creation of diversity policies by companies in order to meet with its requirements, was also introduced not long after in 2013. Annual reports of 2014 for FTSE 100 companies showed that 72% had diversity policies which specifically recognised gender as a diversity objective (Figure 3).⁷¹ While it may be erroneous to conclude that the high number of companies with a diversity policy was influenced by the Code Provision, it could be suggested that the inclusion in a regulatory instrument, albeit one of a non-binding nature, indicated the

⁶⁷ UK Code 2014(note 47 above) Principle B.2.4.

⁶⁸ *The UK Corporate Governance Code 2010* (note 4 above).

⁶⁹ Lord Davies, (note 5 above) Recommendation 3.

⁷⁰ *The Companies Act 2006 (Strategic Report and Director’s Report) Regulations 2013*, s. 414C (5).

⁷¹The figure is streamlined to those that specifically mentioned gender in order to identify how the adoption of a diversity policy reflected on gender diversity level on the board. Companies that did not mention gender specifically in their Diversity policy but recognised *Lord Davies Review* Recommendation in terms of gender diversity target were also included.

importance and recognition the issue of gender diversity on boards was receiving and in this way, was influential. Compliance with the Code Provision however has not influenced gender balance as token representation of women is observed on boards of some FTSE 100 companies. As at mid 2015 women representation on company boards with a diversity policy including gender, averaged at 22%. Assessed against the 25% target recommended in *Lord Davies Review 2011*,⁷² female representation was at a good level but if set against a 30 or 40% target which represents higher level of engagement with the Code's Provision and indicates a more influential representation of women on boards, there is still a lot to be achieved in the UK.

Australia's progress is attributed mainly to the culture of gender diversity reporting and disclosure.⁷³ The 2014 edition of the Australian Code retained these and Principles and the Code include a recommendation that a listed entity should:

“have a diversity policy which includes requirements for the board or a relevant committee of the board to set measurable objectives for achieving gender diversity and to assess annually both the objectives and the entity's progress in achieving them;”⁷⁴

and to “..disclose that policy or the summary of it” ;⁷⁵

given that the “if not, why not” basis (apply or explain principle) on which the Australian Code relies appears more likely to impose greater obligation on companies, a high degree of compliance could be expected with this Recommendation and the Code generally. This is however only a hopeful expectation as the non-binding nature of the Code does create grounds for ineffectiveness of the ‘if not, why not’ approach. A more definite impact of the 2010 amendment of the Australian Code is however reflected in the improved

⁷² See discussion below.

⁷³ Bennett P, (Blackrock), ‘Achieving Gender Diversity in Australia: The Ugly, The Bad and The Good’ (2015) p.2. Available at: <https://www.blackrock.com/au/individual/literature/whitepaper/achieving-gender-diversity-in-australia-en-au.pdf>. Accessed 12/04/16.

⁷⁴ Australian Code (note 19 above), Recommendation 1.5(a).

⁷⁵ *ibid*, Recommendation 1.5(b).

quality of corporate governance reporting and disclosures. While corporate governance disclosures have been a requirement for all listed companies in Australia since July 1996,⁷⁶ generic statements which were said to have characterised those disclosures were now being replaced by more meaningful information following the 2010 amendment of the Code.⁷⁷ A 2014 KPMG Report on ASX listed entities showed that the values of diversity was recognised and utilised by majority of companies.⁷⁸ The Report did not however take the inclusion of a gender diversity element into consideration. A further study of 2014/2015 annual reports of ASX 100 listed entities also reveals a high level of application of this Recommendation indicating a sustained progression in the subsequent years (Figure 3).⁷⁹ Almost all entities surveyed (98 %) had a diversity policy which included the gender diversity element. The inclusion of a gender diversity element is however more likely with regard to this Recommendation given that it included a specific reference to gender diversity. It was pertinent to identify those which had included the gender diversity element as several of the companies already had diversity policies in place before the introduction.⁸⁰ The introduction of the Recommendation provided a standard approach for implementing these diversity policies⁸¹ and further highlighted 'gender' as an important aspect of diversity in the workplace. Female appointment to boards did

⁷⁶Australian Stock Exchange (ASX) Listing Rules 4.10.3.

⁷⁷Bennett P, 'Why Corporate Australia's Gender Policies Need to be Wound into their DNA' (2014) p.5. Available at: <https://www.blackrock.com.au/individual/literature/whitepaper/blackrock-why-corporate-australia-gender-policies-need-to-be-wound-into-their-dna-en-au.pdf>. Accessed 29/05/16.

⁷⁸Considerable time had elapsed by this time giving more companies time to comply with the Recommendation. See KPMG, *ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of Disclosures for Financial Years Ended between 31 December 2012 and 30 December 2013* (2014) p. 16.

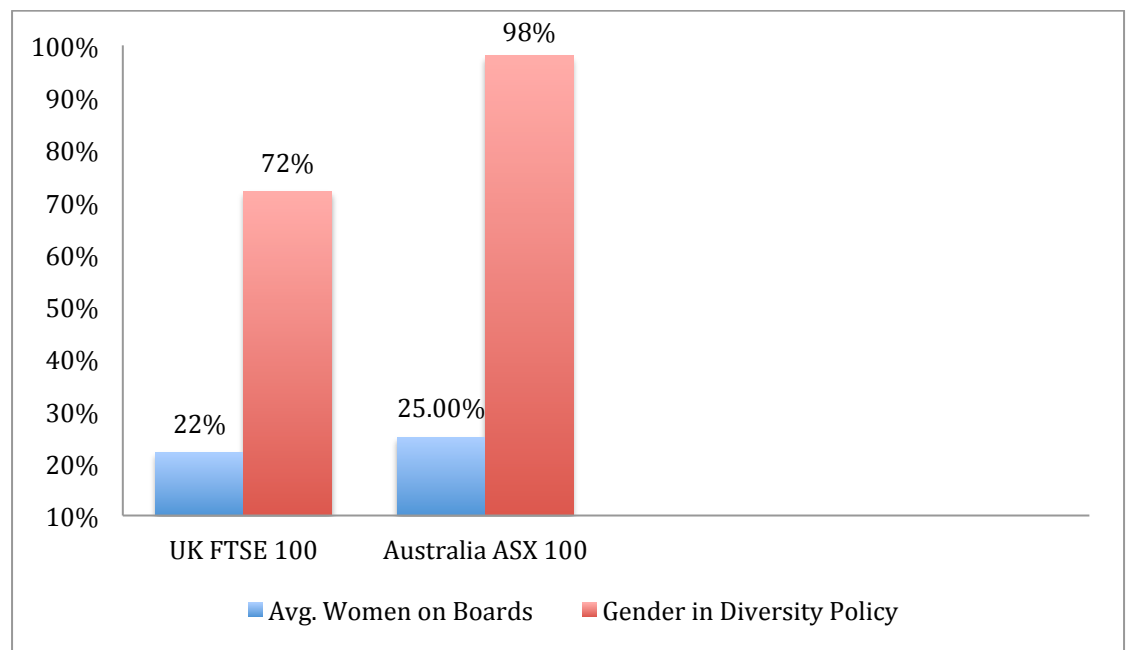
⁷⁹The analysis in this thesis was restricted to listed entities on ASX 100 given that an earlier report had identified a correlation between large companies and greater application levels of the Recommendation. See KPMG Report 2014 (note 78 above) p. 11; 20.

⁸⁰This observation was made in an earlier report. See KPMG, *ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of 31 December 2011 Year End Disclosures* (2012) p. 8-9.

⁸¹KPMG (2012) (note 79 above) p. 8-9.

also increase markedly following the introduction.⁸² Application of the Recommendation however may not translate to high levels of female representation as despite a high number of entities with a diversity policy female representation on boards of a number of entities with gender related diversity policy was still below the 'critical mass' representation (Figure 3).

Figure 3. Correlation between Complying with Recommendation/Provision on Diversity Policy in the UK and Australia, and Level of Female Representation on Boards



Source: 2014 Annual Reports, Corporate Governance Statements and Websites

Apart from its non-binding nature, another reason which could result in the Australian Code not effectively leading to increased gender balance on boards could be that the Code Recommendation does not specifically mention the board as a target for gender diversity and therefore implies that the emphasis on gender diversity extends to include gender diversity levels on other leadership levels in the company and the workplace as a whole.

⁸² See figure 4 above.

(b.) Setting Measurable Objectives

UK Corporate Governance Code also recommends for nomination committees to set measurable objectives towards achieving the board's diversity policy. The Code Provision recommends to:

“.....include a description of.....any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives.....”.⁸³

this Code Provision was first included in the 2012 version of the Code and also occurred following the Recommendations of *Lord Davies Review*.⁸⁴ The increase in female appointments that also occurred following the introduction in the Code (Figure 2) also suggests a possible link between the two. However as has been identified earlier in this chapter, the coinciding of several initiatives in the UK with increase in female board appointments and increased gender diversity level on boards suggests the existence of a collaborative environment thereby making it difficult to attribute changes to a particular factor. The difficulty in suggesting a link is also reflected in the fact that in 2015 companies that applied the Code Provision by setting gender diversity related measurable objectives did not necessarily attain high level of female representation. Annual reports for 2014 showed that only 33 companies on FTSE 100 had set measurable objectives and the average of women representation on these boards was 24.5% (Figure 4). Also, as earlier argued, set against the “critical mass” theory argument, this achievement still leaves a lot to be desired.

⁸³ UK Code 2014 (note 47 above) Principle B.2.4.

⁸⁴ Lord Davies (note 5 above).

Flowing from Recommendation 1.5,⁸⁵ which recommends the setting of measurable objectives and ways to assess their progress, the Australian Code makes a further Recommendation that a listed entity should:

“disclose as at the end of each reporting period the measurable objectives for achieving gender diversity set by the board or a relevant committee of the board in accordance with the entity’s diversity policy and its progress towards achieving them,”⁸⁶

In 2014 compliance with this Recommendation across ASX 100 companies was lower than that for the Recommendation on creation of a Diversity Policy. In 2013, adoption of the further step of setting measurable objectives and monitoring such objectives in terms of implementation and progress was adopted to a lesser degree and was largely dependent on the size of the company.⁸⁷ The larger the company, the more likely it was to have set measurable objectives and monitoring them effectively. A study of 2014 Corporate Governance Statements of ASX 100 companies (being largest companies) to ascertain if application of this Recommendation had improved and how it reflected on female representation on boards showed that the level of setting of measurable objectives still fell below that for diversity policies. Entities evidently felt it was sufficient compliance with the Code to set the diversity policy and include gender as an objective. Where measurable objectives were set, the quality varied among companies with some setting specific and numerical targets while others were ambiguous or vague and thus difficult to assess progress against. It has been suggested that the sub-optimal quality of measurable objectives could be as a result of inadequate definition of what it entails, by the Australian Code.⁸⁸ The measurable objectives as reported by Lend Lease Group for example, clearly showed no measurable objectives against which future progress analysis can be done:

⁸⁵ See note 74 above.

⁸⁶ Australian Code (note 19 above) Recommendation 1.5(b).

⁸⁷ See KPMG Report 2013 (note 78 above) p. 16.

⁸⁸ *ibid.*

“...To encourage greater representation of women at senior level, Lend Lease continues to develop initiatives targeting an improvement in gender diversity, including refinement in recruitment processes, expansion in career and leadership development and mentoring”.⁸⁹

A contrasting example is that offered by Mirvac. Among its measurable objectives for the year 2013/2014 included, to implement a women in Mirvac talent management program and a recruitment policy that all executive recruitment briefs would include a guideline for 50% of short listed candidates to be female.⁹⁰ In the following year, the company was able to identify that it had achieved all objectives.⁹¹ Significantly, the application of the Code’s Recommendation reflected on the level of gender diversity on Mirvac’s board as it is one of only four companies on ASX 100 that achieved gender parity on their boards as at 2015. This does not however suggest any conclusive link between an application of the Recommendation and high female representation (see Figure 4) although Mirvac is identified as consistent in application of all gender related recommendations and apparently had imbibed a culture where gender diversity was promoted.⁹² While 86.7% of companies had set measurable objectives,⁹³ the average proportion of women on their boards was 25% (Figure 4), below the ‘critical mass’ suggested proportion. The difference in the application of the Recommendation by both companies also illustrates how ambiguous words used in Corporate Governance Codes can be misconstrued or misinterpreted leading to uneven outcome. Response to this Recommendation of the Code also illustrates

⁸⁹Lend Lease Group, *Corporate Governance Statement* in 2014 Annual Report, p.16.

⁹⁰Mirvac, *Corporate Governance Statement*, p. 38. Available at: http://www.mirvac.com/uploadedFiles/Main/Content/About/Corporate_Governance/Mirvac_CorporateGovernanceStatement_Aug14.pdf. Accessed 10/05/16.

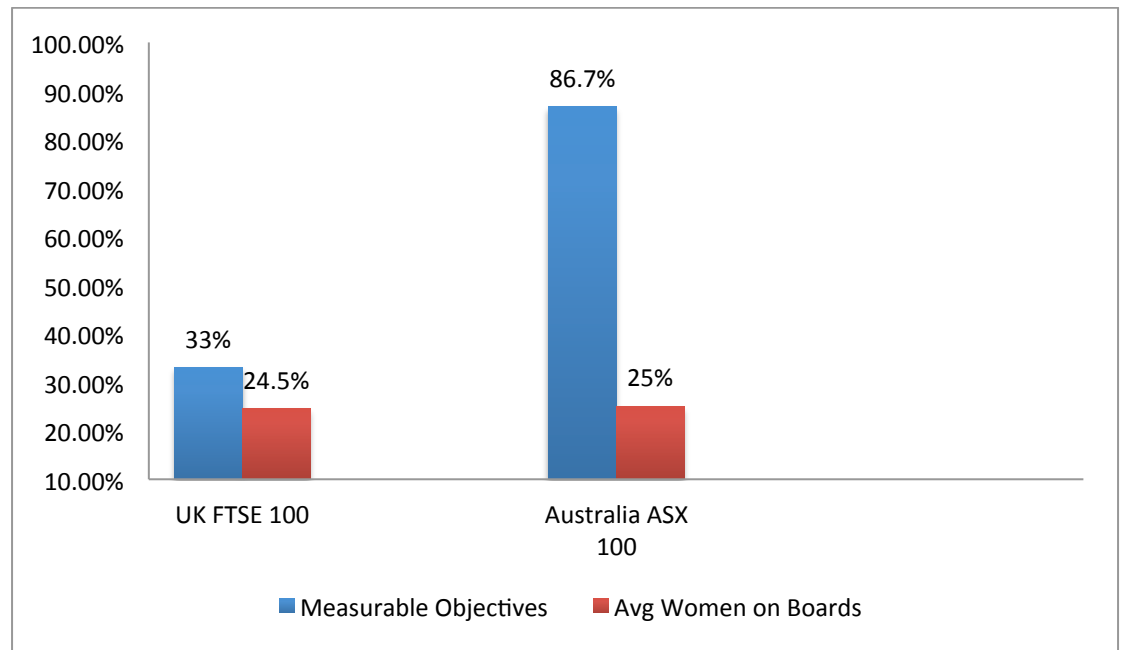
⁹¹ibid.

⁹²Mirvac was one of the 16 ASX 200 companies to be rated a green light in the ‘Women on Boards 2013 Traffic Light Index’ see Women on Boards, ‘WOB 2013 Traffic Light Index’. Available at: <http://www.womenonboards.org.au/pubs/traffic-light/2013-traffic-lights/index.htm>. Accessed 10/04/16. The original report is however not publicly available. The company was also one of only 6 companies that were recognized as having excellent standard in reporting on gender diversity. See Bennett (2014) (note 77 above) p. 4.

⁹³This figure includes measurable objectives that were equivocal.

how Code Recommendations can be disregarded, as a result of its non-binding nature.

Figure 4. Correlation between Compliance with Recommendation/Code Provision on Measurable Objectives in the UK and Australia and Women on Boards



(c.) Disclosure of Gender Metrics

In the UK, the requirement for the disclosure of organisational gender metrics is addressed under legislation and is discussed in more detail below in this chapter. It is notable however that there was an absolute compliance with this requirement as was revealed in 2014 annual reports, including companies that applied the Code’s gender related Principles/Code Provisions minimally. The binding nature of the legislation is the likely influential factor.

The Australian Code does recommend that a listed entity should:

“disclose as at the end of each reporting period.....the respective proportions of men and women on the board, in senior executive positions and across the whole organisation (including how the entity has defined “senior executive” for these purposes); ...⁹⁴

This Recommendation encourages a forward looking approach as it could cause companies to assess and have regard to how their pipeline is managed and being developed. Similar to other gender diversity related Code Recommendations, the 2014 KPMG Report on ASX listed entities noted that the reporting of gender metrics at all levels was sub-standard as a number of entities that reported on it failed to give details for all level positions particularly in respect of board level positions.⁹⁵ A more narrow analysis of ASX 100 companies 2014 Annual reports showed a considerable level of application of this Recommendation with 84.6% having reported on gender metrics for all levels. It is however not conclusive if this level of compliance was as a result of a need to comply with the Corporate Governance Code as similar requirements were also introduced through legislation in 2012. The new requirements included the reporting and disclosure of the gender composition of the workplace by employers.⁹⁶ Compliance with the legislation has been encouraging,⁹⁷ thus making it more difficult to attribute compliance with gender metric disclosure by companies to the impact of the Australian Code. Notably however, a compliance with this Recommendation of the Code has not translated to high representation of women on boards. The average representation of women on boards of compliant companies was 24.2 % also below the critical mass of 30-40 %.

⁹⁴ Australian Code (note 19 above) Recommendation 1.5 (c) (i). The 2014 update of the Code includes an optional approach to this Recommendation by giving listed entities the option to report on the ‘Gender Equality Indicators’ as required under the *Workplace Gender Equality Act 2012*. A reflection of these changes would however become evident in 2015 Annual reports/ Corporate Governance Statements. See Australian Code (note 19 above) Recommendation 1.5 (c) (ii).

⁹⁵ KPMG Report (2014) (note 78 above) p. 26.

⁹⁶ See *Workplace Gender Equality Act 2012* Act No. 91 of 1986 as amended (*WGEA 2012*) Part IV, 13 (1-3).

⁹⁷ See further discussion below.

iii. Board Evaluation

The Finnish Code makes no specific reference to diversity or gender in its Recommendation for board evaluation.⁹⁸ The Australian Code also makes no reference to gender or diversity in its Recommendation for a performance evaluation of the board.⁹⁹ However, the Australian Code Recommends an evaluation of the board in terms of the “...balance of skills, knowledge, experience, independence and diversity.” as part of the recruitment process for a director.¹⁰⁰ Recommendation 2.1(b) which relates to board appointments thus suffices as an evaluation of the board.¹⁰¹ Board evaluations in terms of the composition of the board were focused on ensuring that a mix of skills, experience and independent directors were on the board rather than the inclusion of more women. The 2007 version of the Code also made no reference to ‘diversity’ with regard to performance evaluation of the board.¹⁰² Accordingly, no suggestive links can be identifiable between a performance evaluation of the board and level of women on the board. There was therefore no mention of ‘gender’ or ‘diversity’ in relation to board performance evaluation. Given that the term ‘diversity’ was included in the 2014 edition of the Code with regard to making appointments, few companies had been required to report on it at the time of writing. However as argued earlier in chapter, the broad use of the term does not suggest any significant difference will be made.

The UK Code specifically mentions ‘gender’ among factors that should be taken into consideration in an evaluation of the board:

“Evaluation of the board should consider the balance of skills, experience, independence and knowledge of the company on the

⁹⁸ Finnish Code (note 12 above) Recommendation 7.

⁹⁹ Australian Code (note 19 above) Recommendation 1.6.

¹⁰⁰ *ibid*, Recommendation 2.1 (Commentary).

¹⁰¹ See discussion on *Appointment to Board above*. Same suggestions will also be applicable here given the broad use of the term.

¹⁰² Australian Code (note 19 above) Recommendation 2.5.

board, its diversity, including gender, how the board works together as a unit”¹⁰³

Application of this Principle was not significantly observable across FTSE 100 companies as many failed to specifically mention that ‘gender’ had been considered in board evaluation. Only 29 companies (29 %) on the FTSE 100 indicated compliance with this Provision. The 29 companies includes those that mentioned ‘diversity’ as a consideration in the evaluation process as companies that considered ‘gender’ were very few. It is significant that a similar attitude to compliance is observed as in Australia despite that ‘gender’ was not mentioned in the Australian Code. The inclusion of ‘gender’ hence made no difference with regard to compliance. It could be suggested that this general attitude to compliance stems from the nature of Corporate Governance Codes which is a common factor shared by both countries. This is illustrative of the inability of Codes to guarantee/ attract compliance and ultimately, change.

The application of this Principle of the Code in relation to gender balance was observed to be the least when compared with other Code Principles/Provisions. Accordingly, it cannot be concluded that this Principle influenced female representation on boards. Boards that had applied all three Principles that mentioned ‘gender’ specifically in relation to gender diversity in the UK such as RSA Insurance Group and Royal Dutch Shell, did not have the highest figures of women on boards in 2014/2015, suggesting no definite correlation and validating the suggestion that other existing collaborative factors were contributory.

E. Engagement with Gender Balance under Corporate Governance Code Regimes

The impact of Corporate Governance Codes can also be assessed by analysing the extent to which companies may have engaged with gender balance. Engagement under soft law instruments suggests that a culture of gender diversity has been

¹⁰³ UK Code 2014 (note 47 above) Principle B.6.

imbibed and thus more gender balance should be observable/reflect in other areas of the company's activity and not just on boards.¹⁰⁴ The implication of engagement for board gender balance is that the value of gender diverse boards will be utilised and attained increased levels will be sustained in the future. Female representation in board Chair positions and lower level managerial positions are indicative that Corporate Governance Code Principles/Recommendations have been taken a step further from the wordings of the Code as per board composition, to also include gender balance in other positions. The appointment of female directors in influential positions on boards such as Chair position would thus be an indication that the spirit or objective of the Code is being accepted and fulfilled as female directors would likely make more impact in corporate governance through these positions. The ultimate objective for regulating to increase gender balance on boards is to have a balanced and effective participation of both genders. Occupying key position as Chair of the board is one way of enhancing and integrating female participation on boards. The creation of a pipeline for women progression into higher level management positions i.e. boards is considered a critical necessity in attaining high gender diversity level on boards and sustaining it. Apart from Australia where the Code recommends reporting and disclosure of gender representation in other organisational levels,¹⁰⁵ similar provisions/recommendations are not included in the UK and Finland's Codes. A significant finding in the survey of annual reports of listed companies in these three countries was that compliance with all gender related Recommendations/Principles of the Code did not translate to more women in Chair and CEO positions.

¹⁰⁴ See Ahern D and Clarke B, 'Listed Companies' Engagement with Diversity: A Multi-Jurisdictional Study of Annual Report Disclosures' (2013) *ECGI Law Working Paper No. 221*, p. 37.

¹⁰⁵ Australian Code (note 19 above) Recommendation 1.5(c) i.

i. Female Directors in Board Chair Positions

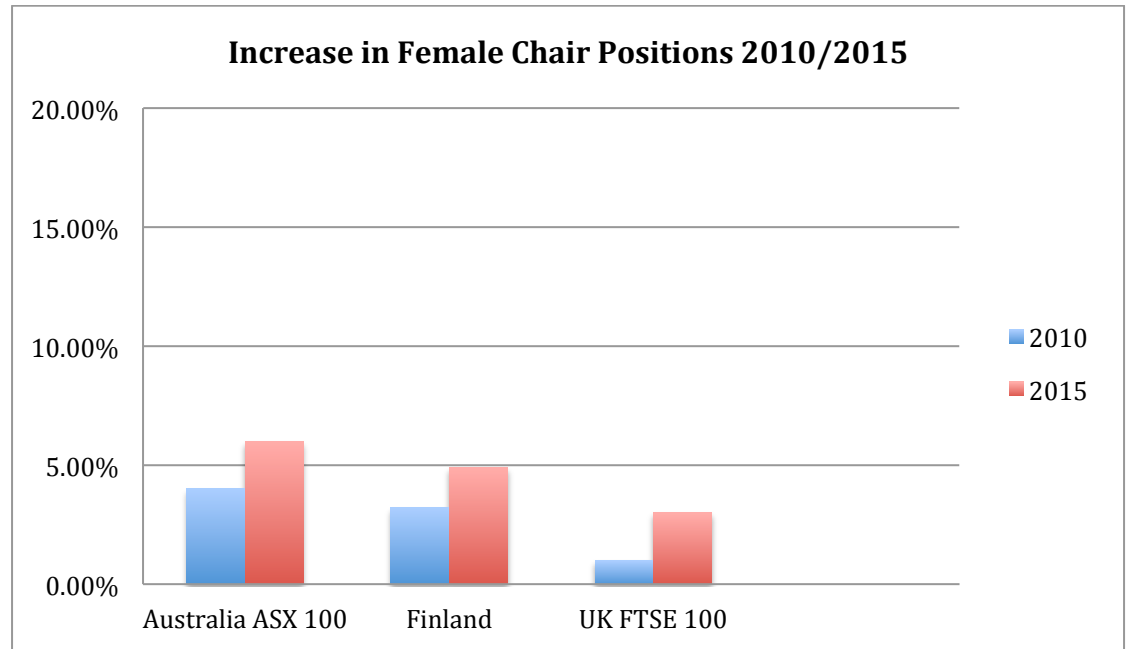
In Finland, a dearth of female directors in board Chair positions was observed across the 102 companies surveyed for 2014. Only five companies (4.9%) had their board chaired by a female director (see Figure 5). The first female director to chair the board of a Finnish listed company, Sari Bauldaf was elected in 2011 and by 2015 no significant change had occurred. Women directors occupied 3.2% and 4.2% of board Chair positions among listed companies in 2011 and 2012 respectively.¹⁰⁶ While there was an increase, the progress was marginal. Women directors in board Chair positions in the UK are almost non-existent with a representation of 3% across FTSE 100 boards as at May 2015 showing a 2% increase from the 2010 representation of 1%.¹⁰⁷ In 2011, there was a marginal increase of 1%.¹⁰⁸ Evidently, compliance with the UK Code has not been influential in appointing women to Chair positions. The representation of female directors in board Chair positions on ASX 100 companies in 2015 can also be considered non-existent. Six companies (6%) had their boards chaired by women with one of the female directors occupying the Chair position in two companies. The growth in the span of five years is not significant in all three countries.

¹⁰⁶ Note that these figures reflect an increased number of companies (all listed companies at the time) than the 102 companies surveyed for this thesis. See FINNCHAM, *The Glass Ceiling is Cracking: Self-Regulation Beats Quotas* (2012) p. 19. Available at: http://naisjohtajat.fi/files/2012/05/THE-GLASS-CEILING-IS-CRACKING_Self-regulation-Beats-Quotas_finncham.pdf. Accessed 12/06/16.

¹⁰⁷ Vinnicombe S, Sealy R, Graham J and Doldor E, *FTSE Female Board Report 2010: Opening Up the Appointment Process* (Cranfield University School of Management, 2010).

¹⁰⁸ Lord Davies, *Women on Boards Davies Review Annual Report 2015* (Department of Business, Innovation and Skills, 2015) p. 7 (Lord Davies Review 2015).

Figure 5.



Sources: Equality Opportunity For Women in the Workplace Agency, *Australian Census of Women in Leadership* (2010); Finland Chamber of Commerce (FINNCHAM) Women Executives Report, *Women Executives Stepping Up For More Business Responsibility* (2014); Lord Davies, *Women on Boards Davies Review Annual Report 2015* (Department of Business Innovation and Skills, 2015); 2014/2015 Companies' Annual Reports.

ii. Women in the Pipeline

Increasing levels of gender diversity on boards is yet to reflect on other management positions. Consequently, there is a growing concern globally in relation to developing a pipeline of female talent and thus the sustainability of gender diversity. Developing a pipeline through the appointment of more women in various levels of leadership in the organisation is also a concern in the three countries studied, indicating that Corporate Governance Codes have so far been inadequate with regard to influencing the practice.¹⁰⁹ In 2014, women occupied

¹⁰⁹ See Business Council of Australia, *Increasing the Number of Women in Senior Executive Positions: Improving Selection, Recruitment and Retention Practices* (2013), Available at: <http://www.bca.com.au/publications/increasing-the-number-of-women-in-senior-executive-positions>. Accessed 15/04/16. Finland Chamber of Commerce (FINNCHAM) Women Executives Report, *Women Executives Stepping Up For More Business*

only 12% of CEO positions globally.¹¹⁰ In Finland, of the 102 companies surveyed, only one company was headed by a female CEO in 2015. In 2011 there was no female CEO.¹¹¹ A similar trend is observable in the UK as there has been no growth of women in CEO positions despite the implementation of UK Code requirements. In 2015 women occupied five percent of CEO Positions of FTSE 100 companies, the same proportion observed in 2011.¹¹² Australia presents a similar picture with females occupying only 17.3% of CEO positions as at 2014.¹¹³ The case of Australia offers a most convincing illustration of the ineffectiveness of Corporate Governance Codes in creating a spill-over into other executive management positions given that the Code's Recommendation is targeted at all levels of the organisation. Evidently, Corporate Governance Codes in all three countries have failed to effectively address a systemic problem that stems from women's inability to crack a glass ceiling that is present at various levels within the company. In fact it is suggested that any regulation that seeks to address gender diversity levels on boards needs to also target barriers facing women at stages of their career and not just focus on boards.¹¹⁴ This conclusion further validates the suggestion that corporate governance codes are ineffective as stand-alone measures in increasing gender diversity levels significantly and that the progress levels recorded in these countries were influenced by independent collaborative measures. These measures are discussed in the next section.

Responsibility (2014) (Finland Women Executive Report) p. 29; Available at: <http://kauppakamari.fi/wp-content/uploads/2014/11/finland-chamber-of-commerce-women-executives-report-2014.pdf>; Accessed 15/04/16. FINNCHAM, *Gender Composition of Boards Does Not Affect Gender Ratio of Executives* (2014) Available at: <http://kauppakamari.fi/wp-content/uploads/2014/03/womens-day-2014-study.pdf>. Accessed 15/04/16; Smith A and Rigby E, 'Women Make Inroads on UK Boards but Top Slots Remain Elusive' *Financial Times* 25 March, 2015.

¹¹⁰ Grant Thornton, *Women in Business: From Classroom to Boardroom (International Business Report, 2014)* p.12.

¹¹¹ Finland Women Executive Report (note 109 above) p. 29.

¹¹² *Lord Davies Review 2015* (note 108 above) p. 7.

¹¹³ Workplace Gender Equality Agency, *Australia's Gender Equality Scorecard* (2014) p. 5. Available at: https://www.wgea.gov.au/sites/default/files/2013-14_summary_report_website.pdf Accessed 12/04/16.

¹¹⁴ Klettner A, Clarke T and Boersma M, 'Strategic and Regulatory Approaches to Increasing Women in Leadership: Multilevel Targets and Mandatory Quotas as Levers for Cultural Change' (2014) *Journal of Business Ethics* DOI 10.1007/s/10551-014-2069-z.

PART III: Impacting Incidental Factors

F. Influential Measures under Corporate Governance Code Regimes

While several other measures and initiatives exist in the three countries, the measures discussed in this section are more likely to have made a direct impact on increased figures in these countries as a result of gender-diversity related tangible obligations they impose on companies. It can be argued that without the existence of these initiatives progress under these corporate governance regimes may not have occurred.

i. Lord Davies Review/Recommendations

In 2010 the then coalition government in the UK commissioned a review into women on boards to be led by Lord Davies in 2011.¹¹⁵ The review involved consultation with stakeholders which included senior business leaders, senior women, search consultants and entrepreneurs.¹¹⁶ The outcome of the review was the publication of the Lord Davies Report in 2011 which put forward 10 Recommendations including a 25% women representation target for boards of FTSE 100 companies by 2015.¹¹⁷ Specific Recommendations were made to be included in the UK Corporate Governance Code and were subsequently included in the 2012 version of the Code:

“The Financial Reporting Council should amend the UK Corporate Governance Code to require listed companies to establish a policy concerning boardroom diversity, including measurable objectives

¹¹⁵ Lord Davies, (note 5 above) p. 6.

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*, p. 18.

for implementing the policy, and disclose annually, a summary of the policy and the progress made in achieving the objectives”¹¹⁸

“... A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments”.¹¹⁹

These Recommendations provide the main Principles/Code Provisions contained in the UK Corporate Governance Code in respect of gender diversity on boards,¹²⁰ evidencing the influence of the Davies Report on the Code. Apart from influencing the Code’s Principles, the Davies Report can be said to have marked a turning point in how the issue of gender diversity on FTSE boards was addressed in the UK as it not only indicated Government’s serious commitment to raising gender diversity levels on boards but also served to raise and attract the interest, commitment and actions of a wide range of actors across society. The Davies Report Recommendations sought to impose obligations on a wide range of actors including Chairmen, Chief Executives, Entrepreneurs, Investors and Executive Search Firms. The Report highlighted the Government’s intention to apply gender quotas in the event that the voluntary approach failed to be effective, which may also have been instrumental in attracting the commitment of necessary actors. As a former banker who had also occupied the position of board Chair, Lord Davies had been a key figure in UK business and this may have influenced many to find his arguments and suggestions for more women on board being good for business more convincing. The influence of the Davies Report/Recommendations is also apparent in the fact that several listed companies specifically make reference to compliance with the Recommendations in their Annual reports, more particularly with the 25% target. The Diversity Policy of a company read thus:

“We firmly believe in the importance of a diverse Board membership and fully support the Lord Davies Report on ‘women

¹¹⁸ *ibid*, p.19.

¹¹⁹ *ibid*, p. 20.

¹²⁰ See discussion above.

on boards'....we remain committed to maintaining at least 25 percent female representation on the board....."¹²¹

and another:

"...The Board has adopted the recommendations of Lord Davies of 25 percent female representation by 2015".¹²²

The Davies Report is evidently a standard reference in terms of the drive to increase gender diversity on boards. The numerical target set by the Review appears to be more of the focus rather than the UK Code's Principles and Code Provisions, suggesting the usefulness of numerical targets.

ii. The Narrative Reporting Regulation

Gender diversity 'Narrative Reporting' Requirements were introduced into the UK Companies Act in 2013.¹²³ This was another attempt by the UK Government to make companies more transparent and accountable with regard to gender diversity. While it does not constitute a soft law/initiative, the Requirements are a significant complement to the UK Code's Provisions on gender diversity and demand more tangible reporting and disclosure in relation to gender diversity, from companies. The Requirements require certain incorporated companies¹²⁴ to prepare a Strategic Report as a separate section of the Annual report which should contain a breakdown showing;

- i. the number of persons of each sex who were directors of the company;

¹²¹ Intercontinental Hotels Group (IHG) *Annual Report 2014* p.62.

¹²² Lloyds Banking Group *Annual Report 2014* p. 67.

¹²³ *The Companies Act 2006 (Strategic Report and Directors' Report)* (note 70 above).

¹²⁴ Companies entitled to take the small companies' directors' report exemption are also exempted from this Regulation.

- ii. the number of persons of each sex who were senior managers of the company;
- iii. the number of persons of each sex who were employees of the company.¹²⁵

As discussed earlier, tangible disclosure requirements could impose more obligation on companies to comply as these are more easily assessable in Annual reports. Tangible reporting and disclosures could also keep companies conscious of gender diversity situations in their company and awaken them to take action where necessary. However, being a legislation and therefore mandatory, compliance with the Requirements raise no concern. It is therefore in order to suggest that compliance with these Requirements influenced increase of gender diversity levels on boards as companies would want to be seen to be doing the right thing by increasing female representation where necessary.

iii. **Workplace Gender Equality Act (2012) (WGEA 2012)**

The introduction of the *WGEA 2012* in Australia was a State measure aimed at improving gender equality outcomes in the workplace, including gender diversity levels on company boards. Some provisions of the Act are significantly complementary to the Australian Code Recommendations in respect of gender diversity and without which gender diversity levels may not have increased to the present level. The legislation highlights the important role of Reporting as a tool to drive gender balance through the introduction of simpler and more transparent Reporting requirements. The requirements of the Act includes that 'Relevant' employers prepare reports annually relating to gender equality indicators:

¹²⁵ *The Companies Act 2006 (Strategic Report and Directors' Report)*(note 70 above) (Chap 4A, s.414c (8c)).

“in respect of each reporting period, a relevant employer must prepare a public report in writing containing information relating to the employer and to the gender equality indicators”.¹²⁶

The Act defines Relevant Employer to include a natural person or a body or association (whether incorporated or not) being the employer of 100 or more employees in Australia,¹²⁷ while gender equality indicators include:

- i. gender composition of the workforce
- ii. gender composition of governing bodies of relevant employers
- iii. equal remuneration between women and men
- iv. availability and utility of employment, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting family or caring responsibilities
- v. consultation with employees on issues concerning gender equality in the workplace
- vi. any other matters specified in an instrument under subsection 1A.¹²⁸

Similar to the UK’s Narrative Reporting requirements, these indicators also awaken the consciousness in companies to take action in areas of gender diversity where they may be lacking. Compliance with the WGEA 2012 is somewhat flexible as the Minister is allowed to set industry-specific minimum standards so as to accommodate the variety in strengths of affected organisations in meeting with the requirements.¹²⁹ Where an organisation does not meet with minimum standards it will have two years to comply before it is regarded as being non-compliant with the Act.¹³⁰ Non-compliant companies are publicly named on the Workplace Gender Equality Agency’s website and could have the impact of

¹²⁶ Workplace Gender Equality Act 2012 (note 96 above) Part IV, 13 (1).

¹²⁷ *ibid*, Interpretation.

¹²⁸ *ibid*.

¹²⁹ Workplace Gender Equality Act 2012 (note 96 above),Part IVA, 19(1), 19(c).

¹³⁰ *ibid*.

shaming them into acting.¹³¹ Non-compliance could also compromise the organisation's eligibility to tender for State contracts, grants or financial assistance.¹³² So far, compliance with the legislation is encouraging. In 2014, 76 organisations were awarded with the 'WGEA Employer of Choice for Gender Equality (EOCGE) Citation' indicating that they had fully complied with the Act.¹³³ The 76 organisations, though from across a range of sectors included several listed companies.¹³⁴ Being legislation, companies are more likely to comply with the Act's requirements than the similar disclosure Recommendations of the Australian Code. Compliance with the Act will thus serve to buffer any shortcomings in compliance with the Recommendations of the Code thereby still acting to enhance transparency of companies with regard to gender diversity. In this way, the *WGEA Act* lends significant support to the Code's objectives.

IV. Act on Equality between Men and Women

Finland's *Act on Equality between Men and Women* influences the effectiveness of the Finnish Code in respect of gender diversity on boards in a unique way. As discussed earlier in chapter, the Government quota of 40% gender representation on all boards of wholly owned SOEs and partly-owned SOEs in respect of the State's nominees to the board was in response to the legislative provision for gender quota in respect of public sector bodies.¹³⁵

In 2014, female directors on boards of companies where the State had ownership rights made up 44.2 percent of State appointed board members.¹³⁶ This figure

¹³¹ See Wu Y, (note 66 above).

¹³² *ibid.*

¹³³ Workplace Gender Equality Agency, 'Employer of Choice for Gender Equality' (2014). Available at: <https://www.wgea.gov.au/lead/employer-choice-gender-equality>. Accessed 15/04/16.

¹³⁴ Such as Suncorp, Mirvac, Westpac and Telstra Corporation Limited, to mention a few.

¹³⁵ See note 14 above.

¹³⁶ Ownership Steering Government Office, *State Ownership Steering Annual Report 2014*, p.20. Available at: http://vnk.fi/documents/10616/1221497/2014_OO+vuosikertomus_eng.pdf/1f84341c-ddb7-4a04-9de6-3fb50013c606. Accessed 18/04/16.

contributes to the achieved figure for listed companies as several of the partly State-owned companies are listed on the Stock Exchange. The State of Finland was also the biggest investor in listed equities in Finland in 2014.¹³⁷ Evidently, increased levels on boards cannot be attributed solely to the impact of the Finnish Code. The fast rate with which SOEs were able to achieve their set target also suggests to the availability of competent women to take up board positions. The quota was introduced in 2004 and by 2006 the target of 40 percent had been achieved.¹³⁸ Listed companies are not able to justify their excuse of a lack of women and thus face the pressure of complying with the Finnish Code and include more women on boards.

V. Threat of Gender Quota

Threats to impose legislative gender quotas in the event that a soft law approach fails, is a common thread in all three countries which can be said to have inspired greater action towards increasing gender diversity levels. More specifically in the UK, it is doubtful if the present progress level would have been achieved without the Government's threat to impose legislation in the event that voluntary attempts fail to get more women on boards. The threat underscored the introduction of *Lord Davies Review*,¹³⁹ which occurred the same time an increase in female appointment to FTSE 100 boards began (Figure 2). The voluntary regulatory environment under which UK businesses have become accustomed to may have caused greater response to this threat so as to avoid a change from that environment. In 2013, the Government reiterated this threat following a drop in

¹³⁷ *ibid*, p.3.

¹³⁸ Ministry of Trade and Industry, *State Shareholdings in Finland, 2006* (Helsinki: Ministry of Trade and Industry, 2007). Calculation was done by the author based on information provided in this document.

¹³⁹ Lord Davies (note 5 above) p.2.

female appointments on FTSE 350 company boards in 2012.¹⁴⁰ Responding to the drop, Business Secretary Cable said,

“Companies should be under no illusion that government will adopt tougher measures if necessary....quotas are still a real possibility if we do not meet the 25% target”.¹⁴¹

Threat of a gender quota in the UK attracted more attention and action also because it may have indicated that the Government was truly committed to change at this time. The UK was one of the nine Member States that presented major opposition to the intention of the EU to address women’s low representation on boards through legislative intervention, i.e. gender quotas.¹⁴² The opposition which was led by Vince Cable argued that measures were better handled at national level and reiterated the UK’s commitment to its business led voluntary approach.¹⁴³ A resort to threatening with gender quotas therefore showed the seriousness of the Government. Despite progress made in the UK against Lord Davies’ set target, the threat of the EU-wide gender quota continued to underscore the UK voluntary approach. In 2015, Vince Cable while acknowledging progress made said;

“our target of 25% women on board by 2015 is in sight. However, the threat of EU mandatory targets remains a reality if we do not meet it. If we are to avoid action from Brussels, we must continue

¹⁴⁰ Female appointments had dropped from 44% to 26% and 36% to 29% on FTSE 100 and FTSE 250 boards respectively. See Sealy, R. and Vinnicombe, S. *The Female FTSE Board Report 2013: False Dawn of Progress for Women on Boards?* (Cranfield, England: Cranfield University School of Management, 2013) p. 6.

¹⁴¹ Alex Spence, ‘Vince Cable Raises Threat of Quotas for Women on FTSE 100 Boards’ *The Sunday Times*, 10 April, 2013.

¹⁴² House of Lords, European Union Committee 5th Report of Session 2012-2013, *Women on Boards Report* (London: The Stationery Office Limited, 2012). See also, James Fontanella-Khan, ‘UK Musters Support to Block EU Quota’ *Financial Times*, 16 September, 2012.

¹⁴³ Daily News, Europe-Gender Quota to Break Glass Ceiling, 15 November 2012.

to demonstrate that our voluntary approach is the right one and is working".¹⁴⁴

It is likely that this will continue to inspire more action from businesses towards increase gender diversity on boards.

In Finland, Government's threat to impose a legislative gender quota could also have influenced progress under the Corporate Governance Code regime. Where the effectiveness of the Code in increasing the number of women on boards is in doubt, the State reserves the right to impose a gender quota law. The *Government Action Plan for Gender Equality 2012-2015* includes that legislative measures will be undertaken to ensure a more equal gender representation on boards of listed companies if sufficient improvement is not noted.¹⁴⁵ An evaluation of progress so far achieved was conducted in June 2014 of which the report was yet to be publicly available at the time of writing. Interestingly, despite being considered a front runner in terms of representation of women on boards, in its capacity as a Member State, Finland supports the EU Directive to increase gender balance on boards.¹⁴⁶ Listed companies in Finland are regulated under a self-regulatory approach through the *Finnish Code* and so the imposition of a legislative gender quota could have serious implications for companies. The imposition of a gender quota on SOEs in Finland could suggest to listed companies that the threat could become a reality.

In Australia, Recommendation 7 of the *Blueprint Report* (mentioned above) included an urge for the Government to impose a legislative quota of a minimum 40% gender representation backed by sanctions, on public listed companies, in the event that a soft voluntary approach does not achieve the minimum representation. While this is not a direct threat from the Government, the *Blueprint Report* was influential to a number of positive steps that began to occur

¹⁴⁴ Simon Goodley, 'Cable Hints at Mandatory EU Quotas for Women Executives' *The Guardian*, 4 February, 2015.

¹⁴⁵ Ministry of Social Affairs and Health, *Government Action Plan for Gender Equality 2012-2015* (Publications of the Ministry of Social Affairs and Health, Helsinki, Finland 2012) p. 23. (Government Action Plan).

¹⁴⁶ Council of the European Union, *Report by the Permanent Representative Committee* (16300/14), Brussels, 4 December, 2014(OR.en) p.4.

in Australia so it is safe to suggest that the urge to Government may have been perceived by public listed companies as a potential outcome. The introduction of gender diversity related policies in ASX Corporate Governance Recommendations and Principles in 2010 is evidence of reaction to this likely introduction of legislative quotas.

The positive influence which a threat to impose legislative gender quotas has on Corporate Governance Code regimes is also evident in Sweden where in 2014, threats by the Swedish Minister of Finance, Anders Borg to impose quotas on listed companies¹⁴⁷ inspired the modification of the Swedish Corporate Governance Code to include more gender diversity specific requirements which came into force in January 2015.¹⁴⁸

G. Impact of Director Tenure and Board Size on Gender Balance under Soft Law Regimes

i. Director Tenure

The practice of lengthy tenures for board directors creates a challenge in the practical implementation of Code Recommendations/Provisions addressing

¹⁴⁷Carl-Gustav, L. 'The Threat of Quotas' (2014) *Nordic Labour Journal*, Available at: <http://www.nordiclabourjournal.org/i-fokus/gender-equality-2014/article.2014-03-04.0069351438>. Accessed 15/04/16.

¹⁴⁸See Swedish Corporate Governance Board, 'Questions and Answers Regarding the Swedish Corporate Governance Board's Efforts to Improve Gender Balance on the Boards of Listed Companies' (2014). Available at: <http://www.corporategovernanceboard.se/media/64821/gender%20qa.pdf>. Accessed 15/04/16. The inclusions formed part of other modifications to the Rules of the Code which become applicable from November 2015. The new Rules regarding gender however took precedence. See Swedish Corporate Governance Board, 'The Revised Code 2015', Available at: <http://www.corporategovernanceboard.se/the-code/the-revised-code-2015>. Accessed 15/04/16. A copy of the new Code is available at: <http://www.corporategovernanceboard.se/media/68323/code%20revision%20draft%202015-06-23%20clean.pdf>. See Rules 7.7 and 7.8. Accessed 15/04/16.

gender imbalance on boards as vacant positions that arise are few.¹⁴⁹ In the three countries studied for example, board tenure was commonly in the range of nine to 14 years and the reluctance of companies to initiate the resignation of long serving directors was noted.¹⁵⁰ It is increasingly becoming indicative that the issue of directors' long term limits need to be addressed if attempts to increase female representation on boards are to be effective. In Norway, in order to comply with the quota law, average board tenure of directors reduced from two and a half years in 2003 to two years in 2007.¹⁵¹ The Ontario Securities Law through which more gender balance on boards is being promoted recognises the correlation of director tenure to increasing gender balance on boards, and thus requires companies to disclose director term limits and other mechanisms of renewal of their board in an attempt to make companies more conscious and accountable for unusually long term service.¹⁵² In Ireland, director tenure is identified as one of the major barriers to women's ascension to board positions on State boards and private sector company boards.¹⁵³ While the Code of Practice for the Governance of State Bodies 2009 which governs SOEs in Ireland makes no provision for director tenure on State boards, director tenure is provided by statutes for those SOEs established under statutes. The period for which a director can serve on majority of statutorily created SOE boards such as Bord na

¹⁴⁹ Gladman K and Lamb M, 'Director Tenure and Gender Diversity in the United States: A scenario Analysis' (2013) *GMI Ratings*. Available at: https://www.boarddiversity.ca/sites/default/files/GMIRatings_WOB_TenureGender_062_013.pdf. Accessed 15/04/16.

¹⁵⁰ As observed by the author from Corporate Governance Statements and Annual Reports of companies surveyed (FTSE 100, ASX 200 and companies that were surveyed in Finland in Appendix 1.

¹⁵¹ See Ahern K and Dittmar A, 'The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation' (2012) 127(1) *Quarterly Journal of Economics* 137.. This period represented the time when companies would have been under pressure to increase female representation before the law became applicable.

¹⁵² Ontario Securities Commission, Amendment Instrument for National Instrument 58-101 *Disclosure of Corporate Governance Practices 1*, Item 10. Available at: https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20141211_58-101_amd-governance-practices.htm. Accessed 10/04/16.

¹⁵³ See Finnegan R and Wiles J, *Women and Public Policy in Ireland: A Documentary History 1922-1997* (Dublin: Irish Academy Press, 2005) p. 395. See also, Institute of Directors, *Women on Boards in Ireland 2015 Survey 2015*. (IOD Survey 2015) p.10. Available at: <https://www.iodireland.ie/sites/default/files/documents/Women%20on%20Boards%20In%20Ireland%202015%20FINAL.pdf>. Accessed 20/04/16.

See further discussion below in chapter (Part IV).

Mona, Dublin Airport Authority, Electricity Supply Board, is five years after which the director is eligible for reappointment.¹⁵⁴ The laws are however silent on the number of times the director may be reappointed. For instance, Air Navigation and Transport (Amendment) Act 1998 as amended by the 2004 Act provides with regard to Dublin Airport Authority (DAA) that “each director shall be appointed.....for a period not exceeding five years and shall be eligible for reappointment”.¹⁵⁵ The Act, as all other Acts are, is silent on how many times a director may be eligible for reappointment. The variety in the Irish SOE sector is also evident in the issue of director tenure on their boards as different regulatory instruments tend to require different tenures. An illustration can be found with SOEs such as Shannon Group plc where the governing statute provides for a specific term of appointment. The Act provides that “a director of Shannon Group Company (other than the Chief Executive) shall not serve for more than a period of 10 years in total”.¹⁵⁶ Shannon Group Company is created by Statute and incorporated under *Companies Act 2014*. So while other SOEs also incorporated under the *Companies Act 2014* such as Dublin Port Company, *do not have* the terms of appointment of directors defined given that the *Companies Act 2014* is silent, that of Shannon group is defined. A 10 year board rotational period does not augur favorably for getting more women on boards of SOEs at the required and necessary pace. Apparently there is need for a single and specific regulation addressing this uniformly for all SOEs. The 2014 Guidelines for Appointment to State Boards attempts to address this but does so in an advisory capacity by advising that a director may not serve more than two full terms.¹⁵⁷ The Guideline is also silent on the number of years that make up a term. Given the advisory nature of this Guideline however, it is unclear how effective it would be in guiding practice in this regard.

¹⁵⁴ See for example, *Turf Development Act 1976*, s. 9(2) (a) & (b) .

¹⁵⁵ Other examples include *Electricity (Supply) Act 1927*, s.2 (ESB) ; *Gas Act 1976* , s.7(5) First Schedule (Ervia); and *Turf Development Act 1976*, s.9(2) (a) & (b) (Bord na Mona)

¹⁵⁶ *State Airports (Shannon Group) Act 2014*, s.16(8).

¹⁵⁷ Department of Public Expenditure and Reform, *Guidelines on Appointments to State Boards* (2014) provision 13.1.

While it may be less difficult to surmount lengthy term limits under a gender quota law, the non-binding and ambiguous nature of Corporate Governance Codes enhances the challenge posed by tenure under Code regimes. The issue of director tenure is addressed in Codes albeit in an indirect and ambiguous manner which does not aid in fulfilling the objective of appointing more female directors. Director tenure is also commonly addressed in relation to its impact on director independence and board performance. In Australia for example, following the outcome of a public consultation, the ASX Corporate Governance Council did not recommend a specific maximum length of tenure for independent directors for the 2014 version of the Australian Code.¹⁵⁸ In reference to the independence of a director, the Code suggests that the independence of a director may be susceptible to compromise where he or she has “.....served in that position for more than 10 years”.¹⁵⁹ The Australian Code also recognises the need for a mix of long tenure and short tenure directors.¹⁶⁰ The UK Code tows a similar line with regard to director tenure. The Code provides that a board should disclose in its Annual report why it considers a director who has “served on the board for more than nine years...” still qualifies as independent.¹⁶¹ A 2012 study of compliance with the 2012 UK Code showed that directors in the UK served at an average of four and half years, suggesting there was a high rate of the recommended nine years of full service.¹⁶²

While various countries do adopt a term approach i.e. three-term, nine year term, as a standard in their Codes they recognise that boards may have reasons to extend the term beyond that limit. Consequently, specific Code

¹⁵⁸ See ASX Corporate Governance Council, *Review of the Corporate Governance Principles and Recommendation, Public Consultation* (2013) at 9. Available at: <http://www.asx.com.au/documents/asx-compliance/cgc-3rd-edition-consultation-paper.pdf>. Accessed 20/04/16.

¹⁵⁹ ASX Corporate Governance Council, *Corporate Governance Principles and Recommendations 3rd Edition (Australian Code)*, Commentary on p.17.

¹⁶⁰ *ibid.*

¹⁶¹ Financial Reporting Council, *The UK Corporate Governance Code (2014)* (note 47) Provision B 1.1.

¹⁶² Grant Thornton, *Corporate Governance Review 2012: The Chemistry of Governance: A Catalyst for Change* (2012) p. 19. Available at: http://www.grant-thornton.co.uk/Global/Publication_pdf/Corporate_Governance_Review_2012.pdf. Accessed 13/04/16.

Recommendations on term of directors fall short of specifying a limit on the number of terms. The Finnish Code adopts this approach:

“ The board of directors shall be elected annually at the annual general meeting”.¹⁶³

The Recommendation goes further to explain:

“...since the shareholders decide on the election and re-election of directors, it is not necessary to restrict the number of their successive terms of office”.¹⁶⁴

Also, in making recommendations with regard to the independence of a director, the Finnish Code suggests that a director may not be independent if “the director has been a non-executive director for more than 12 consecutive years”.¹⁶⁵ The French and Spanish Corporate Governance Codes also recommend a term of 12 years as criteria for independence.¹⁶⁶ The European Commission recommends, subject to national context, that independent directors serve a maximum of three terms or 12 years.¹⁶⁷ All these suggest a minimum term of 12 years for directors as determining independence is also left to the rest of the board who put up directors for re-election.

The main source of concern may however be that companies do find long serving directors more valuable in terms of company performance,¹⁶⁸ and as a result may

¹⁶³ Finnish Code 2010 (note 49 above) Recommendation 10.

¹⁶⁴ *ibid.* (This has however been removed in the 2015 edition of the Code)

¹⁶⁵ Finnish Code (note 49 above) Recommendation 15(j). In the 2015 edition of the Code, 12 years is reduced to 10 Years. See Recommendation 10.

¹⁶⁶ AFEP-MEDEF *Corporate Governance Code of Listed Corporations* (Amended in June 2013) recommendation 9.4.

¹⁶⁷ European Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC) OJ L 52, 25.2.2005 ‘profile of independent non-executive or supervisory directors’ (Annex II, 1(h)).

¹⁶⁸ See Baysinger B and Butler H, ‘Corporate Governance and the Board of Directors: Performance Effects of Changes in Board Composition’ (1985) 1(1) *Journal of Law, Economics and Organization* 108, 110, for finding that directors may perform additional tasks apart from their governance role. See also for example see BHP Billiton submission to the ASX Corporate Governance Council’s consultation paper *Review of the Corporate Governance Principles and Recommendations*. Available at:

not be willing to compromise on this in the interest of increasing gender balance. More particularly when there is no direct correlation between having more female directors on the board and improving the company bottom line.¹⁶⁹ The experience and expertise acquired from long service could also be crucial for SOEs especially those operating in areas where firm-specific or sector knowledge is required. For example ESB and EirGrid may require directors with technical knowledge or know how on their boards, an attribute which is likely to have been enhanced from longer experience with the board and thus not easily replaceable. Such sectors may not also have enough available women as replacements. Thus, even though with SOEs, given their relationship with the State, there might be greater compulsion to comply even under a soft regime, the need/pressure to achieve commercial objectives could undermine any recommendation or guideline in respect of board term limit. Research has however shown that although long serving board members do acquire firm-specific knowledge and skill that enhance their contribution without which the performance of the company could be compromised,¹⁷⁰ at a certain point, i.e. exceeding the threshold of nine years, the benefits of the acquired knowledge become outweighed by costs of 'entrenchment' to the company.¹⁷¹ Globally and as is characteristic of the approach to corporate governance indicators, there is a general hesitation to apply a mandatory limit to directors tenure so as not to interfere with the autonomy of businesses.¹⁷² For SOEs, the hesitation from the State may well be as a result of the conflicting objective of commercial objectives, as discussed above. Taking company variety into consideration suggests that imposing a mandatory limit on companies may not be the best approach as

http://www.asx.com.au/documents/public-consultations/bhp_submission.pdf . Accessed 24/04/16.

¹⁶⁹ Adams R and Ferreira D, 'Women in the Boardroom and their Impact on Governance and Performance' (2009) 94(2) *Journal of Financial Economics* 292; Rhode D and Packer A, 'Diversity on Corporate Boards: How Much Difference does Difference Make?' (2010) 39 *Delaware Journal of Corporate Law* 383.

¹⁷⁰Huang, S. 'Zombie Boards: Board Tenure and Firm Performance' (2013) *Research Collection School of Accountancy*, Available at: http://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=2328&context=soa_research. Accessed 15/04/16.

¹⁷¹ *ibid.*

¹⁷² Baysinger and Butler (note 168 above) p. 101.

certain boards could place greater reliance on expertise than others. On the other hand, the existing practice of leaving the decision to the board based on an assessment or evaluation of the board indicates that the issue may not receive the necessary attention particularly as boards could exhibit reluctance in effecting changes in board membership.¹⁷³ As a result, the slow pace in increasing gender balance on boards under Code regimes could thus persist. A term limit of nine or 12 years could suffice in determining the independence of a director from management but jeopardises the short-term objective of increasing gender balance on boards.

ii. Board Size

A likely solution to the lengthy term limits under Codes would be to increase board size so as to accommodate women, as was the case with Norwegian companies in an attempt to comply with the quota target.¹⁷⁴ The issue of board size is left to the board's discretion in order to determine at which size the board can be optimally effective. The UK Code for example provides:

“The board should be of sufficient size that the requirements of the business can be met and that changes to the board's composition and that of its committees can be managed without undue disruption, and should not be so large as to be unwieldy”¹⁷⁵

¹⁷³ See Ruef M, Aldrich H and Carter N, 'The Structure of Founding Teams: Homophily, Strong Ties, and Isolation among U.S. Entrepreneurs' (2003) 68 (2) *American Sociological Review* 195. See also Boone C, Olffen W, Witteloostuijn A and Brabander B, 'The Genesis of Top Management Team Diversity: Selective Turnover among Top Management Teams in Dutch Newspaper Publishing, 1970-1994' (2004) 47(5) *Academy of Management Journal* 634.

¹⁷⁴ Matsa D and Miller A, 'A Female Style in Corporate Leadership? Evidence from Quotas' (2013) 5(3) *American Economic Journal: Applied Economics* 144. Another study however found that the quota had no impact on board size. See Ahern and Dittmar (note 151 above) p. 140.

¹⁷⁵ UK Code 2014 (note 47 above), Provision B. 1.

The Australian Code has a very similar provision,¹⁷⁶ and the Finnish Code also provides:

“With regard to the duties and efficient operations of the board, it is important that the board has a sufficient number of members.....”¹⁷⁷

Group theories suggest that the dynamics of group decision-making in terms of quality of decision-making could be determined by the size of the group.¹⁷⁸ While it is justifiable in the interest of board effectiveness to leave the decision as a matter for boards themselves, other considerations which could undermine board effectiveness may influence the board’s decision in this regard. It can be argued that a decision not to increase board size even where board effectiveness will not be compromised could be as a result of unwillingness to include more women on boards. Moreover there is no pressure on boards to increase size so as to appoint more women under corporate governance code regimes. The size of a company’s board is also relative to the peculiarities of the company and therefore not all companies would benefit from an increased board size as this could have negative implications for its performance.¹⁷⁹ Consequently, we may not expect such boards to increase their size so as to accommodate more women. The Norwegian quota law imposed a binding constraint on companies’ board choice, forcing them to increase board size even where that would not have been the case.¹⁸⁰ While this may not necessarily be an ideal approach considering

¹⁷⁶ Australian Code (note 19 above) Principle 2 (Commentary).

¹⁷⁷ Finnish Code (note 49 above) Recommendation 9.

¹⁷⁸ Bantel K and Jackson S, ‘Top Management Innovations in Banking: Does the Composition of the Top Team Make a Difference?’ (1989) 10 *Strategic Management Journal* 107; Amason A and Sapienza H, ‘The Effects of Top Management Team Size and Interaction Norms on Cognitive and Affective Conflict’ (1997) 23(4) *Journal of Management* 511.

¹⁷⁹ See Jensen M, ‘The Modern Industrial Revolution, Exit and the Failure of Internal Control Systems’ (1993) 48 (3) *Journal of Finance* 831; Eversheds, *The Eversheds Board Report: Measuring Impact of Board Composition on Company Performance* (2011) p.11. Available at: <http://www.dubchamber.ie/docs/research-by-members/eversheds-board-report.pdf>. Accessed 25/04/16.

¹⁸⁰ See Matsa and Miller (note 174 above).

economic implications it could have on a company's performance,¹⁸¹ there were no observed negative outcomes of the law in relation to board size at the time and therefore it can be argued that the law rather inspired boards to critically analyse the composition of their boards at the time.¹⁸² As economic considerations do influence changes in board size, it can be suggested that where increased gender balance is considered an economic advantage boards may be increased for this purpose.¹⁸³ Resource-dependence, increased monitoring and more robust decision-making are some of the reasons why companies should increase board size to accommodate more women as these are also positive antecedents to performance.¹⁸⁴

In terms of economic consideration, larger and better performing companies tend to have larger boards and also more women on them validating the argument that the impact of large boards on company performance is experienced more with smaller companies.¹⁸⁵ What this means is that progress recorded so far in the level of gender balance on boards, which is more evident with large companies¹⁸⁶ may not extend to mid-size or small companies at the desired pace. The practice of increasing board size so as to add female directors is not uncommon and is increasingly being adopted in the US even without mandatory rules. In 2014, 51% of S&P 1500 companies that appointed women on their boards did so by increasing the size of boards.¹⁸⁷

¹⁸¹ Guest P, 'The Determinants of Board Size and Composition: Evidence from the UK' (2008) 14 (1) *Journal of Corporate Finance* 53.

¹⁸² Ahern and Dittmar (note 151 above) p. 141.

¹⁸³ Boone A, Field L, Karpoff J and Raheja C, 'The Determinants of Corporate Boards Size and Composition: An Empirical Analysis' (2007) 85 (1) *Journal of Financial Economics* 69.

¹⁸⁴ See Pfeffer J, 'Size and Composition of Corporate Boards of Directors: The Organisation and its Environment' (1972) 17 (2) *Administrative Science Quarterly* 218. See also discussion in Chapter 2.

¹⁸⁵ Dalton D, Daily C, Johnson J and Ellstrand A, 'Number of Directors and Financial Performance: A Meta-Analysis (1999) 42(6) *The Academy of Management Journal* 679.

¹⁸⁶ As revealed in the three countries studied. Attempts at increasing gender balance have so far however concentrated on large companies.

¹⁸⁷ EY, *Women on US Boards: What are we Seeing? (2015)* (EY Centre for Board Matters) Available at: http://www.ey.com/GL/en/SearchResults?query=women+on+US+Boards&search_option_s=country_name. Accessed 20/4/16.

The above discussion on the relationship between board tenure, board size and gender balance is illustrated in a 2015 study where it was found that women were appointed on boards following retirement of male directors rather than size of boards being increased.¹⁸⁸ This also explains the glacial growth in gender balance across the companies studied.¹⁸⁹

PART IV: Ireland's Code of Practice for the Governance of State Bodies in Perspective

H. As a Means to Improving Gender Balance on Ireland's SOE Boards

The experience of other countries under a soft law regime can be beneficial for Ireland. While the discussion in the previous parts of this chapter points to an adverse indication regarding the ability of Corporate Governance Codes to address gender imbalance on boards as stand-alone instruments, this section develops a critical analysis towards suggesting how the *Code of Practice for the Governance of State Bodies 2009* (Code of practice 2009) can be utilized more effectively for the same purpose, while taking the factors identified in the three countries studied into consideration. As an instrument of the State, the Code of Practice 2009 does have different and unique implications for State-owned enterprises in comparison to Corporate Governance Codes for listed companies. Significantly, although it is a soft law instrument, the Code of Practice lacks the flexibility that is characteristic of Corporate Governance Codes in respect of application of Code provisions.¹⁹⁰ The Code of Practice 2009 requires that SOEs

¹⁸⁸ European Women on Boards, *Gender Diversity on European Boards-Realizing Europe's Potential: Potentials and Challenges* (2016) p.23. Available at: <http://european.ewob-network.eu/ewob-publishes-landmark-report-on-the-progress-of-women-on-the-boards-of-major-european-companies/>. Accessed 13/05/16.

¹⁸⁹ Ibid. Female representation across listed companies in 17 countries grew gradually from 13.9% to 25% between five years (2010 and 2015).

¹⁹⁰ See discussion below.

comply with relevant provisions and confirm compliance with the Code provisions to the Minister.¹⁹¹ Further, a lack of severe sanctions for failure to comply with the provisions of the *Code of Practice* may not be of serious concern as it can be expected that being under the control of the State is influential enough to elicit compliance.¹⁹² The degree of influence both instruments exert on those it seeks to regulate differs to a large extent. The difference in influential capability of both instruments is important as it determines how effective the instrument is in attaining its objective. However, it is possible that the State may not always exert adequate influence to prevent non-compliant activities in their institutions/SOEs and as such there is that possibility of non-compliance albeit to a low degree. This could occur where the State is seen not to act adequately in its capacity as owner and authority of SOEs. For example, despite its relationship with the State in 2008, executives of Foras Áiseanna Saothair (FÁS-Training and Employment Authority) recklessly expended the organisation's funds for personal use.¹⁹³ Evidently, there was a lacuna in the authority the State was expected to exert on its own organisations. The Public Accounts Committee investigations into the activities of FÁS revealed that internal controls and governance procedures put in place had not been adhered to efficiently.¹⁹⁴ The extent to which a SOE relies on Exchequer funding can be indicative of how much the State's influence will impact on it.

¹⁹¹ Code of Practice 2009 (note 3 above), p.1.

¹⁹² Severe sanction referred to here would be similar to that applicable in Norway. Existing applicable sanctions for financial or non-financial non-performance of SOEs include a decrease in resources for the organisation and/or less autonomy. See MacCarthaigh, M. 'Corporate Governance of Commercial State-Owned Enterprises in Ireland' *CPMR Research Report 9* (Dublin: IPA, 2009) Fig 7.18, p. 48. See also discussion in Chapter 2.

¹⁹³ Ronald Quinlan, 'How the FAS Scandal unfolded' 27 September, 2009. Available at: <http://www.independent.ie/irish-news/how-the-fas-scandal-unfolded-26569297.html> . Accessed 30/03/16.

¹⁹⁴ Michael O'Reagan 'Public Accounts Committee Set to Publish Interim Report on FÁS' 2 February 2009. Available at: <http://www.irishtimes.com/news/public-accounts-committee-set-to-publish-interim-report-on-fas-1.690342>. Accessed 30/03/16. See also House of the Oireachtas 'Public Accounts Committee to continue its Investigation into FAS as new Report by the Comptroller and Auditor General Raises Further Questions' (2010). Available at: <http://www.oireachtas.ie/parliament/mediazone/pressreleases/2010/name-1494-en.html>. Accessed 30/03/16.

The influence of the State notwithstanding, the drawbacks commonly associated with soft law instruments are also likely to be observed with the *Code of Practice*, albeit to a lesser extent. For example, the *Code of Practice* is also inclined to flexibility given the variety of SOEs and other State agencies it regulates.

i. Flexibility in the Code of Practice for the Governance of State Bodies 2009

A flexible application of the Provisions of the *Code of Practice* could lead to unintended outcomes such as an uneven increase in women director representation across SOEs or no increase on boards of some SOEs as is the case in Finland, Australia and the UK. Female directors are currently represented unevenly on SOE boards (see Table 1, Chapter 1) and one of the intended benefits of regulatory intervention is achieving a more uniform progress across all boards. Flexibility in the application of the regulation could however compromise this objective. The *Code of Practice* provides that:

“...some State bodies may consider that certain requirements of the Code of Practice would have a disproportionate effect on them because of the nature and scale of their activities, the resources available to them, and their governing statuses.....In such cases, the relevant body should reach agreement with the parent Department on the extent to which the requirement might be suitably adapted to their case. The body should then note the agreement reached in its annual report and explain whether the requirements are to be phased in over a long period of time or otherwise varied in some way. The Department of Finance should be advised about the proposed statement in advance of the publication of the report”.¹⁹⁵

¹⁹⁵ Code of Practice 2009 (note 3 above) Provision 1.1.

While the Code of Practice recognises the variety among State bodies/SOEs by encouraging that the Provisions can be applied variedly, the allowance is not open-ended as identified under the ‘comply or explain’ approach but rather still imposes certain conditions/actions to be taken by the State body/SOE such as notifying the Department of Finance, that are indicative of checks/controls.¹⁹⁶ In explaining a modification or deviation from a requirement, the State body/SOE is required to include the nature of modification and any other steps to be taken.

Although the extent of the flexibility in the Code of Practice is limited due to Ministerial control, it can be argued that this control may not be adequate to prevent these outcomes. For example, a lack of skilled and competent women could be used as a reason for not appointing female directors on boards of SOEs operating in highly technical sectors that are predominantly male. While not all outcomes as a result of flexibility are considered negative as it could be for a valid reason, increased monitoring of the process by which appointments are made on boards could be necessary to curtail outcomes that would detract from the objective of addressing gender imbalance.

ii. Appointments to Boards of Ireland’s SOEs

The Code of Practice 2009 makes no reference to ‘gender’ with regard to board appointments. The experience of the three countries studied show that not only is a specific mention of ‘gender’ necessary in the Code but also that there are more efficient ways in which it can be included so as to influence an actual increase in female appointments.

The dissimilarity in the appointment process of listed companies and that of SOEs could have implications in the application of similar provisions in the *Code of Practice*. A significant dissimilarity lies in the fact that the Minister makes the final

¹⁹⁶ Shareholding responsibilities of the State in SOEs are shared between the Department of Finance and NewEra.

decision regarding appointments to boards of SOEs in Ireland. The *Code of Practice* provides that:

“.....Where a Board Chair is of the view that specific skills are required on the Board, he/she should advise the relevant Minister of this view for his/her consideration sufficiently in advance of a time when board vacancies are due to arise in order that the Minister may take the Chair’s views into consideration when making appointments”.¹⁹⁷

This provision also suffices as an evaluation of the board. Evidently the role of the Chair is an advisory one which could also be instrumental to addressing gender imbalance on boards. Evaluating the board’s effectiveness in relation to competency gaps is the responsibility of the board/Chair on whose advice the Minister should rely.¹⁹⁸ The unfettered role of the Minister could however undermine any gender diversity objectives to be achieved. The inclusion of the term ‘gender’ as a consideration for the Chair in advising the Minister could be useful in streamlining the Chair’s advice and the Minister’s appointment towards prioritising female appointments. As a regulatory instrument, the Code of Practice is likely to be more effective in persuading the Minister’s decisions than the informal Government policy on 40% gender representation. A formal regulation demands a higher level of accountability than policies could.

iii. Director Tenure on SOE Boards

While the Code of Practice for the Governance of State Bodies 2009 which governs SOEs in Ireland makes no provision for director tenure on State boards, director tenure is provided by statutes for those SOEs established under statutes. The period for which a director can serve on majority of statutorily created SOE

¹⁹⁷ Code of Practice 2009 (note 3 above), Provision 2.17.

¹⁹⁸ *ibid.* See also, *Guidelines on Appointments* (note 157 above) Guideline 10.5.

boards such as Bord na Mona, Dublin Airport Authority, Electricity Supply Board, is five years after which the director is eligible for reappointment.¹⁹⁹ The laws are however silent on the number of times the director may be reappointed. For instance, Air Navigation and Transport (Amendment) Act 1998 as amended by the 2004 Act provides with regard to Dublin Airport Authority (DAA) that “each director shall be appointed.....for a period not exceeding five years and shall be eligible for reappointment”.²⁰⁰ The Act, as all other Acts are, is silent on how many times a director may be eligible for reappointment. The variety in the Irish SOE sector is also evident in the issue of director tenure on their boards as different regulatory instruments tend to require different tenures. An illustration can be found with SOEs such as Shannon Group plc where the governing statute provides for a specific term of appointment. The Act provides that “a director of Shannon Group Company (other than the Chief Executive) shall not serve for more than a period of 10 years in total”.²⁰¹ Shannon Group Company is created by Statute and incorporated under *Companies Act 2014*. So while other SOEs also incorporated under the *Companies Act 2014* such as Dublin Port Company, do not have the terms of appointment of directors defined given that the Companies Act 2014 and the Statutes creating them are silent in this regard, that of Shannon group is defined. As discussed above, a 10 year board rotational period does not augur favourably for getting more women on boards of SOEs at the required and necessary pace.²⁰² Apparently there is need for a single and specific regulation addressing this uniformly for all SOEs. The 2014 Guidelines for Appointment to State Boards attempts to address this but does so in an advisory capacity by advising that a director may not serve more than two full terms.²⁰³ The Guideline is also silent on the number of years that make up a term. Given the advisory nature of this Guideline however, it is unclear how effective it would be in guiding practice in this regard.

¹⁹⁹ See for example, *Turf Development Act 1976*, s. 9(2) (a) & (b) .

²⁰⁰ Other examples include *Electricity (Supply) Act 1927*, s.2 (ESB) ; *Gas Act 1976* , s.7(5) First Schedule (Ervia); and *Turf Development Act 1976*, s.9(2) (a) & (b) (Bord na Mona)

²⁰¹ *State Airports (Shannon Group) Act 2014*, s.16(8).

²⁰² See p. 277 above.

²⁰³ *Guidelines on Appointments* (note 157 above) Guideline 13.1.

IV. Gender Diversity Related Disclosure and Reporting and the Code of Practice 2009

A gender diversity disclosure and reporting practice in SOEs will be indicative of accountability and transparency to shareholders/stakeholders. In addition, the experience of Australia and the UK point to the fact that such a practice can be instrumental to a forward looking and long term approach in terms of addressing gender diversity levels across all levels of the SOE which will be useful in creating a pipeline of female talent. The stakes for accountability and transparency in SOEs is high in light of their responsibility to the State, taxpayer and the society as a whole. The OECD recommends that:

“State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies”.²⁰⁴

The OECD further recommends that:

“SOEs should report material financial and non-financial information on the enterprise in line with high quality internationally recognised standards of corporate disclosure, and including areas of significant concern for the State as an owner and the general public.....With due regard to enterprise capacity and size, examples of such information include:

- i. The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;

²⁰⁴ OECD, *OECD Guidelines on Corporate Governance of State-owned Enterprises (2015 Edition)* (OECD Publishing, 2015) VI, p.24.

- ii. Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board”.²⁰⁵

The OECD also recommends that in ensuring adequate disclosure and transparency at SOE level, the State should:

“develop adequate policies in terms of SOE disclosure and transparency; and follow up the implementation of this policy in individual SOEs and encourage good practice”²⁰⁶

The Code of Practice 2009 makes no provision for disclosure and reporting of non-financial information, including corporate governance practices of the board,²⁰⁷ this is in spite of OECD’s recommendations in earlier publications:

“The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company”.²⁰⁸

“SOEs should disclose material information on all matters described in the OECD Principles of Corporate Governance and in addition focus on areas of significant concern for the state as an owner and the general public”.²⁰⁹

²⁰⁵ *ibid*, (VI(A)) (VI(A3), (A5)).

²⁰⁶ OECD, *Accountability and Transparency: A Guide for State Ownership* (Paris: OECD Publishing, 2010) p. 95.

²⁰⁷ The Companies Act under which some SOEs are governed requires that the Directors’ Report should state “...the names of the person at any time during the financial year, were directors of the company”. *Companies Act 2014, (Number 38 of 2014)* s. 326 (1a).

²⁰⁸ *OECD Principles of Corporate Governance* (Paris: OECD Publishing, 2004) p. 49.

²⁰⁹ *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (note 204above) p.16.

Gender balance on SOE boards is considered an area of significant concern given that a lack of gender diversity on these boards was identified as one of the conditions that led to the 2008/2009 economic crisis.²¹⁰ While the Code of Practice 2009 adopts the OECD Recommendation, it does so limitedly as the Code's Reporting requirements constitute of only financial-related matters.²¹¹

Disclosure and reporting of gender diversity related information may not only be indicative of a transparency and accountability culture but could serve to put indirect pressure on SOEs to improve gender balance on their boards. The European Union recognises the usefulness in the publication of diversity related information including gender:

“...it is therefore important to enhance transparency regarding the diversity policy applied. This would inform the market of corporate governance practices and thus put indirect pressure on undertakings to have more diversified boards”.²¹²

It was on the backdrop of this recognition that in 2014, the European Parliament and Council voted to adopt the Directive which requires certain companies to disclose non-financial information, including:

“...a description of the diversity policy applied in relation to the undertaking's administrative, management and supervisory bodies with regard to aspects such as for instance age, gender, or educational and professional backgrounds, the objectives of that diversity policy, how it has been implemented and the results in the reporting period....”²¹³

²¹⁰ Clancy P, O'Connor N and Dillon k, *Mapping the Golden Circle* (Dublin: TASC/New Island, 2010)p.24, 3.16 ; Murphy M, *Gender, Governance and the Irish Crisis* (Dublin: TASC, 2012).

²¹¹ *Code of Practice 2009*, (note 3 above)Provision 12 & 13.

²¹² *DIRECTIVE 2014/95/EU* of the European Union Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups OJ L330, 15.11.2014, para. 18.

²¹³ *ibid.* Art.20 (g)(amended).

The rules, which require companies to begin reporting for financial years commencing from 2017 will apply only to “large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year....”.²¹⁴ Public interest entities include listed companies, credit institutions, insurance undertakings and other undertakings designated by Member States to be public interest entities such as undertakings that are of significant public relevance because of the nature of their business, their size or the nature of their business.²¹⁵ While none of Ireland’s SOEs are currently listed on the Stock Exchange, a number of them such as ESB, Bord Gais and CIÉ can qualify as public interest entities for being of significant public relevance.

While a higher rate of compliance was noted with listed companies in Australia and the UK in respect of diversity related reporting requirements in legislative instruments in comparison to Corporate Governance Codes, it can be argued that a high rate of compliance could be expected with SOEs in respect of gender diversity disclosure and reporting if included in the *Code of Practice 2009* even though it is a soft regulatory instrument. As argued earlier, the *Code of Practice 2009* imposes a higher obligation on SOEs. Issuing authorities of Corporate Governance Codes can be influential in how the Code is complied with. The *Code of Practice 2009* is a State instrument and therefore would wield greater influence on SOEs than was the case in Australia and the UK.

²¹⁴ Ibid, Art. 19(a)(amended).

²¹⁵ *DIRECTIVE 2013/34/EU* of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, Art. 2(1). Large undertakings include undertakings with a balance sheet in excess of €20 Million and a net turnover of €40 Million or more. See Art. 3(4).

(a.)Disclosure of Numerical Targets and Measurable Objectives

The setting of numerical targets and measurable objectives appear to be instrumental to realising the benefit in a disclosure and reporting culture under corporate governance code regimes. Notwithstanding Australia's progress, in 2015 Australian Institute of Company Directors (AICD) suggested the adoption of a 30% target by companies to be achieved by 2018²¹⁶ indicating a disposition that numerical targets are likely to drive quicker progress. Lord Davies' 25% target to be achieved by 2015 was evidently a driving force in positive action taken by companies. To attach a numerical target to a goal suggests commitment and encourages accountability. In the words of a CEO:

“Putting targets out and having them published is quite effective. If you put out targets and you're publishing targets then you have to do something about meeting them or have a good explanation why you can't. If you drop that requirement it's much easier (for a company) to not make the change”.²¹⁷

Research conducted by McKinsey also points to the potential benefits of relying on gender metrics and targets in order to drive gender diversity levels up. The 2012 McKinsey study showed that companies who had knowledge and understanding of the gender metric status of the company were in a better position to tackle the gender diversity.²¹⁸ Knowledge of the gender distribution will also serve in identifying obstacles that could be removed in achieving targets. In other words, both activities i.e. setting and publication of numerical targets and gender metrics should be applied together as was incorporated in Australia's

²¹⁶Australian Institute of Company Directors, *30% By 2018*. Available at: <http://www.companydirectors.com.au/director-resource-centre/governance-and-director-issues/board-diversity/30-per-cent-by-2018>. Accessed 22/04/16.

²¹⁷ Mike Smith, CEO of Australia and New Zealand Banking Group Limited (ANZ). See Nassim Khadem, 'ANZ Boss Mike Smith Says Watering Down Gender Diversity Reporting Could Reduce Diversity' *The Sydney Morning Herald*, 3 March, 2015.

²¹⁸ McKinsey & Co., *Women Matter 2012: Making the Breakthrough* (2012) p.15-16. Available at: http://www.mckinsey.com/client_service/organization/latest_thinking/women_matter. Accessed 12/04/16.

Code. While this practice is more relatable where the goal is to increase gender diversity in all levels of the organisation as is the case in countries like Australia and the UK where it is being practiced, it can be argued in respect of Ireland's SOEs that the inclusion of a similar requirement in the *Code of Practice* would be informative and influential to the board Chair in his advisory role as to the requirements of the board and also influence the relevant Minister in appointing more women onto boards where gender diversity levels are low. It would also be useful for the creation and maintenance of a pipeline of female talent that assures of a sustainable change. The Guidelines for Appointment to State boards require that:

“State Departments should maintain a particular focus on those boards on which women or men are currently significantly under-represented and should actively seek to appoint candidates of the under-represented gender....”²¹⁹

The Government target of 40% gender representation on State boards²²⁰ could suffice as a target for all SOEs while the setting of individual voluntary targets could comprise their set measurable objectives towards achieving the 40% target.

(b.) Timeline for Numerical Targets and Measurable Objectives

A set time by which a numerical target and measurable objectives should be achieved is more likely to enhance its usefulness. As the experience of the UK and Australia has shown, termed targets can influence a faster rate of progress in getting more women on boards. The application of Code Recommendation/Code Provision in respect of setting measurable objectives without a set time to

²¹⁹ *Guidelines on Appointments to State Boards* (note 157 above) Guideline 16 (c).

²²⁰ Department of Justice and Equality, *Gender Equality in Ireland, Women on State Boards* (2014). Available at: http://www.genderequality.ie/en/GE/Pages/State_Boards. Accessed 10/12/15.

achieve these objectives reflects ambiguity and non-commitment to the objectives by companies. An introduction of a set time to achieve the Government 40% target could make a difference in the rate of progress that has occurred since the target was introduced in 1993. A time setting would ensure that Ministers and Chairpersons can also be held accountable where the target is not achieved.

V. Monitoring of Compliance and the Code of Practice for the Governance of State Bodies 2009

The level of monitoring required may be to a lesser degree than that required for listed companies.²²¹ To whatever extent it is required, monitoring needs to be adequate to so as to realize the effectiveness of the Code of Practice with regard to its objectives.

Monitoring compliance by SOEs may not be a straightforward process. The ability of the State to monitor SOEs may be limited and/or compromised by a conflict of interest with regard to business/profit interests the State has in SOEs. The commercial success of SOEs is also a priority of the State and this could overshadow their interest in other relative areas. The State could also exhibit a lackadaisical attitude towards monitoring generally as is evident from the FAS scandal mentioned above. SOEs could take advantage of this limitation of the State/Minister to monitor effectively and not apply best practice as they should. Apart from the State, monitoring of SOEs could also occur through shareholder/stakeholders i.e. the public, given their responsibility to society in the provision of services. The free-rider problem could also be an issue in respect of SOE monitoring as no individual citizen may have the incentive or resources to monitor SOEs.²²² Stakeholder activism (collective) is however an avenue through

²²¹ See also Forfas, *The Role of State-Owned Enterprises: Providing Infrastructure and Supporting Economic Recovery* (Dublin: Forfas, 2010) p.27.

²²² Albanese R and Van Fleet D, 'Rational Behaviour in Groups: The Free Riding Tendency' (1985) 10(2) *Academy of Management Review* 247.

which SOEs could be monitored. Negative public opinion towards a State-owned enterprise could be detrimental to its reputation and company performance.²²³ Dissatisfaction with service or provision of goods could trigger opposition from the service recipients. Such activism could act as check in the practice or activities of SOEs. Given however the multiple shareholders/stakeholders and interests which SOEs are required to satisfy, this form of monitoring can also be undermined as a result of a clash of interest/objective. The provision of goods or services for the public at an affordable rate or on a no charge basis, which is in line with the universal service objective of SOEs could be trumped by the State's interest in realizing commercial gains. The response to the introduction of water charges in 2013/2014 in Ireland illustrates how such clash of objectives could occur. Prior to the introduction, cost of water provision and services had been borne by the State. Following new legislation, the administration of water services including collection of water charges was now to be handled by Irish Water, a SOE.²²⁴ Opposition to the legislation/water charge was displayed through marches and protests by members of the public.²²⁵ While protesters called for a total abolition of the charges, the attention the protests and marches attracted at national political level resulted in a downward revision being made by the State to initial stated charges rather than a total abolition.²²⁶ The State's position stems from Ireland's financial commitment under the EU-IMF Programme of Assistance²²⁷ that required a restructuring of the State's income

²²³ See Wu Y (note 66 above).

²²⁴ *Water Services Act 2013*, s. 20; *Water Services (No. 2) Act 2013*, s.21.

²²⁵ Mark Hilliard, 'Thousands Turn Out for Dublin Water Charge Protest' *The Irish Times*, 18 April, 2015. See also Ciaran D'Arcy, 'Thousands March in Anti-Water Charges Protest in Dublin' *The Irish Times*, 20 June 2015.

²²⁶ See *Water Services Act 2014, Number 44 of 2014*, s. 4 & 7. Protests against the charges are on going as at the time of writing so a different outcome could still be realized eventually.

²²⁷ Department of Taoiseach, 'Government Statement- Announcement of Joint EU-IMF Program for Ireland' Available at: http://www.taoiseach.gov.ie/eng/News/Archives/2010/Government_Press_Releases_2010/Government_Statement_Announcement_of_joint_EU_IMF_Programme_for_Ireland.html. Accessed 20/08/15.

and expenditure.²²⁸ Evidently, the State will be faced with the challenge of balancing its social and economic objectives.

The media is another indirect avenue through which compliance with the Code of Practice can be monitored. The Irish media has particularly been responsible for publicising a number of violations in the activities of the State sector including with regard to SOEs and director appointments. In 2015 Irish Independent published an article highlighting the failure of the Agriculture Minister Simon Coveney to achieve the target for female directors on boards of the State boards under his aegis.²²⁹ The Minister was not seen to be actively making appointments aimed at achieving the target. It can be expected that recognition of the media's active role in publishing such non-compliant activities will act as a check or deterrence to non-compliance.

Parliamentary supervision could also be significant in monitoring compliance with the Code of Practice. Chairpersons of State boards and Ministers are answerable to the Oireachtas in respect of their adherence to legislations and guidelines.²³⁰

Conclusion

In this chapter, the practical outcome in using Corporate Governance Codes to increase gender diversity levels on boards have been discussed using the experience of Finland, the United Kingdom and Australia as case studies. The discussion has been extended through a comparative analysis to identify how a similar instrument i.e. the *Code of Practice for the Governance of State Bodies*

²²⁸ Government of Ireland, *National Recovery Plan 2011-2014* (Dublin: Stationery Office, 2010) p. 61.

²²⁹ Shane Phelan, 'Pressure on Coveney over Lack of Women On State Boards', *Irish Independent* 31st January 2017.

²³⁰ House of the Oireachtas, Dail Eireann Debate Vol. 795 No.2 (6 March 2013). See also Dail Debates of 25 September 2008.

2009 in Ireland can be implemented towards the same purpose on boards of Ireland's State-owned enterprises. The following conclusions can be drawn from the discussion.

The three countries studied in this chapter have made significant progress in increasing gender diversity levels on boards of listed companies while operating under a Corporate Governance Code regime. A definite correlation between Corporate Governance Code Recommendations/Principles and Code Provisions and the increase is however difficult to identify. It is observable that the level of commitment under a soft law regulatory regime significantly differs from that under a hard law mandatory regime. As instruments of soft law regulation, the non-binding nature of Codes which is characterised by 'comply or explain' principle and the lack of strong sanctions backing up Code Recommendations in all three countries, creates an environment where compliance is varied and therefore not reliable as a confirmed source for the increase. The ambiguous and unspecific manner in which Code Recommendations/ Provisions are couched have also detracted from the usefulness of the Code in all three countries as they have become susceptible to misinterpretation by companies and ultimately negatively impact on implementation. Disclosure and reporting requirements stand out as significant contributors in the efficiency of Corporate Governance Codes in Australia and the UK but their impact is greatly undermined by the non-binding nature of Codes and the 'comply or explain' principle. Disclosure and reporting requirements however are observed to increase the accountability of boards towards gender diversity in all three countries.

The chapter has also identified a slower and uneven rate of progress in all three countries when compared with the rate of progress in countries where gender quota laws have been implemented such as in Norway and France. The slow rate of progress can be attributed to the absence of a termed target/focus for gender diversity levels. The absence of a termed target is common under soft law regulatory regimes where the aim is usually to encourage best practice rather than to mandate it as under gender quota law regimes. The experience of the UK under the Lord Davies Review term target of 25% further reveals the shortcoming

of Codes of Corporate Governance without termed targets. Although voluntary and thus does not guarantee that the target will be achieved at the set time, they served to increase the pace of progress in the UK. Uneven growth of gender diversity levels across companies has meant that while some boards have been adequately progressive in terms of achieving a 'critical mass' representation, others are yet to attain a similar standard, hence a significant occurrence of token representation of female directors on boards is observed in all three countries. Evidently, it is the success of some boards that account for the progress being attributed to these countries. The slow and uneven pace of increase also point to the fact that Corporate Governance Codes or soft law instruments are not an ideal instrument to achieve increase in the short term.

It is notable that mandatory legislative instruments were introduced in Australia and the UK which served to complement Code Recommendations/Provisions and in fact attracted higher levels of compliance in comparison to Code Provisions. This suggests that more adequate and efficient monitoring is needed to enhance compliance with Codes. Increased compliance however may not guarantee that a culture change will occur under a soft law regime as is commonly argued. So far, there is no indication of a change in boardroom culture towards gender diversity occurring in all three countries studied. Using the parameters of Chair positions and CEO positions, it can be concluded that Corporate Governance Codes are yet to influence practices that suggest a change of culture in the boardroom and that this inability stems from the non-binding nature which could be a blunt means to effect behavioural change of the board. In effect, Corporate Governance Codes or soft law instruments cannot also be relied on to achieve and sustain gender diversity increase in the long term. Increased and consistent compliance with gender diversity disclosure and reporting requirements may however serve to make gender diversity an integral part of corporate strategies.

Given the existence of other independent measures such as the Lord Davies Review and the threat of quotas in Finland and the UK, and the legislative instruments e.g. *Workplace Gender Equality Act 2012* in Australia, that can be said to have attracted significant attention and response it is safe to also conclude that

the effectiveness of Corporate Governance Codes or a soft law instrument as a stand-alone tool in increasing gender diversity levels is doubtful.

Accordingly, it is in line to conclude that a soft law instrument i.e. *Code of Practice* cannot reliably address gender imbalance on Ireland's SOE boards. However, the difference in ownership/control arrangement in both types of companies is significant enough to suggest that a different outcome could be expected in Ireland. Also, based on the experience of the three countries studied, some useful practices can be included in Ireland's *Code of Practice* in order to enhance its effectiveness in getting more female directors on boards.

The Guidelines on Appointments to State Board which was introduced in 2014 seeks to address the issue of gender imbalance on State boards including SOEs but the extent to which the Guidelines will be effective in this regard is doubtful as it could lack the force associated with regulatory instruments. The Guidelines only lay further emphasis on the Government Decision to increase gender representation on State boards to 40% without including specific measures that could make the difference from the slow pace of progress that has occurred since the introduction of the target in 1993.

The analysis in this chapter suggests that including reporting and disclosure requirements in the *Code of Practice* to complement a requirement to appoint more women on SOE boards could increase the pace of progress in Ireland. Requiring boards to report against the 40% target Government policy; actions taken towards meeting the target (this they could account for through discussions with the Minister); and gender metric situation in their organisations could enhance their accountability towards meeting the target. However, the experience of UK and Australia highlight how a mandatory element made the reporting requirements more effective. It could therefore be beneficial for Ireland to follow a similar trend so as to increase compliance levels. The inclusion of a set time to achieve the target will also be relevant for all relevant actors in the appointment process.

Notwithstanding that a higher level of compliance should be expected with SOE boards/Minister and thus the *Code of Practice* could have more positive impact in increasing gender diversity on SOE boards, as a soft law instrument, the *Code of Practice* cannot effectively guarantee a positive outcome. A reliance on the *Code of Practice* could mean that the current attitude that favours ‘cronyism’ on Ireland’s boards may continue;²³¹ it could also mean that a termed target if included may not be achieved at the set time; and if achieved may not be sustainable over time as soft law instruments do not also guarantee a change in board culture.

Where Ireland chooses to persist with the soft regulatory environment to which SOEs are accustomed and thereby relies on the *Code of Practice*, it may be further useful to adopt the European Commission’s recommendation that a clear distinction should be made of Recommendations/Provisions within Corporate Governance Codes so as to identify those recommendations that may not be deviated from, those that can be applied on a ‘comply or explain’ basis and those which can apply on a voluntary basis.²³² Critically important requirements such as gender diversity disclosure should be included under those not to be deviated from and by that some guaranteed level of commitment to increasing gender diversity on SOE boards can be expected. This would in effect however be importing a mandatory element into a soft law instrument.

The extent to which the *Code of Practice* may operate effectively as a stand-alone instrument is however doubtful as the experience of the three countries have indicated. Collaborative and complementary support from other initiatives or measures could make significant difference in this regard. Some existing measures/initiatives in Ireland and other suggestions which could complement the *Code of Practice* are discussed in the next chapter.

²³¹ See discussion in Chapter Six, p.312.

²³² European Commission, *Commission Recommendation on the quality of corporate governance reporting* (‘comply or explain’) C (2014)2165/2, s.1(2).

Chapter 6: Harnessing Regulation towards Improving Gender Balance on Ireland's SOE Boards: Irish Context

A. Introduction

Against the background of the discussion in the previous chapters and the experience of the countries studied it can be concluded that regulatory intervention will be more beneficial than otherwise for Ireland in improving the gender imbalance on boards of SOEs. Legislative gender quota and Provisions in a corporate governance code of conduct have the potential, albeit with specific design to suit the Irish terrain,¹ if properly harnessed to ultimately achieve this objective. In other words, the stage i.e. Ireland, needs to be readied so as to become an environment in which either regulatory approach can thrive and be effective. A conducive environment can be viewed from two perspectives: firstly, an environment that will further or encourage a political inclination towards regulation to address the issue and secondly, an environment where if adopted, regulation will be effective.

To this end the discussion in this chapter will highlight and critically address certain institutional and cultural peculiarities that could impact the adoption of regulation and the realisation of the objective. As discussed in Chapter Three, these differences account for the variety in progress achieved across countries despite regulation, with regard to promoting gender balance on boards.² These

¹ See Recommendations based on this research in Chapter Seven.

² Inglehart R and Norris P, *Rising Tide: Gender Equality and Cultural Change around the World* (Cambridge: Cambridge University Press, 2003) p.85; Aguilera R, 'Corporate Governance and Director Accountability: An Institutional Comparative Perspective' (2005) 16 (IS 1) *British Journal of Management* S43; Klettner A, Clarke T and Boersma M, 'Strategic and Regulatory Approaches to Increasing Women in Leadership: Multilevel Targets and Mandatory Quotas as Levers for Cultural Change' (2014) *Journal of Business Ethics* DOI 10.1007/s/10551-014-2069-z. Terjesen, S. Aguilera, R. and Lorenz, R. 'Legislating a Woman's Seat on the Board: Institutional Factors Driving Gender Quotas for Boards of Directors' (2014) *Journal of Business Ethics*. Available at: <file:///C:/Documents%20and%20Settings/pubadult/My%20Documents/Downloads/SSRN-id2327576.pdf>. Accessed 20/04/16

differences³ still exist despite the possible strong influence of international practice and the EU's attempts to further gender equality/parity objectives including with respect to increasing female participation in economic decision-making, across Member States in line with its (EU) aims to influence uniformity in this regard, in line with its common market objective.⁴ Therefore in order to provide the opportunity for a regulatory path to result in Ireland being one of the successful countries particularly as it relates to SOE boards, it is pertinent that detracting inherent factors in Ireland are addressed.

The perseverance of these differences suggest that national/domestic factors such as economic, political or other objectives could be trumping the objective of the EU at national levels and/or whatever regulatory approach is adopted at domestic level.⁵ In Ireland for example while the impact of European Union membership/integration has been tremendous in many ways including in the adoption of gender-related policies, the extent of implementation of these policies have been limited as a result of a non-alignment between national objectives and EU objectives.⁶ In this regard, isomorphic pressures/influence as propounded by institutional theorists has also been limited in transcending these national differences indicating the extent to which these differences may be ingrained into Irish culture and practice.⁷ The significance of these national factors lies in their potential potency to determine the effectiveness of any regulation to increase female directors on SOE boards.

³ See discussion in Chapter Two on international developments.

⁴ European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01, Art. 2(3). See discussion on EU's attempts and EU influence in Chapter One, p.6. and Chapter Three, p.149.

⁵ See discussion of national peculiarities and Institutional influence in Chapter Three, p.139.

⁶ Adshead M, 'Europeanisation and Changing Patterns of Governance in Ireland' (2005) 83 (1) *Public Administration* 172. See also, Rees N, 'The Irish Economy and Europe' in Rees N, Quinn B and Connaughton B, *Europeanisation and New Patterns of Governance in Ireland* (Manchester: Manchester University Press, 2010) p.80. See more discussion in Chapter Three p.149.

⁷ DiMaggio P and Powell W, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields' (1983) 48(2) *American Sociological Review* 149-150.

While these factors impact across public sector and private sector companies, the discussion in this chapter takes from a perspective of Ireland's SOEs, hence public sector. The discussion is addressed in two parts. The first part critically discusses potential institutional and cultural factors that could hinder the adoption of regulation and also hinder its ability to further gender balance on boards of Ireland's SOEs. In the second part, initiatives and changes that could eliminate or ameliorate these potential limitations so as to harness the benefit of regulation are discussed. Existing international practice is relied on to suggest how Ireland might take action. The discussion in the second part of this chapter also lends credence to a strand of the argument in this thesis which is that neither type of regulation i.e. gender quotas or corporate governance codes may be totally effective as a stand-alone instrument in increasing gender diversity on boards. The existence of these limiting factors suggests the need for independent structures/initiatives to collaborate regulatory objectives.

B. An Ideal Terrain for Regulation in Ireland

i. Patriarchal Culture in Ireland

A Patriarchal society suggests that male domination permeates all areas of the society including the corporate and political arena of Ireland. A patriarchal political arena could be a hindrance to the adoption of regulation (more particularly a prescriptive regulation like legislative quota) that aims to elevate the position of women.⁸ A patriarchal corporate arena can also act as a hindrance where it is strong enough to influence political decisions that affect them.⁹ In addition to influencing political decisions a patriarchal corporate arena could also detract from the effective implementation of the law where the law is not strong and prescriptive enough to breakdown structural and attitudinal obstacles that

⁸ See discussion in Chapter Three, p.144

⁹ 'Capture theory' explains how this could occur. For further reading on 'Capture theory' see Laffont J and Tirole J 'The Politics of Government Decision-Making: A Theory of Regulatory Capture' (1991) *Quarterly Journal of Economics* 1089.

exist to prevent women elevation.¹⁰ Evidently, this would suggest that a legislative gender quota is the preferred type of regulation for Ireland, in this regard.

ii. Political Reluctance

The Irish political system is influenced by the patriarchy inherent in the society. Political systems can influence the role of the female in society and their access to leadership roles.¹¹ The political environment in Ireland has been shaped by the culture of cronyism and is also controlled by the 'boys' club culture' where personal relationships are important and political patronage thrives.¹² Irish political values are also influenced by the culture, social backgrounds and life experiences of those who hold them.¹³ While they may be holding the political/governance reins of the State today, politicians are still a product of the Irish society in which gendered segregation of roles has historically been manifest.¹⁴ It is therefore logical to conclude that the traditional view of women in the Irish society has encouraged a political reluctance regarding issues of gender balance in the society, including in decision-making roles. An illustration is evident in the State's attitude toward the proposed amendment of the 'Women in the home' clause in the 1937 Constitution which states:

¹⁰ See discussion in Chapter One.

¹¹ Carrasco A et al, 'Appointing Women to Boards: Is There a Cultural Bias?' (2015) 129 *Journal of Business Ethics* 431.

¹² O'Malley E, Quinlan S and Mair P 'Party Patronage in Ireland: Limited but Controversial' (2009) p.27. Available at: http://dcu.ie/~omalle/The%20Extent%20of%20Party%20Patronage%20in%20Ireland%20EOM_SQ_24-10.pdf. Accessed 15/04/16; see also Michael C 'Take Note: Its Political Patronage as Usual' *Irish Examiner* 29 January 2015, on the discovery that Michael Lowry, an Independent TD, engaged in lobbying in trying to have Valerie O'Reilly reappointed to the board of the National Transport Agency (NTA).

¹³ Coakley J, 'Society and Political Culture' in Coakley J and Gallagher M, (eds.) *Politics in the Republic of Ireland* Fifth Edn. (London: Routledge, 2010) p.37. See also, Buckley F, Galligan Y and McGing C, 'Someday Girls, Someday': Legislating for Gender Quotas in the Republic of Ireland' (2013) p.10. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2236481. Accessed 14/04/16.

¹⁴ See discussion in Chapter Four, p191.

“...the State shall therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home”.¹⁵

The said clause emphasises women as ‘second class citizens’. Despite a recommendation by a substantial majority in the 2013 Constitutional Convention to make the clause gender neutral,¹⁶ a change that will see the status of women in the Irish society elevated constitutionally, a constitutional amendment referendum which is required before the amendment can be carried out, was yet to be held in the first quarter of 2016.

The persistent low representation of female political representatives in Ireland¹⁷ also reflects a reluctance of successive governments regarding gender issues. Although an electoral gender quota law was eventually introduced in 2012 to address this issue, it has been said that the State exhibited reluctance in introducing regulation and was only persuaded as a result of pressure from supporters of regulation, following the 2007/2008 economic crisis in Ireland.¹⁸ The crisis revealed how women were excluded from public decision-making.¹⁹ With respect to increasing gender balance on boards and decision-making in Ireland generally, the State also exhibits a reluctant attitude. Following the recommendations of an investigative report in 2013,²⁰ in July 2014, the Government announced the plan to create a Talent Bank of suitably qualified women to take up positions on State boards.²¹ By the end of the first quarter of

¹⁵ See Art. 41.2 of the 1937 Constitution of Ireland.

¹⁶ See The Convention on the Constitution, *Second Report of the Convention on the Constitution* (2013). Available at: <https://www.constitution.ie/AttachmentDownload.ashx?mid=268d9308-c9b7-e211-a5a0-005056a32ee4>. Accessed 15/04/16.

¹⁷ Galligan, Y. ‘Women in Politics’ in Coakley and Gallagher (note 13 above) p. 263.

¹⁸ Buckley et al. (note 13 above) p.6. See details of the quota in Chapter Four, p.189.

¹⁹ Clancy P, O’Connor N and Dillon k, *Mapping the Golden Circle* (Dublin: TASC/New Island, 2010).

²⁰ DEPARTMENT OF JUSTICE AND EQUALITY, *Towards Gender Parity in Decision-Making in Ireland (An Initiative of the National Women’s Strategy 2007-2016)* 2013 p. 62.

²¹ See Department of Justice and Equality, *Opening Address by the Minister for Justice and Equality Frances Fitzgerald TD ‘Investing in Talent- Promoting Gender Balanced Leadership’*, Available at: <http://www.justice.ie/en/JELR/Pages/SP14000343>. Accessed 18/04/16. See also discussion on Talent Bank in Chapter Four, p.202.

2016 (at the time of concluding this thesis), the Talent Bank was yet to be created. This political environment suggests that there could be some reluctance in ruling regimes to take a more definite/prescriptive action through regulation to address gender imbalance on SOE boards. It is also indicative of a political system that will not be totally committed to the successful implementation of the regulation even after it is passed. Political reluctance of a ruling regime regarding a particular issue can also be inferred for example, from its election manifesto. The 2011 election manifestos of Fine Gael and Fianna Fáil, the two major ruling parties in Ireland, reflected their eventual piecemeal inclination towards equality principles.²² Fine Gael only made a passing reference in relation to gender issues while Fianna Fáil made no reference at all.²³ A reluctant government is particularly a drawback in relation to implementing such regulation for SOEs given the relationship between the two. Having the regulatory authority and ownership rights in the State necessitates that certain extra structures will be required to eliminate a conflict of interest and ensure regulation is implemented effectively.

In light of this background of a cronyism culture, the State may be torn between satisfying two polarised specific interests in addressing gender imbalance on boards. On the one hand the demands of the European Union require that the State pay more adequate attention to addressing gender imbalance in decision-making while on the other hand, the State may also be inclined to satisfy the interest of corporations, in preserving the status quo.²⁴ The position of the State is evidenced in the lack of total commitment in following through on policies aimed at increasing female participation in the public sector and a reluctance in influencing greater participation and commitment from the private sector towards the same goal, as other States such as the UK have done by setting up the Lord Davies Review.

²² Murphy M, and Kirby P, *Towards the Second Republic: Irish Capitalism in Crisis* (London: Pluto, 2011) p.15.

²³ See Fine Gael Manifesto, p.24. Available at: <http://michaelpidgeon.com/manifestos/docs/fg/Fine%20Gael%20GE%202011.pdf>. Accessed 02/04/16.

²⁴ Hardiman N, (ed.) *Irish Governance in Crisis* (Manchester: Manchester University Press, 2012) p. 16.

iii. Political Culture and EU Influence

The influence of the EU on Ireland's economic and social policies including in relation to gender disparities in the Irish society, since its membership in 1973 has been tremendous.²⁵ Of particular significance is the increased female participation in labour, which began to occur after Ireland became a member of the EU,²⁶ including the introduction of legislation such as the *Employment Equality Act* and other work-life balancing policies, which were aimed at increasing female opportunities in the workplace and the wider society.²⁷ All these developments occurred in response to EU policies and Directives and thus it is difficult to infer that gender balance/equality related progress in Irish society is an outcome of the unbiased political and social ideologies of the State. The Oireachtas (Parliament) is said to have particularly exhibited reluctance in granting women equal rights and only did so under obligation of EU membership.²⁸ For example equal pay legislation (*Anti-Discrimination (Pay) Act 1974*), was introduced in Ireland, sooner than it would have been, because of the EU Directive on equal pay.²⁹ Ireland's non-compliance with the 1979 EU Directive on equal treatment in social security attracted several challenges for Ireland

²⁵ See discussion on EU impact in Chapter Three, p.149. See also FitzGerald R, and Girvin B, 'Political Culture, Growth and the Conditions for Success in the Irish Economy' in Nolan B et al. (eds.) *Bust to Boom? The Irish Experience of Growth and Inequality* (Dublin: IPA, 2000) p.281; Laffan B, 'The European Context: A New Political Dimension in Ireland, North and South' in Coakley J, Laffan B, and Todd J, (eds) *Renovation or Revolution? New Territorial Politics in Ireland and the United Kingdom* (Dublin: University College Dublin Press, 2005) p.166. See also Adshead (note 6 above).

²⁶ Connolly E, 'Durability and Change in State Gender Systems: Ireland in the 1950s' (2003) 10(1) *European Journal of Women's Studies* 65.

²⁷ Adshead (note 6 above) p. 175.

²⁸ Scannell Y, 'The Constitution and the Role of Women' in Farrell B, (ed.) *De Valera's Constitution and Ours* (Dublin: Gill and Macmillan, 1988) p. 133; Galligan Y, *Women and Politics in Contemporary Ireland: From the Margins to the Mainstream* (London: Pinter, 1998) p. 84.

²⁹ COUNCIL DIRECTIVE 75/117/EC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (75/117/EEC). See Harvey B, *Guide to Equality and the Policies, Institutions and Programmes of the European Union* (Dublin: The Equality Authority, 2003) p. 14.

including the payment of substantial compensation for the women affected.³⁰ However, national political ideologies could limit the extent to which EU Influence may occur. Member States may choose to adopt EU policies superficially by one of two ways: adapting EU requirements without making any major modifications even where required; and Member States could choose to accommodate EU requirements modestly by changing only peripheral aspects of existing institutions.³¹ Through both processes, the intended impact of the EU policy/Directive is likely to be limited. In Ireland, the enthusiasm for EU integration is said to have been limited to the alignment of EU policies with national political objectives.³² Accordingly, even where the EU seeks to influence gender participation in decision-making through various policies, a reluctant political regime may choose to adapt such policies in a way that does not conflict with its domestic or political objectives. In this way also national political ideologies that do not embrace gender participation in decision-making could compromise the EU's objectives. The relevance of this to Ireland is that notwithstanding the EU's influence on Member States in respect of increasing gender diversity on boards, Ireland may still resist the full impact of such influence. Thus where EU policies could enhance effectiveness of regulation, the State's reluctance may still prevent it.³³

iv. A Closed Corporate Upper Echelon

The domination of Ireland's corporate society by the male gender is illustrated by their occupation in majority of middle to senior management roles across companies in the public and private sectors. Their domination can be traced back

³⁰ Harvey (note 29 above) p.14.

³¹ Borzel T, 'Europeanization: How the European Union Interacts with its Member States' in Bulmer S and Lequesne C, (eds) *The Member States of the European Union* (Oxford: Oxford University Press, 2005) p. 59. See also, Quinn B and Connaughton B, 'Mediating Forces and the Domestic Polity' in Rees N, Quinn B and Connaughton B (note 6 above) p.34.

³² See Adshead (note 6 above) from p. 73. See also, Fahey E, *EU Law in Ireland* (Dublin: Clarus Press, 2010) p.3.

³³ See discussion on EU impact in Chapter Three, p.149.

to historical Ireland where patriarchy was evident in institutional structures which included role segregation in work and family which translated to lower pay status for women and men generally playing the sole breadwinner role at the family level.³⁴ Role segregation inadvertently also resulted in men occupying leadership roles.³⁵ Despite a changing national terrain where State structures, e.g. Employment Equality Agency, and feminist awareness and activities e.g. through the National Council of Women (now National Women's Council of Ireland) have emerged to make women more visible and relevant; the development of an influential international practice e.g. through EU Membership, that is more sensitive to gender segregation, male domination in Ireland is very slow in dissipating, more particularly with regard to decision-making roles.³⁶ The slow response to change is evidenced for example by the fact that in spite of global changes in relation to female representation on private sector corporate boards, Ireland has remained at the lower end of the scale in terms of progress.³⁷ Over a decade ago, a 1997 survey of 68 listed Irish companies showed a dismal representation of women on boards at the time.³⁸ Only 16 of these companies had at least one female director on their board, accounting for only 3% of the total director positions on boards.³⁹ Female representation on SOEs was only slightly better at the time. The survey showed that only nine SOEs of the 16 surveyed, had at least one female director, accounting for 9.5% of directors on SOEs at the time.⁴⁰ In 2015, no significant improvement can be seen to have occurred. A 2015 global survey showed that only 10.3% of director positions on Ireland's listed companies' boards was occupied by female directors in 2015,⁴¹ while for SOEs, female representation accounted for approximately 24.8% of

³⁴ O'Connor P, 'Ireland: A Man's World?' (2000) 31(1) *Economic and Social Review* from p. 85. See also discussion on role segregation in Chapter Four p.191.

³⁵ *ibid*, p. 86.

³⁶ *ibid*, p. 84.

³⁷ 'Irish among Worst for Gender Balance on Boards' *The Irish Times*, 13 January, 2015.

³⁸ Brennan N, and McCafferty J, 'Corporate Governance Practices in Irish Companies' (1997) 18 (1) *Irish Business and Administrative Research* 132.

³⁹ *ibid*.

⁴⁰ *ibid*.

⁴¹ Catalyst, 2014 Catalyst Census: Women Board Directors (2015). Available at: <http://www.catalyst.org/knowledge/2014-catalyst-census-women-board-directors>. Accessed 19/04/16.

director positions.⁴² For SOEs, this is in spite of the Government Policy on a 40 % gender representation target introduced in 1993.⁴³ Evidently, change has been slow.

(a) A 'Network' System in Board Appointments

The slow process of change can be linked to an appointment system in which appointments to boards are made from a limited pool consisting mainly of men.⁴⁴ A 2010 study, *Mapping the Golden Circle*, revealed that a limited number of directors (39) occupied 93 director positions on boards of 40 of Ireland's leading companies across the public and private sector, including SOEs.⁴⁵ This evidenced a high level of multi-directorships and familiarity among the 'Director Network'.⁴⁶ Notably, the study revealed that women were significantly under-represented on the boards of the companies studied with only 11 % of the positions occupied by women.⁴⁷ It is apparent that women were majorly excluded from the limited pool from which board appointments were made.

Another perception from the 2010 study is that appointments to State boards and private sector companies in Ireland thrives on a culture of 'who you know' or 'who you can identify with' and has thus resulted in the recycling of the male network.⁴⁸ Social similarities tend to determine appointments such that any

⁴² Author's calculation from information on SOEs (Table 1, Chapter 1) websites and 2014 annual reports.

⁴³ See discussion in Chapter One, p.44. See also Gender Equality in Ireland, *Women on State Boards* (2014). Available at: http://www.genderequality.ie/en/GE/Pages/State_Boards. Accessed 12/04/16.

⁴⁴ O'Higgins E, 'Non-executive Directors on Boards in Ireland: Co-option, Characteristics and Contributions' (2002) 10(1) *Corporate Governance: An International Review* 23. See also, Institute of Directors, *Women on Boards in Ireland 2015 Survey 2015*. (IOD Survey 2015) p.10. Available at: <https://www.iodireland.ie/sites/default/files/documents/Women%20on%20Boards%20in%20Ireland%202015%20FINAL.pdf>. Accessed 20/04/16.

⁴⁵ Clancy et al (note 19 above) (Overview). 14 of the companies studied were SOEs.

⁴⁶ *ibid*, p. 20.

⁴⁷ *ibid*, p.24 (3.16).

⁴⁸ Clancy et al (note 19 above) p. 11. See also, IOD Survey 2015 (note 44 above) *Executive Summary*.

fresh/new inclusions into the network will also have similar identifiable traits.⁴⁹ This culture and the existence of a 'network' system in appointments need to be surmounted if regulation is going to be successful and sustained. The experience of the countries studied in previous chapters suggest that though such culture that are discriminatory to appointing female on boards can be suppressed in the short term, it is not permanently eliminated and is likely to become evident in the long term. For example, in the case of Norway, although there is no proven direct causal link, it can be suggested that the institutional and cultural environment in Norway was not conducive to ensure sustenance. While the quota target of 40 % was achieved and even surpassed in Norway following the implementation of the law, the target has not been sustained in subsequent years, with female representation on boards of certain listed companies dropping to 35.5 % in 2014/2015.⁵⁰ It could also influence other incidental aspects, as is the case with presence of women in other senior management positions. For Ireland therefore, the regulatory approach adopted needs to be designed to ensure that where the target objective is achieved, it is sustained and even if for reasons such as retirement or death this figure falls below target, it will be temporary as a structure will be in place to revert to original target.

The persistence of this anomalous appointment system over many years suggests how ingrained it may be and thus would require other collaborative and effective strategies to address. The *Guidelines on Appointment to State Boards* introduced in 2014, amongst other objectives, aims to widen the talent pool from which directors are appointed thereby eradicating the limited 'network' that was relied

⁴⁹ Powell G, 'The Glass Ceiling: Explaining the Good and Bad News' in Davidson M, and Burke R, (eds) *Women in Management*, Current Research Issues Volume II (London: SAGE Publications, 2000) p. 243; Burgess Z and Tharenou P, 'What Distinguishes Women Non-Executive Directors from Executive Directors' in Burke R and Mattis M (eds.) *Women on Corporate Boards of Directors* (Dordrecht: Kluwer Academic, 2000) p. 223.

⁵⁰ Catalyst, 2014 Catalyst Census: Women Board Directors (2015) (note 41 above). This figure was a representation of only 24 listed companies in Norway however we would expect that under a quota regime all companies should maintain the 40% target. In 2016 however Statistics Norway reported a 41.6% representation of women on boards of public limited companies. See Statistics Norway, *Board and Management in Limited Companies 1 Jan 2016*.

on.⁵¹ It is notable that calls/recommendations to institute a Guideline for the appointment to State boards had been made almost a decade ago.⁵² Addressing the drawbacks in the appointment system will enhance the effectiveness of regulation in several ways including sourcing for board members from a wider pool and thus access to more women. In addition, the growing awareness and acceptance of a gender diverse board by men is encouraging and suggests that this may also influence a breaking down of the network. Increasingly, initiatives to get more women directors on boards are being championed by men and are gradually gaining global presence. Examples include 'Male Champions of Change', an initiative which is active in Australia⁵³ and the 30percent Club, which originated in the UK and now operates in over five countries including Ireland.⁵⁴ The works of other initiatives being implemented by Boardmatch Ireland and the National Women's Council of Ireland (NWCI) are some initiatives that will aid in addressing the anomaly in appointments and thereby also potentially impact positively on regulatory outcome. Boardmatch for instance, engages in matching professionals from private and public sector organisations with boards of non-profit organisations or ventures.⁵⁵ The impact of this process which involves a free and simple online matching service is felt in the opportunity it gives to a wide range of potential board candidates by providing a free and accessible medium through which board roles can be got and thus board experience had. Assumedly, the platform will attract a significant number of women because of its simple and open process, who wish to serve on boards. The availability of such women with not for profit board experience also widens the pool from which appointments to State/SOE boards could be made. Through its activities, NWCI attracts attention to the issue of women on boards and ensure that it remains an issue of national

⁵¹ Department of Public Expenditure and Reform, *Guidelines on Appointments to State Boards* (2014) . See discussion in Chapter Four, p.204.

⁵² See Finnegan R and Wiles J, *Women and Public Policy in Ireland: A Documentary History 1922-1997* (Dublin: Irish Academy Press, 2005) p.395.

⁵³ Male Champions of Change, Available at: <http://malechampionsofchange.com/champions/>. Accessed 14/04/16.

⁵⁴ 30% Club. Available at: <http://30percentclub.org/about/who-we-are>. Accessed 14/04/16.

⁵⁵ See Boardmatch Ireland. Available at: <http://www.boardmatchireland.ie/aboutus/about-us/>. Accessed 14/04/16.

debate.⁵⁶ In addition, by organising/hosting seminars frequently, the NWCI seeks to develop knowledge and sensitise women with regard to board roles.⁵⁷

v. Low Availability of Women with the Requisite Experience

The availability of women in middle and senior management positions such as CEO positions, Human Resource directors, etc., will be useful for regulation as this will increase the talent pool which appointments are made and thereby increase the potentials of the regulation being complied with.⁵⁸ SOE board appointees/applicants are drawn from all sectors of the society including public servants still in service who however are not entitled to any director's fees.⁵⁹ While this suggests there may be less women seeking for SOE board appointment from the talent pipeline, the creation and development of a pipeline is still very relevant particularly for the purpose of widening and increasing the number of women in Ireland with CEO experience. Even where they are not available for appointment while in service, they may choose to participate on boards after retirement or choose to resign for a less demanding pre-occupation on boards.

Globally, progress in gender diversity on boards has in general not translated to other senior management levels within organisations.⁶⁰ As discussed in Chapter

⁵⁶ National Women's Council of Ireland, http://www.nwci.ie/index.php?/discover/what_we_do/women_in_decision_making/women_on_boards. Accessed 12/04/16.

⁵⁷ *ibid.*

⁵⁸ Sealy R, Doldor E, and Vinnicombe S, *Increasing Diversity on Public and Private Sector Boards: Part 1, How Diverse are Boards and Why?* (United Kingdom: Government Equalities Office, 2009) p.15.

⁵⁹ This is in line with the 'one person one salary' principle which is to the effect that public servants occupying the position of chairperson or director on State boards do not receive additional pay for taking such additional duties. See Department of Public Expenditure & Reform, *2013 Business Plan* (2013) p.23.

⁶⁰ McKinsey & Company, *Gender Diversity in Top Management: Moving Corporate Culture, Moving Boundaries* (Women Matter 2013). Available at: http://www.mckinsey.com/features/women_matter. Accessed 12/04/16; Klettner et al. (note 1 above) p.6; Grant Thornton, *Women in Business: From Classroom to Boardroom*

five, this has also been the case even where regulation targeting female representation on boards is implemented.⁶¹ The low presence of women in these positions persist as a result of existing cultural and organisational barriers which could require greater effort including more direct regulatory intervention to alleviate.⁶² The presence of women in senior management positions or the pipeline per se can aid the implementation of regulation as there would be more women with relevant experience and qualification to occupy board positions.⁶³ The availability of female CEOs is considered a useful panacea in fulfilling regulatory objectives of appointing women to boards as the CEO position is considered to be an adequate preparatory platform in terms of experience, to perform board roles.⁶⁴ Other executive operational roles considered in similar category to CEO positions in terms of a higher tendency of attaining board roles include the Finance Director position and other Senior Operation roles. As at 2015, none of the 30 Irish SOEs surveyed had a female CEO.⁶⁵ While very few females occupied top executive positions, these were greatly limited to positions that are considered to be of a support nature and less potential of appointment to boards.⁶⁶ For example in Eirgrid, the three females who occupied executive management positions were in support roles as Director of Public Affairs; Director for European Affairs and Company Secretary. A number of SOEs such as Bord na

(*International Business Report, 2014*) . See also International Labour Organization, *Women in Business and Management: Gaining Momentum* (Geneva: ILO, 2015)

⁶¹ Ahern K and Dittmar A, 'The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation' (2012) 127(1) *Quarterly Journal of Economics* 137. Bertrand M, Black S, Jensen S and Lleras-Murey A, 'Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labour Market Outcomes in Norway' (2014) *NBER Working Paper No 20256*. p.23.

⁶² See discussion in Chapter 1. See also, Inglehart, and Norris (note 1 above) p.85; *Women Matter 2013*, (note 60 above) p. 12 and Grant Thornton *International Business Report 2014*, (note 60 above) p. 9.

⁶³ Walt N, and Ingle C, 'Board Dynamics and the Influence of Professional Background, Gender and Ethnic Diversity of Directors' (2003) 11(3) *Corporate Governance: An International Review* 225.

⁶⁴ Burke R, 'Women on Canadian Board of Corporate Directors: Still a Long Way to Go' in Burke and Mattis (note 49 above) p.185.

⁶⁵ As observed from a Survey of 2014 Annual reports of SOEs. (See list in Table 1, Chapter 1).

⁶⁶ Vinnicombe S, 'The Position of Women in Management in Europe' in Davidson M, and Burke R, (eds) *Women in Management: Current Research Issues, Vol. 2* (London: Sage Publications, 2000) p.16.

Móna, CIÉ and National oil Reserve Agency had no female in executive management positions while SOEs such as Shannon Group and DAA had a single female on their boards with both serving as Company Secretaries. The only female serving as a Chief Finance Officer in Bus Éireann also doubled as the Company's Secretary i.e. an operational role and support role fused in one person of which the support role could be determinant in terms of promotion to more senior roles. However while a dearth of women in the pipeline within the public sector may not necessarily impact negatively on SOE board appointments given that the majority of board appointees, including women, are sourced/poached from a wide area of the society including the private sector, law, academia and those that have gained personal recognition and experience in other areas of society. An analysis of female directors on boards of SOEs showed a majority of them are drawn from these areas rather than the public sector. In fact the availability of more women with senior level experience in the public sector could help speed up the implementation of regulation as they could be more likely to be appointed than those that have no public sector experience. It is also probable that it is the dearth of such women within the public sector that has necessitated appointing more women from other areas.

Irrespective of what area of society applicants come from, senior level experience would still be relevant so as to qualify for advertised roles. For example, a vacancy advertisement for a State board position in 2015 required amongst other that "... candidates must demonstrate experience in one or more of the following areas.....experience at a senior leadership level in the disability/advocacy sector....".⁶⁷ This is where the need to break barriers for women in society as a whole becomes relevant in respect of addressing increasing gender diversity on SOE boards. The more women in society with senior level experience, the more applications from women for the advertised roles and the wider the pool of women from which appointments can be made. In 2015, 31 % of persons who applied for advertised roles on State boards were female compared to 69 % of

⁶⁷ See advertised vacancy at: <http://www.stateboards.ie/stateboards/campaignAdvert/24932.htm>. Accessed 14/04/16.

men.⁶⁸ More particularly, where women have gained senior level experience in the public sector it could boost their confidence further to apply for such roles. It is therefore of concern that women are minimally represented in senior management roles in SOEs.

In Ireland generally, the low level of female board members i.e. public and private sector, has been linked to the lack of suitable females with the senior level experience required.⁶⁹ This indicates a deeper societal issue that should be addressed from a broader perspective. While a historical patriarchal culture in society is largely attributable to a gender based role segregated society in which women may have had less incentive to work,⁷⁰ within the workplace, organisational values and perceptions which are translated from society also culminate into discriminatory practices against women, further preventing them from rising in their career.⁷¹ Stereotypical attitudes, expectations and policies tend to be more favourable to the male gender and discourage females from furthering their careers to senior roles where the job becomes more demanding.⁷² These attitudes and perceptions reflect the traditional view of the female in the Irish society as the main care provider/homemaker.⁷³ In spite of an increase in the participation of women in Ireland's labour force following industrialisation and economical demands,⁷⁴ the traditional perception of women

⁶⁸ StateBoards.IE, *State Boards Activity to December 2015*. Available at: www.stateboards.ie. Accessed 12/04/16.

⁶⁹ O'Higgins (note 44 above) p.24. See also IOD Survey 2015,(note 44 above) p.7.

⁷⁰ See further discussion below. See also, Finnegan and Wiles (note 51 above) p.11.

⁷¹ Cross C, and Linehan M, 'Organisational Barriers and the Female Managerial Career: Some Empirical Evidence from Ireland' (2008) 13(3) *Journal of Workplace Rights* 246.

⁷² *ibid*, p. 251-252.

⁷³ Galligan (note 28 above) p. 275.

⁷⁴ Russell H, McGinnity F, Callan T and Keane C, *A Woman's Place: Female Participation in the Irish Labour Market* (Dublin: Equality Authority, 2009) p.6. See also, Farrell R, 'An Overview of the Irish Labour Market' (2014) NER WP 2014/No 15, *Nevin Economic Research Institute Working Paper Series*, p.6. Available at: http://www.nerinstitute.net/download/pdf/an_overview_of_the_irish_labour_market_neri_wp201415.pdf. Accessed 20/04/16.

is slow in conforming to the change particularly as regards appointing them to decision-making roles.⁷⁵

Women in labour participation are thus saddled with the greater responsibility of balancing work and personal life demands causing many to exit the workplace or avail of part-time work opportunities,⁷⁶ an option that in turn makes them less visible and puts them at a disadvantage in the workplace in terms of promotion. In 2013, women constituted over 70 % of those working 19 hours per week or less in the Irish labour market.⁷⁷ More significantly, employment rate for women with young children in the age of four to five years was 51.7 % compared to 76.2 % of male in the same category in the same year, indicating that the responsibility of child-rearing was assumed by mothers in the majority.⁷⁸ The inability of females in the workplace to be as 'visible' as their male colleagues, as a result of caring or other family-related responsibilities they may have, could create a 'glass ceiling' preventing them from being promoted and acquiring the necessary senior level experience.⁷⁹

The non-availability of women to appoint to SOE boards could compromise the attainment of any regulatory targets or result in the emergence of 'Golden Skirts' as was the case in Norway under the quota law.⁸⁰ Irrespective of the type of regulation introduced, the relationship of the SOE and State suggests that Ministers and Chairpersons could feel under a higher obligation to comply with such regulation and could end up making use of a limited pool of talent. One major objective for issuing the *Guidelines to the Appointment system for State Boards* is to widen the talent pool from which appointments are made: "To

⁷⁵ An indigenous study revealed that despite the increasing acceptance of males of female economic independence, there was still a reluctance of the men to share domestic and caring responsibilities with females. See Fine-Davis M, *Attitudes to Family Formation in Ireland: Findings from the Nationwide Study* (Dublin: Trinity College Dublin, 2011) p.47.

⁷⁶ Connolly P, 'The Development of Women as Leaders in the Public Sector' (2008) 56(3) *Administration* 188. See discussion on role segregation in Chapter Four, p.191.

⁷⁷ Central Statistics Office, *Women and Men in Ireland (2013) (Ireland: Employment by Usual Hours Worked)* 2.8.

⁷⁸ Central Statistics Office, *Women and Men in Ireland (2013) (Ireland: Employment Rates of Couples and Lone Parents Aged 20-44 by Age of Youngest Child)* 2.10.

⁷⁹ Cross and Linehan (note 71 above) p. 253.

⁸⁰ See discussion on 'Golden Skirts' in Chapter Four, p.214.

increase access and widen the pool from which potential appointees to State Boards are drawn”.⁸¹ While this does not specifically guarantee that a wider talent pool will include more women, other provisions of the Guidelines that encourage Ministerial sole discretion also suggest that this objective may not be utilised.⁸²

The non-availability of women in the talent pipeline or with relevant senior management experience is an anomaly noted in the countries studied in this thesis under different regulatory regimes. It is indicative of the limitation of gender quotas and Corporate Governance Codes when targeted at board composition in filtering through to correct this systemic anomaly and the need for other collaborative forms of interventions or strategies to be implemented simultaneously with regulation. The extent to which sex-based discriminatory values, perceptions and policies have been ingrained into the workplace and society culture in Ireland will therefore require that such interventions or strategies should target these barriers directly and be structured for enhanced effectiveness.⁸³ While some arrangements such as with regard to childcare arrangements and flexible working have been in place within the Irish workplace there is evidently need to structure them in a way to be more effective.⁸⁴

vi. The Process of Appointment to State Boards

In Ireland, in spite of the Guidelines introduced in 2014,⁸⁵ the appointment process to State boards could still be susceptible to political and self-interested influence as a result of the Minister’s sole discretion in appointments. According

⁸¹ *Department of Public Expenditure and Reform. Guidelines on Appointment* (note 835 above) 4.1. See also, 5.1-5.5.

⁸² See discussion below.

⁸³ Department of Justice and Equality, *Towards Gender-Parity in Decision-Making in Ireland*(note 20 above) p.7.

⁸⁴ See discussion below.

⁸⁵ *Guidelines for Appointment* (note 51 above).

to the Guidelines, Ministers may appoint board members outside the set guidelines in circumstances which include.⁸⁶

- i. where he has identified such a person who is 'evidently and objectively highly-qualified' and can discharge the role effectively but has not applied through the laid down process;⁸⁷
- ii. in the case of re-appointment where the Minister has consulted with the Chair of the Board and the Board on the member's effectiveness;⁸⁸
- iii. where the person being appointed is an official of the Minister's Department;⁸⁹
- iv. and where the selection and appointments of board members is the sole responsibility of the Minister in light of the objective of the appointment system to ensure that State boards have the adequate board.⁹⁰

These provisions could serve to undermine any regulatory objectives to increase female representation on SOE boards. The Minister's discretion could be an avenue through which the ills of the previous system under which females did not perceive an equal opportunity with men can still persevere. Prior to the introduction of the Guidelines, the Minister's discretion in the appointment process attracted criticism suggesting that the practice undermined the tenets of Ireland's democratic society whilst also increasing the risk of lobbying and political patronage through appointments.⁹¹ The tendency to reward political party loyalists and personal relationships with State board appointments is a

⁸⁶ *ibid*, Guideline 9.1.

⁸⁷ *ibid*, Guideline 9.14. The Minister is however required to publish information confirming the candidate's qualification and suitability for the role (12.10).

⁸⁸ *Guidelines for Appointment* (note 51 above) 9.15.

⁸⁹ *ibid*, 9.17.

⁹⁰ *ibid*, 13.1.

⁹¹ Clancy P, and O'Connor N, *Public Appointments: Option for Reform* (Dublin: TASC, 2011) p.10.

practice that has persisted in Ireland's political/ leadership environment.⁹² In 2002, the then Minister for the Marine was accused of "blatant political patronage" when he appointed three of his party's (Fianna Fáil) supporters to positions on boards of Dún Laoghaire Harbour Company; Dundalk Harbour Company and Dublin Port.⁹³ The appointments were considered to be in contravention of the spirit of the relevant legislation at the time, regarding board composition.⁹⁴ While the issue of lack of transparency in appointments may have now been addressed through the function of the Public Appointment Service (PAS),⁹⁵ accountability still remains an issue given the Minister's discretion.⁹⁶

The strength of the Minister's discretion also lies in the absence of any statutory supervisory control from the Oireachtas regarding appointments.⁹⁷ **In practice however, the Oireachtas acts in supervision as they could question the Minister on board appoints and the Minister is obliged to answer the questions.**⁹⁸ it can however be assumed that the Oireachtas will not question every appointment and there is no evidence yet that an appointment made by the Minister was annulled. The Guidelines still retain a practice adopted in 2011 whereby persons being proposed by Ministers for appointment as Chairpersons of State bodies/Agencies are required to appear before the appropriate Oireachtas committee to discuss their intended plans and approach to their role.⁹⁹

The Guidelines require that the Government Decision of 23 July 2014 regarding the gender balance on State boards i.e. the 40% target, should be complied with in the process of appointments, and goes further to outline how this requirement may be fulfilled.¹⁰⁰ While this represents a significant development,¹⁰¹ the

⁹² O'Malley et al. (note 12 above) from p.13. Clancy and O'Connor (note 91 above) p.10.

⁹³ 'Patronage Claim on Harbour Appointments' *The Irish Times*, 13 May 2002. See also Michael Clifford, 'Take Note: It's Political Patronage as Usual' (2015).

⁹⁴ 'Patronage Claim on Harbour Appointments' (note 93 above).

⁹⁵ *Guidelines for Appointment* (note 51 above) Guideline 7.2.

⁹⁶ O'Malley et al. (note 12 above) p.12; Clancy and O'Connor (note 91 above) p.12.

⁹⁷ Clancy and O'Connor (note 91 above) p.11.

⁹⁸ See Chapter Five, p.296.

⁹⁹ *Guidelines for Appointment* (note 51 above) Guideline 14.1.

¹⁰⁰ *Ibid*, 16 (1) a-f.

Minister's discretion could be used in a way to undermine this objective. It can also be inferred from this that where regulation is put in place, (to replace the Government Decision), the transparency provisions of the Guidelines will still not provide enough buffer to the exercise of the Minister's discretion, so as to achieve the objective of the regulation.

Given that the corporate and political terrains in Ireland are naturally exclusionary to women, the appointment process is an avenue through which change on boards will be achieved, as it constitutes the final decision point for board memberships. While it is still early to observe what impact the Guidelines have made on the process by the first quarter of 2016 (at the time of writing), the lack of accountability still inherent in the process suggests that attempts at change, even through regulation could be undermined. The relationship of the State and the SOE is relevant to this outcome given the Minister's position as the State's representative. This means that the Minister may also choose to exercise his or her discretion in contravention of the regulation, as occurred with the Harbour boards discussed above. Evidently, any new regulation designed to address gender balance more effectively will have to be in conflict with the Guideline in relation to the Minister's unfettered discretion. Nevertheless it is doubtful how useful the Guideline will be when regulation is introduced as it is not established that the use of such accountability measures in a bureaucracy will translate to better accountability as those usually subjected to such rules such as the Minister are less likely to conform to the increasing and restrictive demands.¹⁰²

(a) Necessary 'Force' in the Appointment System

Perhaps a significant drawback of the appointment system would lie in the lack of applicable sanctions in the event that the State's 40 % target is not attained

¹⁰¹ Prior to the introduction of the Guidelines, the Appointment process was criticised for lacking in an effective structure through which the diversity (including gender) of the Irish society could be replicated. See Clancy and O'Connor (note 1225 above) p.23.

¹⁰² MacCarthaigh M, 'Governance and Accountability: The Limits of New Institutional Remedies' in Hardiman N, (ed.) *Irish Governance in Crisis* (note 24 above) p. 29.

across State boards. The experience of Norway, France and Italy show how sanctions accompanying regulation can influence its effectiveness to a large extent.¹⁰³ The lack of sanctions further points to the need for a specifically designed regulation including compellable sanctions to address the issue of gender imbalance on SOE boards. An inclusion of sanctions in the Guideline is not likely to have a similar effect as within a regulation. It is doubtful if strong and compelling sanctions would be suitable in a Guideline document.

Failure to address the above systemic anomalies in Ireland will mean that women will continue to be excluded from significant economic participation including decision-making roles on State boards/SOEs. If it is considered that in spite of the attention the issue of women in decision-making is receiving at national and global levels and yet these barriers in Ireland still persist and have in fact led to very slow increase in female representation on boards of private and public sector companies, it is doubtful if regulation alone can surmount these systemic problems successfully. Moreover, the drawbacks associated with implementing regulation such as lack of monitoring and flexibility in application, which further increase challenges to regulatory effectiveness could be further detraction. Therefore, in order to make the Irish society terrain susceptible to potential regulation, these systemic barriers need to be addressed.¹⁰⁴ In line with international practice certain initiatives and structures could be useful in mitigating or eradicating these barriers and as well provide collaborative support to any regulatory intervention. These initiatives are discussed within the Irish context in the next part of this chapter.

¹⁰³ See discussion in Chapter Two from p.92. See also discussion on Norway in Chapter Four, p. 180.

¹⁰⁴ Berkery E, Tiernan S and Morley M, 'Female Participation Trends in the Irish Labour Force: The Case of State-sponsored Bodies in Ireland, 1970-2007 (2012) 60(2) *Administration* 79.

PART II: Making Systemic Changes

A. An Accountable and Suitable Process of Board Appointments

The discussion above points to the fact that the process of appointment to State boards in Ireland should involve greater accountability. While improvements in the system have been made over the years in making the process more transparent, fair and accountable,¹⁰⁵ more action is needed particularly in certain areas so as to guarantee it does not undermine an objective to improve gender balance on SOE boards and thus act as a drawback to the requirements of regulation.

As discussed above, the Minister's discretion on board appointments undermines a transparent, fair and accountable process. The reformed Guidelines appear to be in line with international practice, for example, the practice in the UK and thus an ideal standard of a transparent and fair process suitable for appointing board members on public boards. There are however certain areas in which Ireland's Guidelines differ from that of the UK. Such areas include the active role played by the Commissioner for Public Appointments in the entire process which acts as a form of additional regulatory check and could serve to put additional consciousness on the Minister in making his appointments.¹⁰⁶ The role of the Public Appointment Service in Ireland is not as extensive and independent as that of the Commissioner.¹⁰⁷ In the UK, the Minister also exercises a final discretion on

¹⁰⁵ Given how the system functioned previously. See Clancy and O'Connor (note 91 above).

¹⁰⁶ See The Commissioner for Public Appointments, Code of Practice for Ministerial Appointments to Public Bodies (2012) 8.1-8.5. Available at: <http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2012/02/Order-in-Council-April-2012.pdf>. Accessed 19/04/16.

¹⁰⁷ *Guidelines for Appointment* (51 above) compare with the UK's commissioner's functions. See Public Appointments Order in Council 2015. Available at: http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2015/08/CO-DC00-PRN01_Baljit-Rayit_0633_001-1.pdf. Accessed 19/04/16.

board appointments however complaints regarding appointments are handled by the Commissioner.¹⁰⁸ While there is no specific provision suggesting that the Commissioner can overturn the appointment, the availability of such avenue for aggrieved candidates is likely to make the Minister more conscious in complying with the relevant guidelines.

The functions of the Commissioner are robustly provided for by the Crown under the Public Appointments Order in Council and include monitoring to ensure that the laid down procedures in the Code of Practice and general procedures for public appointments are being followed.¹⁰⁹ The UK's Code of Practice for public appointments is also independently issued by the Commissioner and thus suggests an element of independent regulation that could influence the Minister's decision/compliance.¹¹⁰ In Scotland, a Code of Practice for a similar purpose is also issued by the Commissioner for Ethical Standards in public Life who acts independently of the Scottish Government.¹¹¹ Notably, Ireland's *Guidelines for Appointment to State Boards* are issued by the Government for which the Minister is a representative.

The power of the Minister in this regard can be viewed as a preservation of the status quo to a great extent, particularly with regard to parliamentary (the Oireachtas) oversight. Prior to the introduction of the Guidelines, the Minister also made the final decision on appointments with minimal oversight from the parliament.¹¹² In Canada, appointments of SOE (Crown Corporations) board members are done under a system of parliamentary scrutiny.¹¹³ The Minister is

¹⁰⁸ See The Commissioner for Public Appointments, (note 106 above) 9.1.

¹⁰⁹ Public Appointments Order in Council 2015. (107 above) 3(1)-(7).

¹¹⁰ *ibid*, 3(2).

¹¹¹ Commissioner for Ethical Standards in Public Life in Scotland, *Code of Practice for Ministerial Appointments to Public Bodies in Scotland (2013)*. Available at: <http://www.ethicalstandards.org.uk/site/uploads/publications/406ebe2cdaa457e47217d07aaa11f566.pdf>. Accessed 15/04/16.

¹¹² Department of Finance, *Code of Practice for the Governance of State Bodies (2009)* 2.17. See also, Clancy and O'Connor (note 91 above) p. 11.

¹¹³ Parliament of Canada, *Crown Corporation Governance and Accountability Framework: A Review of Recently Proposed Reforms (2006)*. Available at: <http://www.parl.gc.ca/content/lop/researchpublications/prb0580-e.htm#footnote12>. Accessed 15/04/16. See also, Salgo, K. *Crown Corporation Governance in the Government of Canada : The 2005 Review and Beyond* (Institute on Governance, 2012)p.11. Available

answerable to parliament for all activities of the corporations within his or her department including the daily operations.¹¹⁴ The Canadian government aims to re-instil public confidence in the governance of SOEs by portraying accountability.¹¹⁵ Oversight and monitoring of Minister's appointments is crucial as it is possible that even where female candidates meet the criteria better than male candidates, unconscious bias could still influence the Minister's decision,¹¹⁶ particularly given that there are/is no sanction(s) for not meeting Government's 40% gender target.¹¹⁷

Laid down criteria and role specifications for published vacancies could also further alienate women applicants if the role specification for a vacancy does not align with their qualification and experience. It would be useful to bear in mind the gender diversity aim of the Guidelines and take into consideration the possible difference in men and women's experience and education when role specifications are published. As a result of role segregation, more women may be lacking experience in the more traditional areas. Women are less likely to have CEO experience and thus any criteria requiring this will have a limited number of women applying. Role specifications can also be done bearing in mind the more traditional educational and career path of women in Ireland i.e. service and support areas, so as to attract more applications from them. Specifically including such type of roles in vacancies will be useful.

at: <http://iog.ca/wp-content/uploads/2012/12/Crown-Corporation-Governance-in-the-Government-of-Canada-1.pdf>. Accessed 15/04/16.

¹¹⁴ Treasury Board of Canada, Meeting the Expectations of Canadians: Review of the Governance Framework for Canada's Crown Corporations (Canada: Canadian Government, 2005) p.15. Available at: http://www.tbs-sct.gc.ca/report/rev-exa/gfcc-cgse_e.asp. Accessed 15/04/16.

¹¹⁵ Edwards, M. *Appointments to Public Sector Boards in Australia: A Comparative Assessment* (2006) Issue Paper Series No. 3, Corporate Governance ARC Project, p.2.

¹¹⁶ Powell G, and Butterfield D, 'Investigating the "glass ceiling" Phenomenon: An Empirical Study of Actual Promotions to Top Management' (1994) 37 (1) *Academy of Management Journal* 82. See also Finnegan and Wiles (note 51 above) p.395.

¹¹⁷ See discussion above.

B. Balancing Work-Life Demands

As discussed above, the challenges of balancing work and personal life responsibilities with which women are faced causes a major setback in their labour participation. Work demands, which includes a need to spend longer hours at the workplace tend to increase as career progresses, and could be incompatible with domestic or childcare related demands. In 2013, 72.4 % of men in employment in Ireland worked for 30 or more hours a week compared to 57.9 % of females.¹¹⁸ Married men worked longer hours than married women with 44.1 % of married men working for 40 or more hours compared to 16.8% of females.¹¹⁹ In 2015, 7 % of men in Ireland were recorded to have worked for 50 hours or above compared to 2% of women.¹²⁰ To aid the balancing of these responsibilities and thus give women more opportunity to participate in the workplace, certain working arrangements and policies will have to be implemented.¹²¹ This would also serve to reduce or eliminate discriminatory practices against them in issues of wage increase or promotions in the workplace.¹²² Generally, policies that encourage the combination of labour force participation and caring responsibilities do influence a higher female labour participation.¹²³ While flexible-working arrangements including part-time participation may be considered an avenue through which work-life balance can be achieved, availing of such an opportunity could further alienate women from the workplace and thus engender discrimination in respect of promotion or being appointed to more visible roles of higher responsibility. The discussion in this section thus highlights those opportunities which employees can avail of and still afford both genders equal opportunities in the workplace.

¹¹⁸ Central Statistics Office, *Women and Men in Ireland* (2013) 2.8.

¹¹⁹ *ibid*, 2.9.

¹²⁰ OECD Better Life Index, *Ireland*. Available at: <http://www.oecdbetterlifeindex.org/countries/ireland/>. Accessed 12/04/16.

¹²¹ OECD, *Doing Better for Families* (Paris: OECD Publishing, 2011)p. 156.

¹²² *ibid*.

¹²³ Gornick J, Meyers M and Ross K, 'Supporting the Employment of Mothers: Policy Variation across Fourteen Welfare States' (1997) 7 (1) *Journal of European Social Policy*, 45.

i. Making Childcare More Accessible

In Chapter Four the inaccessibility of childcare in Ireland in terms of cost and availability and the negative impact it has on female labour participation is noted.¹²⁴ The State offers inadequate childcare provision for children between the age of three and school age and makes no provision/support for childcare for children below the age of three, a period when such support is mostly relevant if new mothers are to be discouraged from taking career breaks or exiting the labour market. A 2015 Eurobarometer survey showed that Irish respondents (52 %) were the most likely across Member States to consider inaccessible childcare as an obstacle to increasing female labour participation in Ireland.¹²⁵

A link between accessible i.e. affordable and adequate childcare in Ireland and female labour participation has been highlighted severally. In 2000, the National Childcare Strategy observed this relationship:

“...The availability and cost of childcare and the difficulties around reconciling employment and family lives are the most significant barriers to women accessing and participating in the labour force”.¹²⁶

Several years later, in 2015, the NWCI still makes the same observation, indicating that the system had remained under-developed.¹²⁷ In 2015, the OECD also observed that childcare costs remained significantly high in Ireland and was impacting on female labour participation:

¹²⁴ See discussion also in Chapter Four, p.194.

¹²⁵ European Commission, *Special Eurobarometer 428: Gender Equality* (2015) p. 64. Available at: http://ec.europa.eu/justice/gender-equality/files/documents/eurobarometer_report_2015_en.pdf. Accessed 14/04/16.

¹²⁶ *National Childcare Strategy: Report of the Partnership 2000 Expert Working Group on Childcare* (Dublin: The Stationery Office, 2000) *Executive Summary*.

¹²⁷ National Women’s Council of Ireland, *Better Boards, Better Business, Better Society (A Handbook on Increasing Women on Boards in Ireland)* (Dublin: NWCI, 2015)p.12. See also, Orla O’Connor, ‘Equality for Women? It Won’t Happen with the Irish Childcare System in its Current State...’ (2015) Available at: <http://www.thejournal.ie/readme/childcare-ireland-2285875-Aug2015/>. Accessed 12/04/16.

“Low labour market participation for women after the age of 30 and single parents can be explained by the high costof childcare services”.¹²⁸

The OECD had made the same observation over a decade ago in 2003.¹²⁹ A 2003 OECD study had revealed a very high cost of childcare in Ireland in comparison to Austria and Japan.¹³⁰ Similar conclusions have also been drawn following the outcome of localised studies.¹³¹

The European Council also recognises the link and identifies the need for Ireland. In 2014, the Council made the following Recommendation:

“... facilitate female labour market participation by improving access to more affordable and full-time childcare, particularly for low income families”.¹³²

In 2015, an Inter-Departmental Group was established by the State to identify and assess policies and future options for increasing the affordability, quality and supply of early years and school-age care and education services in Ireland.¹³³ Following extensive consultations, the Group identified (among others) the need for Government to provide a childcare system that would encourage participation

¹²⁸ OECD, *OECD Economic Surveys :Ireland 2015*. (Paris: OECD Publishing, 2015) p.33-34. Available at: DOI:10.1787/eco_surveys-irl-2015-en. See also, Murphy C, ‘Pathways to Work for Lone Parents-What can the Republic of Ireland Learn from the Northern Ireland Experience?’ (2010) *A Paper submitted in Consortium with GHK Consulting Ltd and CERGE-EI*, p.7.

¹²⁹ OECD, *Babies and Bosses: Reconciling Work and Family Life Austria, Ireland and Japan*, Vol. 2(Paris: OECD Publishing, 2003) p.148.

¹³⁰ *ibid.*

¹³¹ Fine-Davis (note 75 above) p. 11. See also, Ibec, Budget 2016, p.25-26 (Recommendation 24). Available at: [https://www.ibec.ie/IBEC/Press/PressPublicationsdoelib3.nsf/vPages/Newsroom~budget-2016-radical-uk-tax-moves-demand-irish-response-27-07-2015/\\$file/Ibec+Budget+2016.pdf](https://www.ibec.ie/IBEC/Press/PressPublicationsdoelib3.nsf/vPages/Newsroom~budget-2016-radical-uk-tax-moves-demand-irish-response-27-07-2015/$file/Ibec+Budget+2016.pdf). Accessed 12/04/16.

¹³² *Council Recommendation of 8th July 2014 on the National Reform Programme 2014 Ireland, and delivering a Council Opinion on the Stability Programme of Ireland, 2014* (2014/C 247/07) Recommendation 4. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.247.01.0029.01.ENG. Accessed 19/04/16.

¹³³ Evelyn Ring, ‘Group to Report on Childcare Sector’ *Irish Examiner*, 20 February 2015.

of parents in the labour market.¹³⁴ Accordingly, the Group made recommendations aimed at improving the availability, quality and affordability of childcare in Ireland.¹³⁵

Childcare costs remain among the highest in Ireland because the State has invested minimal resources in the development and provision of childcare services, in comparison to other European countries. Unlike in Ireland, the provision of Government support in terms of child benefit, or free pre-school provision in countries such as Slovenia, Luxembourg and Switzerland with similar childcare high costs have equally been high and adequate enough to offset the high cost of childcare.¹³⁶ In Luxembourg for example, childcare support covers a wider range of children, i.e. children from 0-12 years, and free childcare vouchers (Cheque-Service Accueil System) or very low price for childcare are made available for low-income groups.¹³⁷ Women in childbearing age are those more likely to have been in the workplace prior to having children and are thus more likely to have attained middle management positions if they didn't need to address childcare issues.¹³⁸

(a.) A Changing Childcare System for Ireland?

Steps have been taken towards addressing the childcare system in Ireland but significant changes and improvement is still required if it is to be collaborative with regulation to improve gender balance on SOE boards. Certain changes to the

¹³⁴ Report of Inter-Departmental Working Group: Future Investment in Childcare in Ireland, Options and Recommendations for Government (2015) p. 9. Available at: <http://www.dcy.gov.ie/documents/earlyyears/20150722IDGReportonEarlyYrsInvestmentReport.pdf>. Accessed 12/04/16.

¹³⁵ *ibid*, p. 12-14 (7.1.2-7.3.4).

¹³⁶ OECD Family Database, PF3.4: Childcare Support, p.3. See also, Start Strong, *Submission to the Oireachtas Committee on Health and Children* (2015) p.2. Available at: http://www.startstrong.ie/files/Start_Strong_Submission_to_Joint_Committee_-_May_2015.pdf. Accessed 12/04/16.

¹³⁷ European Union (European Platform for Investing in Children), *Luxembourg* (2014). Available at: http://europa.eu/epic/countries/luxembourg/index_en.htm. Accessed 14/04/16.

¹³⁸ Central Statistics Office, *Women and Men in Ireland* (2013) 2.10.

provision of childcare have been slated to take effect from 2016. These changes are designed to reduce childcare cost by expanding the provision of free childcare to now include a wider range of children.¹³⁹ An extra free pre-school year will be added to include children from the age of three up to the age of five and a half years or the time when they attain the age for regular school whichever is earlier.¹⁴⁰ While the changes appear to be in the right direction, it may not be a strong influence on female labour participation if the three-hour a day limit provision is sustained. The changes also appears to reinforce an earlier observation that free childcare provision in Ireland is more strongly linked to the objective of providing early education rather than an incentive for female labour participation.¹⁴¹ The State will do better to extend these hours or increase cash support in the form of child benefit, tax returns or subsidised childcare rates, as is being practiced in countries with similar high costs (see discussion above). However, while improved and affordable childcare systems may only elicit superficial elimination of sex-based discrimination (on the assumption that it is culturally ingrained as discussed above) it can be argued that their availability could afford females the opportunity and also boost their confidence towards challenging such discrimination.

ii. Provision of Adequate Parental Leave Policies

In Chapter Four, the inadequacy of parental leave policies in Ireland is discussed. For the purpose of the discussion in this chapter, parental leave includes paternity and shared parental leave. Both forms of parental leave could afford women more opportunity to equal participation in the workplace. Maternity leave is not included in this discussion as it is an opportunity through which women can also

¹³⁹ Stephen Collins and Arthur Beesley, 'Young Families Benefit Most in Budget Built to Win Votes' *The Irish Times*, 14 October, 2015, p.1. See also, Kitty Holland, 'High Earning Families could Net €2,000 Per Year' *The Irish Times*, 14 October 2015. Available at: <http://www.irishtimes.com/business/budget-2016/budget-2016-news/high-earning-families-could-net-2-000-per-year-1.2388605>. Accessed 14/04/16.

¹⁴⁰ *ibid.*

¹⁴¹ Russell et al. (note 74 above) p.10.

be discriminated in terms of promotion.¹⁴² The shortfall in these policies is also associated with the low participation of females in top management positions including on SOE boards.¹⁴³ Such an outcome defeats the ultimate objective for instituting adequate parental leave policies in the EU, which is for parents to be able to share family responsibilities and thus give both similar opportunities in the workplace.¹⁴⁴

The lack of pay discourages the use of parental leave in Ireland particularly for fathers, thereby putting more pressure on the mothers to assume caring responsibilities.¹⁴⁵ Paid leave is particularly thought to encourage women with caring responsibilities to return to their employment.¹⁴⁶

(a.) Shared Parental Leave

In Ireland, statutory parental leave is an individual entitlement and thus cannot be shared between parents.¹⁴⁷ A benefit of a statutory entitlement to sharing or being able to transfer the leave to the other parent is to encourage a sharing of the responsibility of childcare between both parents so as to give both equal opportunities in labour. In contrast to the case in Ireland, under Swedish Parental law, the mother and father are entitled to share a 16 Month paid statutory parental leave, of which two months are allotted to fathers.¹⁴⁸ Reports show that close to 90 % of new fathers now avail of this opportunity as a result of the favourable incentives that come with it.¹⁴⁹ This is likely to have contributed to Sweden's high global ranking in gender equality (Fourth) in 2014, being one of the

¹⁴² Gornick et al.(note 123 above) p.50.

¹⁴³ Library of the European Parliament, *Work Life Balance, Measures to Help Reconcile Work, Private and Family Life* (May 2013).

¹⁴⁴ *Council Directive 2010/18/EU of 8 March 2010 Implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.*

¹⁴⁵ Russell et al. (note 74 above) p.10.

¹⁴⁶ *ibid.*

¹⁴⁷ Parental Leave (Amendment) Act 2006, s. 6(6a & b)

¹⁴⁸ Gender Equality in Sweden, 'Parental Leave' <https://sweden.se/society/gender-equality-in-sweden/> . Accessed 07/04/15.

¹⁴⁹ *ibid.*

leading countries in female employment with the highest proportion of females in employment.¹⁵⁰ With a 62 % percent female labour participation, Ireland ranked 28th out of 142 countries while Sweden ranked 15th with a 78 % female labour participation.¹⁵¹ In 2013, women accounted for almost 50 % of board positions on Swedish SOEs.¹⁵² For a new mother, having a two month period during which childcare can be taken up by the father will encourage a return to employment. The provision in Ireland thus needs to be amended in line with international practice.

(b.) Paternity Leave

Prior to 2016, Ireland was one of only five Member States that made no statutory provision for paternity leave.¹⁵³ However from the fourth quarter of 2016, fathers in employment in Ireland can avail of a paid statutory two-week paternity leave after the birth of their child.¹⁵⁴ As mentioned above, the usefulness of paternity leave to female labour participation will lie in their generosity in terms of payment and their duration and thus how much opportunity it will afford mothers to participate equally in the labour market.¹⁵⁵ Economic consideration could be a

¹⁵⁰ In 2014, Sweden ranked 15th out of 142 countries, in female employment with an employment rate of 78 percent. See World Economic Forum, *Sweden: Gender Gap Index 2014*. Available at: <http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=SWE>. Accessed 14/04/16.

¹⁵¹ *ibid.*

¹⁵² Statistics Sweden, *Women and Men in Sweden Facts and Figures 2014*. Available at: http://www.scb.se/Statistik/Publikationer/LE0201_2013B14_BR_X10BR1401ENG.pdf. Accessed 07/04/16. This high participation is however not replicated on boards of private sector companies hence the consideration for quotas.

¹⁵³ Schulze E, and Gergoric M, *Maternity, Paternity and Parental Leave: Data Related to Duration and Compensation Rates in the European Union* (Brussels: European Union Publications, 2015) p. 59.

¹⁵⁴ Philip Ryan, 'Paternity Leave Mandatory for Employers' *Irish Independent* 15 October, 2015. Available at: <http://www.independent.ie/business/budget/news/paternity-leave-mandatory-for-employers-34111391.html>. Accessed 20/04/16.

¹⁵⁵ Ruhm C and Teague J, 'Parental Leave Policies in Europe and America' (1995) Working Paper NO. 5065, *NBER Working Paper Series*, p.18. See also, Ray, R., Gornick, J. and Schmitt, J. 'Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality' (2009) *Centre for Economic and Policy Research Paper*, p.13. Available at:

determinant factor in availing of parental/paternity leave, particularly where the income of one parent (usually fathers) is more than the other.¹⁵⁶ In this case the statutory amount paid on paternity leave would come into question as it is likely to be lower than the usual income where the employer does not make a similar provision. Cultural attitude and expectation in the workplace and in society that view women as the more common utilisers of maternity/parental leave could also discourage fathers from utilising leave allowances.¹⁵⁷ Such expectation could unconsciously influence the career progression of the father if the employer shares the same attitude and expectation. A two-week leave for fathers, although paid, appears inadequate to afford mothers the opportunity to return to work. Paid paternity leave entitlements are generally limited in duration across European countries where they are available. Duration ranges from one day in countries like Malta and Italy to two months in Sweden.¹⁵⁸ The drawback in these short terms is however compensated in some countries with a more lengthy parental leave, which can be shared between parents. Besides Sweden, which has a generous paid parental leave provision (discussed above), Finland also compensates for its three week (18 week days) paid paternity leave with a six months paid parental leave that can be taken by either the mother or father or shared.¹⁵⁹ The take up of paternity leave by fathers is thus not correlated to female labour participation because of short duration. In other words, duration of paternity leave entitlements and the pay need to be increased if they are to encourage mothers to return to work and progress their career.

http://www.cepr.net/documents/publications/parental_2008_09.pdf.

Accessed

14/04/16.

¹⁵⁶ Lammi-Taskula J, *Parental Leave for Fathers? Gendered Conceptions and Practices in Families with Young Children in Finland* (2007) Research Report 166, STAKES, p. 23. Available at: <https://www.jyu.fi/ytk/laitokset/yfi/en/studies/arkisto-vanhat/perspectives-on-finnish-society/external-links-books/books/Lammi-Taskula.pdf>. Accessed 18/04/16.

¹⁵⁷ Fine-Davis M, Fagnani J, Giovannini D, Højgaard L and Clarke H. *Fathers and Mothers: Dilemmas of the Work-Life Balance : A Comparative Study in Four European Countries* (New York: Kluwer Academic Publishers, 2004)

¹⁵⁸ Jurviste U, Prpic M, and Sabbati G, *Maternity and Paternity Leave in the EU* (2014), European Parliamentary Research Service. Available at: [http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/545695/EPRS_ATA\(2014\)545695_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/545695/EPRS_ATA(2014)545695_REV1_EN.pdf). Accessed 17/04/16.

¹⁵⁹ Kela, *Parental Leave for Mother or Father* (2015). Available at: <http://www.kela.fi/web/en/parental-leave>. Accessed 15/04/16.

Conclusion

The discussion in Chapter Four and Five establish that regulation, irrespective of type, cannot be efficient as a stand-alone in bettering gender balance on boards. In this chapter, this notion is discussed within the context of Ireland. Accordingly, factors, specific to Ireland, which could detract from regulatory effectiveness are identified and discussed. The chapter highlights that failure to address these systemic issues would detract from the efficiency of any regulatory intervention. This chapter therefore validates the finding in the previous chapters, within the Irish/SOE context.

The absence of sufficient women in the talent pipeline and with senior level experience generally, a gender-bias culture which permeates the political and corporate environment in Ireland are some of the crucial factors existing within the Irish society that could be detrimental to any regulatory objectives.

In spite of a transparent appointment system, a lack of accountability of the Minister's appointment decisions can undermine the usefulness of the system as a complement to regulation.

Consequently, the chapter identifies, in line with developing international practice, areas where the State's attention is required urgently so as to either mitigate or eliminate these issues. These include addressing problems associated with female labour participation and their career progression; addressing the anomalies in the appointment system to State boards and encouraging the participation and promotion of the gender balance initiative by the male gender in Irish society. A collaborative approach to be adopted under a regulatory regime is thus highlighted, whereby other initiatives will need to be put in place so that regulation can thrive. The addressing of these issues however does not suggest that Ireland will be a problem free environment for regulation. Given the experience of other countries, the mitigating or eliminating of these issues could prevent some of the negative outcomes identified such as the 'Golden Skirt' syndrome, stagnation in progress levels, or be at risk of reverting to pre-

regulation or below target level after a while. It could also ensure that female participation particularly under a soft law approach will not be tokens.

This chapter sets a base for the final recommendations and conclusion of this thesis, in the next chapter. A regulatory approach is recommended in order to address gender imbalance on Ireland's SOE boards and the systemic changes recommended here will act to complement and further this regulatory objective.

Chapter 7: Conclusion and Recommendations

A. Concluding Remarks

This thesis focused on identifying how gender imbalance on boards of SOEs in Ireland can be addressed through regulation. The aim was to comparatively analyse legislative gender quotas (hard law) and Corporate Governance Code Recommendations (soft law) in practice so as to identify what and how they can be utilised for this purpose. International practice provided a basis for comparison of the two main regulatory instruments commonly applied to address gender imbalance on boards. Legislative gender quota and Corporate Governance Codes recommendations represent two extremes in the use of regulation and thus made for adequate comparison on how both extremes can impact on boards of SOEs. This comparison was useful in providing for a robust analysis and identification in the context of Ireland's SOEs. This thesis also involved the analysis of certain institutional domestic factors that could impact on any regulatory intervention. This therefore required the analysis of certain cultural and political factors inherent in the Irish system and society with such potentials for regulatory intervention. The main finding of this thesis is that gender imbalance on Ireland's SOE boards can be effectively addressed through both regulatory approaches, albeit within significant dissimilar frameworks. Given that the Government target of 40 % is yet to be achieved on SOE boards, it is evidently time for Ireland to employ the enforcement pyramid principle and move from a non-binding quota/target to a more prescriptive approach as suggested in the discussion above. The main finding of this thesis can be broken down in the following three-pronged manner:

First, both regulatory approaches have positive and negative attributes that impact on their potency to effectively address gender imbalance. A decision as to the more suitable approach should depend on certain factors such as the desired

pace of change as both forms of approach elicit compliance to different degrees. The thesis also showed that the design of both regulatory approaches and indigenous institutional factors can determine the extent of regulatory impact.

Second, this thesis identified that both regulatory approaches do not necessarily have to be implemented exclusively but can co-exist in a mutually re-enforcing and complementary manner towards the same objective.

Third, the thesis also found that either regulatory approach is not capable of independently addressing gender imbalance on Ireland's SOE boards. The existence of cultural, political and other systemic factors in the Irish society which act as a detraction to regulatory effectiveness also need to be addressed effectively if the potency of regulation is to be realised.

The thesis began by presenting in Chapter one, a general background of the themes which the thesis was investigating which included the benefits to be gained from gender balance on boards; the relevance of gender balance on Ireland's SOE boards and the need for a more definitive approach through regulation to address the gender imbalance on SOE boards.

The discussion in Chapter two provided a more specific contextual background of the Irish SOE sector in relation to corporate governance and why the board of directors is an important organ for improved gender balance through regulation. In Chapter two, the board of SOEs was justifiably identified as an ideal context for this research to be addressed. The SOE board is unique given its accountability to a broader range of relevant stakeholders compared to the private sector company. SOEs are public institutions that are created to serve the public and society as a whole and are thus accountable to the society. Stakeholder theory is used in Chapter two to further highlight a board or companies relationship with stakeholders and how taking perspectives of all stakeholders into consideration in making decisions can make a difference between quality decision-making and vice versa. The chapter therefore relates the high level presence of females in the Irish society which is indicative of their position as significant stakeholders, as a justification for a higher level of female representation on SOE boards. Having

established this, Chapter two further introduces the element of regulation as a potential panacea in making SOE boards more representative of the society. International developments are presented to point out regulatory activities in other countries targeting SOEs and private sector companies and how these have been useful in impacting change, albeit at varied paces depending on the type and design of the regulation. The discussion highlights the more common use of targets (non-binding quota) and how compliance has been with SOEs. Evidently the influence of the State on SOEs has a correlation with compliance.

Chapter three then provided a theoretical and analytical discussion on the potentials of legislative gender quotas and Corporate Governance Code recommendations in relation to improving gender imbalance on Ireland's SOE boards. This chapter also included theoretical discussion of some relevant themes that could impact on the adoption and implementation of regulation in practical terms. The chapter set the stage for subsequent comparative analysis of both forms of regulation based on their practical implementation in the case study countries.

Chapter four analysed legislative gender quotas on the basis of its practical implementation in Norway. The discussion here sought to highlight why the law was a success in Norway so as to identify if there are potentials for a similar success within the Irish context. The discussion also included the drawbacks associated with the law and how this reflected in practical implementation in Norway with regard to improving gender balance on company boards. The chapter was addressed from a comparative perspective to the Irish environment. The idea was to identify ways through which a similar law in Ireland could avoid those drawbacks, hence the need for peculiar design of the Irish law.

The discussion in Chapter five took a similar approach as in Chapter four. The case of Australia, Finland and the UK was analysed in terms of their approach to addressing gender imbalance on boards through Corporate Governance Code recommendations/principles and provisions. Code provisions directly aimed at increasing women participation on boards were analysed in relation to their actual impact on female participation on boards. This chapter also includes an

analytical discussion of Ireland's Code of Practice for the Governance of State bodies 2009, under which SOEs are governed. The aim was to identify any similarities or differences with Corporate Governance Codes and determine how the Code of Practice may be utilized in improving gender balance on boards. A major difference identified between both Code types is in the area of flexibility i.e. 'Comply or Explain', an attribute that has significant impact on the outcome of the regulation.

The discussion in Chapter six follows upon the conclusion that in light of the experience of the countries studied in this thesis, a definitive regulatory intervention would be useful to improve the gender balance on Ireland's SOE boards. The chapter analyses how conducive the Irish society and system is for a regulatory intervention. The chapter thus identifies and analyses existing cultural, political and systemic factors that could detract from the harnessing of the benefits of regulation for its intended purpose. The chapter particularly identifies political will, pipeline talent, the availability of suitable women, transparent board appointment system and an anti-patriarchal culture as necessary to be eradicated within the Irish system so as to enhance potentials for regulatory success.

On the basis of the above findings the recommendations of this thesis are centred on implementing peculiar designs to both regulatory approaches to suit the Irish SOE sector and thereby harness regulatory effectiveness optimally. Accordingly, one of the recommendations of this thesis is that certain strategic initiatives be introduced by the Irish government that are aimed at addressing systemic structures that could be an obstacle to effective regulation. The conclusion and recommendation of this thesis is intended to enrich and help streamline discussions in Ireland on the way forward in addressing gender imbalance on SOE boards and boards generally in Ireland. It is also aimed at informing government policy-making towards improving gender balance on SOE boards.

B. A REGULATORY FRAMEWORK TO PROMOTE GENDER BALANCE ON BOARDS OF SOEs in IRELAND

I. A Conducive Environment

In spite of a challenging existing regulatory and political environment, clearly defined regulation will be a more result-oriented approach through which greater gender balance can be achieved on SOE boards in Ireland, than the present informal approach through a Government Decision and Guidelines for appointments that reflects the Government Decision.¹ Regulatory intervention in the form of legislative gender quotas and corporate governance guidelines to address gender imbalance on Ireland's SOE boards represents 'positive action' aimed at assisting women to overcome the system of obstacles and discrimination that prevents them from getting appointed to SOE boards.² As discussed in Chapter Three, a number of international instruments such as European Union Law and International Human Rights Law encourage the use of positive action by permitting the use of special measures to address under-representation of a particular group.³

Positive action aimed at improving women's opportunity translates to 'positive discrimination' and could be challenged on the ground that it discriminates against men.⁴ The onus will however now lie on the appointment system put in place to reflect that the conditional criteria of making appointments based on a pre-assessment to determine qualification of applicants where it involves an

¹ See Department of Justice and Equality, Government Approves New Measures to Promote Gender Balance on State Boards (2014). Available at: <http://www.justice.ie/en/JELR/Pages/PR14000203>. Accessed 18/04/16. See also, Department of Public Expenditure and Reform, *Guidelines on Appointments to State Boards(2014)*.

² See discussion on Positive action in Chapter Three. See also a discussion of obstacles women in Ireland are faced with in Chapter Four and Six.

³ See Charter of fundamental rights of the European Union, Art.23.

⁴ See discussion in Chapter Three.

under-represented gender, as laid down by the Court of Justice of the European Union, has been met.⁵ The importance of maintaining meritocracy on boards even while promoting diversity was highlighted several years ago in the Tyson Report in the UK.⁶ The European Commission also recognised the issue of meritocracy as a potential pitfall in regulatory intervention and included a similar criterion in the proposed EU Directive for increasing gender balance on boards of listed companies.....:

“Member States shall ensure that listed companies in whose boards members of the under-represented sex hold less than 40 per cent of the non-executive director positions make the appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate, by applying pre-established, clear neutrally formulated and unambiguous criteria, in order to attain the said percentage at the latest by 1 January 2020 or at the latest by 1 January 2018 in case of listed companies which are public undertakings”.⁷

The *UK Equality Act 2010* also recognises the potential pitfall and contains a similar provision that allows for recruitment or promotion of an under-represented gender on the basis that she/he is equally qualified with the applicant of the other gender.⁸

Against this background and in the absence of a substantive EU Directive, this thesis strongly recommends that any form of regulatory intervention in Ireland should be set against an appointment process designed to observe this

⁵ See the decision of the Court in discussion in Chapter Three, p.123 and details of the proposed EU Directive in Chapter One, p.6.

⁶ London Business School, *The Tyson Report on the Recruitment and Development of Non-Executive Directors* (2003) p.2.

⁷ European Commission *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures* /* COM/2012/0614 final-2012/0299 (COD) */

⁸ s. 159 (4) (a) of the Act.

conditional criterion through a rigorous pre-assessment procedure to ensure that the 'merit' criterion is met and thus avoid potential challenges to the law.

While it is the conclusion that a regulation route be adopted in Ireland, the peculiarities of SOEs in relation to governance, ownership and control and the Irish socio-political culture necessitate that the more commonly used regulatory options i.e. legislative gender quota and corporate governance recommendations as is being practiced in the other jurisdictions studied in this thesis may not be replicated in the exact same way for Ireland's SOEs. For example, certain significant changes are recommended in the appointment system to SOE boards so as to make regulation more effective. A legislative gender quota or corporate governance guidelines (in the case of SOEs) as the case may be will need to be designed appropriately in order to suit the SOE and Irish environment so as to achieve optimum effectiveness.

(a.) Appointment System to Boards of SOEs

The system by which directors of SOEs are appointed represents the foundation on which any regulatory intervention will thrive. As discussed in Chapter Six, the Irish system of appointment is anomalous in terms of fairness and transparency as long as the Minister continues to exercise a final discretion in State board appointments. This thesis therefore recommends that a new structure where transparency, fairness and accountability is prioritised in an appointment system, be put in place by the government. Evidently, this would mean that the Minister's discretion in appointments should be subject to some check. One way through which a more conducive system can be achieved is by sharing the responsibility of appointment to boards more definitively between the Minister, the board and the Public Appointment System (PAS) so that each participant plays a significant role that acts as a check in the role of the other participants. Under the present system, the role of the board in appointments is largely limited with only the

Chairperson making a contribution to the process.⁹ For this purpose, it is thus also recommended that the practice in private sector companies where a nomination committee of the board oversees board and CEO appointments be adopted and made applicable to SOEs in Ireland. The present corporate governance structure of SOEs does not require that boards have nomination committees (given that this was the sole responsibility of the Minister). The fulfilment of this recommendation will require that the Code of Practice for the Governance of State Bodies 2009 (Code of Practice) be amended to include the requirement of a nomination committee on boards of commercial State bodies that is, SOEs.¹⁰ The usefulness of a nomination committee is notable in the private sector companies as it serves to import the element of fairness and accountability into the appointment process.¹¹ Through the nomination committee the SOE board as a whole would indirectly play a more participative role in the process rather than only the Chairperson of the board as is the current practice.¹² The membership of the nomination committee should be determined based on the size of the board but should include a membership that will ensure that decisions taken in furtherance of their role follows a robust exchange of ideas and suggestions.¹³ The nomination committee will have the responsibility of keeping the board informed with regard to any obligations of the board in relation to regulatory requirements including in terms of the composition of the board. The Code of Practice makes it the collective responsibility of the board to ensure compliance with all statutory obligations applicable to the State body that may be set out in any relevant legislation.¹⁴ It is also the responsibility of the board to ensure that it

⁹ Department of Finance, Code of Practice for the Corporate Governance of State Bodies 2009 (Code of Practice 2009), provision 2.17.

¹⁰ The Code of Practice 2009 (note 9 above) presently only contains a requirement for Audit Committees. See provision 10.2 of the Code.

¹¹ Higgs Derek, *Review of the Role and Effectiveness of Non-Executive Directors* (2003) recommendation 10.9 & 10.12.

¹² Code of Practice 2009 (note 9 above), provision 2.17. See also *Guidelines to Appointments* (note 1 above) guideline 10.5.

¹³ For SOEs such as Coillte and Wicklow Port Company where the board consists of only four members, the nomination committee may have at least two members so as to allow for an adequate number of directors in cases where the decisions or activities of the committee may be challenged.

¹⁴ Code of Practice 2009 (note 9 above), provision 2.3.

is kept informed of all such obligations.¹⁵ The creation of a nomination committee for the SOE board to oversee the appointment process of board members is pivotal as it extends current statutory and regulatory obligations of the SOE board to now include any regulatory obligations in relation to board composition including the gender balance of the board. By this the board becomes accountable for ensuring that the gender balance on the board meets regulatory requirements.

(b.) Sharing the Responsibility

Under the proposed new structure, the Minister should cease to exercise a final discretion in the appointment of directors to SOE boards. The nomination committee should now liaise with the Public Appointment System (PAS) right through the stage of indicating to the PAS of any upcoming board vacancies and any specific requirements for filling those vacancies to the stage where the suitable board members are appointed. It is recommended that the responsibilities in the appointment process should take the following course:

- i. The advertisement of vacancies should be the sole responsibility of the PAS and should portray fairness and transparency by including non-discriminatory candidate specification requirements that could serve to further alienate potential female applicants. The existent role segregation in the Irish society (women have been segregated into job roles that has now resulted in their lacking in CEO experience compared to the men. See discussion in Chapter Six) should be taken into consideration. Specification of requirements should therefore not be specific of CEO experience so as to attract a wider range of applications that includes women;

¹⁵ *ibid.*

- ii. Nominations and suggestions of potential candidates may also be put forward by the Minister and the board through the nomination committee.
- iii. An extensive and in-depth verification process of the qualifications, experience and career history of applicants to be conducted independently by the PAS;
- iv. An interview of potential candidates be conducted by a combination of the nomination committee (or its representative(s)) and a designated committee from PAS for this purpose following which a choice for candidate or candidates for appointment will be decided, having regard for the requirements of any relevant regulation.
- v. The final list of suitably qualified potential appointees to the board will then be presented to the Minister for notification and approval. The Minister may raise objection to a potential appointee only where such objection is based on an issue pertaining to the interest of the public or based on a knowledge to which the Minister is privy which borders on the reputational character of the candidate. Any such objection should be backed by the Minister with verifiable evidence. It is however expected that any such issue which could lead to an objection by the Minister would have been detected earlier in the rigorous nomination and verification exercise by the PAS.
- vi. Appointed board members should be subsequently endorsed by the Oireachtas.

By this proposed new structure, notable anomalies such as patronage appointments and a conflict of interest which the State (through the Minister) could battle with in increasing gender balance on boards,¹⁶ which have both acted as obstacles to women being appointed on boards will be avoided.

¹⁶ See discussion in Chapter Six.

(c.) Political Commitment/Will

The presence or perception of a political will should also contribute to a supportive or conducive environment for regulation addressing gender imbalance on SOE boards to thrive. While it is difficult to ascertain the presence of requisite political will, there are certain steps/measures that can be taken by the government which will be indicative of a political will. As discussed in Chapter Six, it is not sufficient for regulation to be introduced as the introduction can be as a result of external and/or internal pressure/influence on the government. Political will is required if the regulation is to be effective as it will mean that the government will take any extra steps required to influence regulatory success. Accordingly, it is also a recommendation of this thesis that relevant steps that will support regulation, such as setting up an efficient and independent monitoring and enforcement mechanism (discussion below) and fulfilling its commitment to set up a Talent Bank of available women that was introduced by the Government in 2013, be fulfilled by the government. Such steps will not only reflect a political will but would have broader advantages of attracting legitimacy for the regulation and also increasing the compulsion of boards to comply with the regulation.

II. A Legislative Gender Quota for SOEs in Ireland

Based on the findings of this research, a gender quota law would be useful to increase the gender balance on boards of SOEs in Ireland. The benefits of such a law for SOEs, as is observable from Norway's law (and that of France and Italy) will also include an avoidance of tokenistic representation of women on these boards as is identified (Table 1, Chapter 1) and ultimately create an environment on which good corporate governance will be practiced. A practice which will reflect increased influence from women directors; more diverse opinions and robust decision-making process and an increased monitoring of management

should undoubtedly be beneficial to the organisation and the Irish society as a whole.

An appropriate way by which the law should be introduced in Ireland should be through new and specific legislation that targets Ireland's SOEs i.e. commercial State bodies specifically and aimed at legitimately addressing the gender imbalance on these boards.¹⁷ A specific legislation is necessary and advantageous for certain reasons: SOEs are classified within a broader category of State boards but have a different and more significant relevance to the Irish economy and society. Separate and specific legislation would reflect this difference and relevance and highlight the importance of gender balance on these boards. Specific legislation would also enhance the legitimacy and acceptance of the quota law as it is indicative of how important the issue it seeks to regulate is viewed by the government.

SOEs are also further classified within the sub-category of commercial State bodies on the basis of their creation as a result of which they are subject to different regulatory instruments. For instance, SOEs such as ESB and CIÉ and RTÉ are statutorily created and are thus subject to the provisions of the Statute under which they are created while others such as Dublin Port Company and EirGrid plc are created as limited companies and thus subject to the provisions of the *Companies Act 1963 to 2014*. A single source of regulation in respect of board gender composition/balance for all SOEs is therefore relevant to afford uniformity in how these SOEs respond to addressing gender imbalance. Besides, a process of amending a variety of regulatory instruments to include the quota law will prove more challenging and time consuming. This thesis therefore recommends that the introduction of a single and specific gender quota law would be an ideal approach.

The design of the quota law needs to also be taken into consideration in choosing an appropriate form of legislation. Amending existing law means that the law will be defined by the parameters of the existing framework. This could impact

¹⁷ In order to satisfy the CJEU's standard for positive action.

negatively or positively on the effectiveness of the law depending on the suitability of the existing parameters for the new law. For example, the type of penalties the existing framework provides could be less optimal in terms of the gender quota and its objectives. As illustrated by the experience of Norway, the outcome of including their quota law in existing Companies Act was positive in that country because the applicable sanction under the existing legislation served to increase the potency of the gender quota law.¹⁸ A similar approach through Ireland's Companies Act will not be suitable in this case as not all SOEs are incorporated as companies and thus cannot be regulated through the Companies Act 2014.¹⁹ Besides, a contravention of the requirements of the Irish Companies Act 2014 will not attract a harsh penalty as dissolution of the company which was the case in Norway.²⁰

A gender quota law requirement for the purpose of Ireland's SOEs should be drafted in an explicit and detailed manner with the objective target specified under all possible constitution of the board as this should aid further understanding and implementation of the quota objectives. The style of drafting for Norway's gender quota embodies similar and useful detail criteria that Ireland could adopt. It is therefore a recommendation of this thesis that the style of drafting used for the gender quota law in respect of certain Norwegian company boards including SOEs be adopted for SOEs in Ireland. A possible suggestion for Ireland's gender quota law can be drafted thus:

".....On boards of directors of commercial State bodies, both genders shall be represented in the following manner:

¹⁸ The ultimate sanction of dissolution was applicable where the board of directors did not meet statutory requirement. *Norwegian Company Public Limited Liability Companies Act 1997, s. 16-15(2)*.

¹⁹ See discussion in Chapter One.

²⁰ An exception is the failure to file an Annual return on time which could ultimately result in the dissolution of the company. See Companies Registration Office, *Missed Deadlines* (2016). Available at: <https://www.cro.ie/annual-return/missed-deadlines>. Accessed 15/05/16.

where the board of directors consists of two to three members, both genders shall be represented on their board;

where the board of directors consists of four or five members, each gender shall be represented by at least two members;

where the board of directors consists of six to eight members, each gender shall be represented by at least three members;

where the board of directors consists of nine members, each gender shall be represented by at least four members;

where the board of directors consists of more members than nine, each gender shall be represented by at least a 40% representation”.

The above quota requires gender representation ranging between 33.3% to 40% and thereby is still adequate to ensure that a ‘critical mass’ is achieved for both genders.

In line with the discussion in Chapter Three, the law should also include a provision that conforms to the decision of the Court of justice of the European Union (CJEU), requiring that appointments be made based on a comparative pre-assessment of candidates’ qualifications so as to meet the equality in merit criteria. The law should also go further to include that where the comparative pre-assessment is conducted and a person of the under-represented gender, that is women, becomes non-eligible, evidential proof should be shown that all necessary steps were taken to appoint a woman to the position. A situation where all has been done and no suitable woman for appointment was identified will be considered an ‘exceptional circumstance’.²¹

²¹ See further discussion on how this will be practicalised below in chapter.

a. Useful Parameters for a Legislative Gender Quota

(i.) Sanctions

As was the case with the Spanish law on gender balance on boards, a quota law could lack in effectiveness where it is not accompanied by punitive and compelling sanction. The German quota law which came into force in January 2016 also illustrates how non-punitive sanctions can detract from the effectiveness of a quota law. In the event that affected companies failed to achieve the law's 30% requirement on their supervisory boards by January 2016, any further appointments remain null and the seats meant for female directors should be left vacant.²² It is speculated that this sanction unlike the French and Norwegian quota laws, lacks the necessary 'teeth' to compel compliance.²³ At the end of 2015 only 20.3% of supervisory board positions in Germany's 100 largest companies (affected companies) were occupied by women.²⁴ Of all affected companies, only 28% had achieved the quota target by the end of 2015.²⁵ In contrast, the severity of Norway's quota law sanctions influenced compliance greatly and contributed to the success of the law.²⁶ The accompaniment of sanctions and particularly punitive sanctions to improve compliance is particularly important with regard to SOEs given their relationship with the State as the law will serve to ensure that a conflict of interest does not jeopardise the objective

²² *Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst* Vom 24. April 2015.

²³ Renuka Rayasam, 'Why Germany's New Quota for Women on Boards looks like a Bust' (2016). Available at: <http://fortune.com/2016/03/11/germany-board-quota-women/>. Accessed 16/05/16.

²⁴ Holst E and Kirsch A, 'Corporate Boards of Large Companies: More Momentum Needed for Gender Parity' (2016) *DIW Economic Bulletin* 3 p.14 Available at: http://www.diw.de/documents/publikationen/73/diw_01.c.524853.de/diw_econ_bull_2016-03.pdf. Accessed 16/05/16.

²⁵ *ibid*, p.16.

²⁶ See discussion in Chapter Four.

even in the long term.²⁷ However, this thesis recommends that an ‘enforcement pyramid’ approach whereby applicable sanction progresses from a non-punitive sanction to a punitive one so as not to create a hostile environment for SOEs when the need has not arisen.²⁸ This approach is in recognition of the existing non-punitive regulatory environment for SOEs and the higher rate of compliance that could be expected from SOEs as instruments of the State. An applicable ultimate punishment at the top of the pyramid could be the withholding of State funds from the SOE even though the impact of this sanction on SOEs might vary given that the extent of dependence of SOEs on Exchequer funds also varies. Shannon Group plc and Dublin Port Company for example, are funded exclusively from their own resources and receive no funds from the Exchequer.²⁹ It may also be conflicting to impose such sanction on dependent SOEs as it is likely to affect the SOEs capability to carry out its social objectives and thus be of a detrimental impact on the public. A partial withdrawal of funds is however recommended, as is being applied under the political gender quota where only 50 percent of the fund is withheld.³⁰ As for SOEs that do not depend on the Exchequer for funding, other necessary non-financial support which the State provides may be withheld. However, it is expected that nominating committees of boards will take all necessary steps to ensure that the period of non-compliance with the gender balance requirements does not persist to warrant the enforcement of this ultimate punishment.

Based on the foregoing, it is therefore also the recommendation of this thesis that a variety of applicable sanctions that are progressing in coerciveness can be included in the gender quota law and become applicable to SOEs based on specified criteria. The criteria will be applied on the basis of how long non-compliance has persisted and what steps have been taken to have the required gender representation on the board (see discussion below).

²⁷ This would be particularly practicable where an independent monitoring of the quota law is in place.

²⁸ See discussion of the Pyramid Enforcement approach in Chapter Three.

²⁹ Shannon Group plc is however a new creation as it was only incorporated in 2014 and therefore it could require State funds at some point in its operation in the future.

³⁰ *Electoral (Amendment) (Political Funding) Act 2012*, part 6 s.42.

The gender quota law should therefore include the following variety of sanctions which have been included in successful gender quotas in countries such as France and Italy:

“where it has become evident that the board of a commercial State body is not in compliance with the gender representation requirement of this legislation, the following shall become applicable :

1. appointments made contrary to the requirement of the law while the contravention of the gender representation requirement persisted will be nullified, except where ‘exceptional circumstance’ has been shown for non-compliance.

(a) an occurrence of (1) above should not however affect the decisions or activities taken by the board while the contravening appointment persisted.

(b) Where after (1) has been applied and following subsequent vacancies arising, the contravention persists as a result of failure to appoint a person of the under-represented gender, without showing ‘exceptional circumstance’;³¹

2. the fees of all serving directors to be withheld for the period until when a director is appointed and the board becomes compliant with the law.

Where non-compliance with the law persists to a time where it has become observable that the board is displaying obvious and unreasonable disregard for the law by not showing exceptional

³¹ This situation is expected to be a rare occurrence if all measures necessary to support regulation are put in place. One of the main aims of the measures will be to ensure the availability of a wide array of women and also attract them to apply for board positions.

circumstance or any other reason that may be considerable, then the following shall become an option to be enforced against the SOE:

3. Any financial or non-financial (for those not funded by the Exchequer) assistance or support to which the SOE is entitled or requires from the State shall be withheld in part, the extent of the part to be approved by the Oireachtas, until the period where the board becomes compliant with the law.³²

(a) In addition to (3) the nomination committee of the board shall appear before the Oireachtas to show the following:

- i. through documentary evidence, the rigorous and robust steps which the board in liaison with the Public Appointment Service (PAS) has taken in order to appoint the under-represented gender on the board;
- ii. any further cogent steps it plans to take in order to correct the contravention.³³

The inclusion of sanction also represents a significant departure from the existing non-binding target approach and suggests, though arguable, increased political commitment for change.³⁴

(ii.) Target Date for Achievement

This thesis also recommends that the gender quota law should include a compliance date by which time the gender representation requirement on SOE

³² Given that all SOEs do not depend on the State for support equally it is relevant that the penalty is applied on a case by case basis.

³³ See further discussion on this below.

³⁴ The Government may rather than having the political will, be influenced by domestic or external pressure. See discussion on EU impact in Chapter Three and see also Chapter 6.

boards should be achieved. This is to encourage accountability and ensure that the law can be effectively monitored and enforced. One of the drawbacks to the approach currently being used i.e. non-binding Government target is that there is no set time within which the 40% target should have been achieved, leaving it open-ended and thus no standard or deadline against which SOEs can be held accountable. Evidently, the design of the non-binding target reflects a non-committal attitude of the Government to the issue of gender imbalance, which is an anomaly the introduction of a gender quota law could correct. A set date of achievement failing which the law will be implemented will also serve to create a perception of political commitment.

The usefulness of a target date of achievement is evident under the gender quota regimes in a number of countries including Norway and also in France where affected companies were seen to comply with the law before the set date so as to avoid being penalised/ sanctioned.³⁵ The inclusion of a set date under the Austrian non-binding target for SOEs can also be said to have contributed to the success of the target in comparison to Ireland's non-binding target.³⁶

The significance/importance of gender balance on Ireland's SOE boards suggests an urgency with which imbalance needs to be addressed and thus an earliest possible set date for achievement such as 2020/2022, will best serve this objective. Notably, target dates for SOEs are often set at an earlier date than listed companies indicating an expectation that SOEs will comply with the law at faster rate.³⁷ This research does not however recommend a short target date as it could result in appointments being made too quickly without the necessary diligence in identifying suitable candidates. Ultimately, board quality may be compromised.

Factors such as the practice of board refreshment and the tenure of directors in Irish SOEs need to be taken into consideration in setting a date as these factors

³⁵ See discussion on International developments in Chapter Two.

³⁶ *ibid.*

³⁷ This was the case with SOEs in Norway and Finland under the countries' quota laws. See discussion in Chapter Four and Five.

determine the frequency of vacancies that will arise upon which new appointments can be made in compliance with quota requirements. As discussed in Chapter Five, lengthy director tenures have contributed to the slow and modest growth in women representation on boards in Ireland and also on a global level. There is no provision under Ireland's Companies Act 2014 and the Code of Practice 2009 regarding the maximum period directors can serve on the board of SOEs. However director tenure is provided for some SOEs by specific statutory instruments under which they are established.³⁸ The *Guidelines on the Appointments to State Boards 2014* however 'advises' that no director should be appointed for more than two terms.³⁹ The Guideline though is silent on the number of years that should constitute a term. Evidently there is no uniform approach with regard to director tenure across all SOEs.⁴⁰ It would appear however that in practice, a five year term is being observed across SOEs following which majority of directors become reappointed.⁴¹ The essence of board refreshment is also to identify the skill set on the board to ensure that the composition of the board meets the standard of skill and experience required at all times to perform the role of the board effectively. The lack of a statutory or regulatory provision for director's tenure indicates that the issue of board refreshment and director tenure may not be conducted with the aim of actually refreshing the board to make way for new directors where needed. A review of 2014 annual reports of SOEs showed that the evaluation exercise was not reported to have been conducted by all boards and where it was conducted, a refreshment of the board was not necessarily the focus.⁴² The Code of Practice 2009 is limited in its addressing of board evaluation as it only refers to addressing competency gaps on the board when vacancies arise rather than initiating

³⁸ See examples of SOEs in Chapter Five.

³⁹ Department of Public Expenditure and Reform, *Guidelines on Appointments* (note 1 above) guideline 13.2.

⁴⁰ See discussion in Chapter Five, p.277.

⁴¹ Author's survey of 2014 Annual reports of SOEs (Table 1, Chapter One).

⁴² For example where SOEs such as ESB and Ervia reported an evaluation exercise that involved an assessment of the skill requirement on the board, SOEs such as Bord na Mona was not this detailed in their report and thus it is safe to assume that this was not the focus of the exercise. In addition, SOEs such as EirGrid Plc, Dublin Port Company and Port of Cork did not report on a board evaluation exercise for 2014.

vacancies in order to address such gaps. In effect, vacancies would rarely arise sooner than the normal process. This can be addressed through a requirement for a more specific broad refreshment exercise.⁴³

Following from the above, this thesis therefore recommends that in order for the issue of gender imbalance on SOE boards to be addressed within the earliest possible time, the Code of Practice should be amended to require SOE boards to conduct board refreshment exercises objectively, annually, which will be specifically aimed at identifying competency gaps or directors who do not add value upon which some directors may be asked to compulsorily retire prior to the expiration of their tenure. This should be the responsibility of the nomination committee and the Minister acting in an advisory capacity. This will serve to weed out certain directors and thereby create vacancies through which the requirements of the quota law can be complied with at an early date. The requirement for board refreshment exercise should also include a report of how the exercise was conducted to be included in the annual report as this will encourage a transparent, fair and thorough exercise being done.

This thesis also recommends that director tenure on SOE boards (and in fact boards in general in companies in Ireland) be statutorily provided for and given a shorter term than the current practice, taking into consideration the need for quicker rotation of SOE directors to ensure the composition of the board is adequate as regards the needs of the SOE and regulatory requirements at all times. In Norway, directors on boards of public limited liability companies including SOEs can only serve for a maximum of four years which includes re-appointments.⁴⁴

⁴³ Code of Practice 2009 (note 9 above), provision 2.17.

⁴⁴ The law specifically provides for a term of service of two years or a longer term as stated by the Articles of Association which should not be more than a four year term. See *Norwegian Companies Act 1997* s. 6-6.

(iii.) Limitation of Board Membership

It is also the recommendation of this thesis that the law addresses the number of memberships a director can hold across SOE sectors and on other company boards.⁴⁵ It is a pertinent issue that should be addressed as it is likely to create an avenue through which more women can be appointed on SOE boards. Irish Companies Act restricts board membership to 25,⁴⁶ however an application of this within the SOE sector could be contributory to women's low representation on SOE boards. The fewer number of boards a director can be appointed to, the greater the number of vacancies that more women can be appointed to fill up. The 2010 investigative study 'Mapping the Golden Circle' identified a link between multiple directorships by a certain group of directors across Ireland's boards and a low representation of female directors on Ireland's boards including SOE boards.⁴⁷ Regulating the number of memberships is also necessary to ensure that in complying with the regulation, appointments are not limited to women with board or CEO experience as this pool of women will be few given women's prior participation in Ireland. While the current representation of women on SOE boards (Table 1 Chapter 1) does not show significant multi-directorships it is likely that the introduction of a law possibly with a target date of achievement and applicable sanctions will lead to a reliance on these few women and could possibly result in the creation of 'Golden Skirts' as was the case in Norway.⁴⁸ In a bid to meet the target date of 2017, in 2016 French companies struggled to find adequate suitable women to fill up the required positions.⁴⁹ Also, the issue of multi-directorship requires a balancing approach so as to ensure the role of the

⁴⁵ This issue needs to be addressed by any form of regulation that is relied on to correct the gender imbalance on SOE boards and not necessarily only the quota law.

⁴⁶ The limitation only applies for private companies limited by shares. Directors could therefore be members of other types of companies in addition to this restricted number. See Companies Act 2014 s. 142.

⁴⁷ Clancy P, O'Connor N and Dillon k, *Mapping the Golden Circle* (Dublin: TASC/New Island, 2010) guideline 3.16.

⁴⁸ See discussion in Chapter Four.

⁴⁹ Adam Thompson, 'French Boards Rush to Meet Quotas for Female Membership' *Financial Times*, 22 March 2016. Available at: <http://www.ft.com/intl/cms/s/0/5b542782-ee9e-11e5-aff5-19b4e253664a.html#axzz48qNr4K7q>. Accessed 15/05/16.

board is not compromised. In Chapter Four this thesis argued that multiple memberships can be useful for boards in relation to resource dependence benefits and in gaining the necessary experience, commitment on too many boards could also impact negatively on a director's ability to contribute qualitatively in his or her role. There is therefore a need to find the right balance where board memberships do not become detrimental to the activities of the board. To this end, it is the recommendation of this thesis that a different limitation of board membership be introduced specifically for the SOE sector other than that permitted under the Companies Act 2014. Board membership within the SOE sector should be limited to three boards given the few SOEs operational in Ireland so as to create opportunities for more directors to participate. The limitation of roles would also be adequate to ensure a balance between the benefits and drawbacks of multi-directorships.

III. An Approach through the Code of Practice for the Governance of State Bodies (Code of Practice)

In the interest of continuity and to avoid attracting hostility toward the objective of increasing gender balance, an approach using the existing Code of Practice will also be a useful regulatory instrument in improving gender balance on SOE boards, albeit with significant amendments. The amendments would be aimed at attracting a high level of compliance in the shortest possible time. Such amendments may only also target commercial state-sponsored bodies (SOEs). The findings of this research did not reveal an incapability of a soft law approach in respect of improving the gender balance on boards. Certain drawbacks in the approach such as a slower pace of progress and a varied level of gender balance across boards were noted which could be potentially handled in designing a similar approach for Ireland's SOEs.

While there is no evidence (based on annual reports of SOEs) of substandard or non-compliance with the provisions of the Code of Practice particularly in relation

to corporate governance requirements, the inclusion of requirements with regard to gender representation on boards in a language which connotes a 'carrot' rather than a 'stick' approach, could attract a slow and varied response. To this end, it will be useful to also include tangible requirements such as requirements to make disclosures, and penalties that will become enforceable where the board does not have the requisite representation of both genders. It is important that the requirement avoids ambiguity whereby even though required representation is not expressed in numerical terms the objective of attaining reasonable balance of both genders on the board is understood. For this purpose, a possible phrasing of the Code Provision is recommended as thus:

For commercial State bodies,

1. The board of directors is required to have a representation of both genders to the extent that no single gender dominates the entire composition of the board.
 - (a) The board shall be deemed as dominated by one gender where a single gender occupies a minimum representation of three-quarters of positions on the board.

2. where representation of one gender is not in compliance with the provisions of this Code, any subsequent appointments should, as much as is reasonably and practically possible, be of the under-represented gender. In the event that no suitable candidate of that gender becomes available, the appointment of the over-represented gender shall be considered as one under 'exceptional circumstance' and the imbalance so created shall be rectified as soon as the circumstance permits.⁵⁰
 - (a) where the above (2) is the case, 'exceptional circumstance' will be proven where it can be shown that all necessary and required action

⁵⁰ This refers to where subsequent vacancies come up then the under-represented gender should be appointed.

to find a suitable person of the under-represented gender has been taken unsuccessfully.⁵¹

(b) where it cannot be proven as in (a) above that 'exceptional circumstance' has occurred and all necessary required action to find a suitable person of the under-represented gender has been unsuccessful, the board shall be held accountable and should ensure that any other subsequent appointments following that which tipped the gender balance requirement of the board be of a person of the under-represented gender.

A requirement that the board is not dominated by a single gender will ensure that in the absence of mentioning specific numerical representation for both genders, the under-represented gender should at all times still have a significant and influential representation that would range between 30-40% as a single gender occupying more than 60% will be considered as dominating.

In line with the recommended new appointment structure discussed above, this thesis also recommends that the Code of Practice be amended to include provisions effectively sharing the responsibility of board appointments between the board and the Minister and thereby making both accountable in respect of board composition. To this end, provisions 3.4 and 3.5 of the Code of Practice may also be amended to include a penalty for directors that will become applicable during the time the non-compliance persists.

Provision 3.4 requires that:

“the directors should ensure that the Chairperson keeps the relevant Minister advised of matters arising in respect of the State body”.

Provision 3.5 requires that:

⁵¹ See discussion on these necessary steps below in chapter.

“If a director finds evidence that there is non-compliance with any statutory obligations that apply to the State body, he/she should immediately bring this to the attention of their fellow board members with a view to having the matter rectified. The matter should also be brought to the attention of the relevant Minister by the Chairperson indicating (i) the consequences of such non-compliance and (ii) the steps that have been or will be taken to rectify the position”.

The recommended amendment should thus include the following :

- i. an inclusion of a list of matters that should be brought to the attention of other board members and the Minister. Non-compliance with the requirement of gender representation should be one of such matters.
- ii. A requirement that the communication with respect to (i) above, should be in documented form.
- iii. A provision that where such non-compliance persists for more than 60 days and there is no documentary evidence to show that the directors had communicated to other board members and the Minister, all directors serving at the time shall be liable to be penalised.

The amendment imports a ‘stick’ character, albeit which could be mild initially based on an enforcement pyramid approach, into the requirement which increases the pressure on directors with regard to gender balance on their board and their accountability. It is expected that the pressure will influence and guide appointments as conducted by the nominations committee and PAS.

(a.) Disclosure and Reporting Requirements

An additional way by which the Code of Practice can be potentially useful in increasing gender balance on SOE boards is by including disclosure and reporting requirements in relation to gender representation on boards of SOEs. This thesis thus recommends that the present reporting and disclosure obligations of SOE boards should be extended to include a disclosure requirement in respect of gender representation. The responsibility placed on boards in the preparation of the accounts of the SOE should also be extended to include the preparation of a corporate governance statement which will include a disclosure in relation to the gender representation of the board.

Based on the analysis of the case studies in this research, disclosure and reporting frameworks support regulatory initiatives in the UK and Australia towards improving gender balance on boards.⁵² Recent changes to the Finnish Corporate Governance Code also recognise the benefits of a reporting framework by including a requirement that companies disclose their objectives in line with both genders being represented on the board, means in achieving those objectives and an account of the progress towards the objectives.⁵³ The Australian Corporate Governance Principles and Recommendations include a robust disclosure and reporting regime which was useful in making companies accountable to the issue of gender balance on boards and other levels across the entire company.⁵⁴ The Australian regime which includes the requirement for companies to have a diversity policy and measurable objectives against which the board may be assessed and to disclose same also influenced the improvement of gender balance observed on ASX 100 boards.⁵⁵ The approach to disclosure and reporting in Australia is also useful for influencing the creation of a pipeline of talent within the company as it identifies where there is a dearth of female representation and

⁵² See discussion in Chapter Five, 250.

⁵³ Securities Market Association, *Finnish Corporate Governance Code 2015*, Recommendation 9.

⁵⁴ See discussion in Chapter Five, p.250. Although that of the UK was also robust the requirements were contained in a separate legislative document.

⁵⁵ *ibid.*

thereby attracts attention. The importance of a robust reporting framework was also highlighted in respect of Australia's Government boards. An inadequate reporting framework was identified as one of the drawbacks to the existing Government target policy.⁵⁶ The 2015 Bill proposing that the Government policy be passed into law includes a requirement for the publication of reports each financial year by portfolio departments, setting out the gender composition of each Government board within that portfolio.⁵⁷

For these reasons this thesis recommends a similar robust reporting and disclosure regime for Ireland's SOEs. Female talent is also identified to be significantly lacking in the pipeline in Ireland's SOEs.⁵⁸ The Code of Practice should be amended to include a similar disclosure and reporting Provision which could read as follows:

Commercial State bodies should:

1. Aim to achieve the gender representation policy set by this Code by requiring for the board or the nominations committee of the board to set measurable objectives for achieving gender balance in line with the requirements of this Code;
 - a. assess annually both the objectives and the State body's progress in achieving the measurable objectives in (1) above;
 - b. disclose at the end of each reporting period the measurable objectives set by the board or the nominations committee of the board for achieving the gender representation policy set by this Code and its progress towards achieving them, and:

⁵⁶ Commonwealth of Australia, The Senate, Finance and Public Administration Legislation Committee, *Australian Government Boards (Gender Balanced Representation) Bill 2015* p.20.

⁵⁷ The Parliament of the Commonwealth of Australia, The Senate, *Australian Government Boards (Gender Balanced Representation) Bill 2015, (Explanatory Memorandum)* p.2.

⁵⁸ See discussion in Chapter Six p.315.

- c. disclose the respective proportions of both genders on the board, in senior executive positions and across the whole SOE.

IV. An Approach through a Modified Non-binding Quota

The existing Government target of 40% women representation on State boards is an example of a non-binding quota. Despite its being non-binding this approach has been utilised more successfully in countries such as Finland and Austria to increase female directors on SOE boards. There are certain attributes in relation to the approach in both countries which are lacking in the Irish version. In both countries, the non-binding quota is supported by threats of legislative quota and in Austria a date of achievement of the target is also included in the policy.⁵⁹ It is safe to suggest that these factors provided the extra force to compel higher compliance. In both countries the targets were achieved in a short time while Ireland is yet to attain the target after many years.

Accordingly, it can be suggested that if the government chooses to retain the non-binding quota approach, relevant changes aimed specifically at SOEs will need to be made so as to enhance its force. A significant potential drawback with this approach however is that since the non-binding quota is a Government policy and therefore could change with subsequent governments it should not be considered very strongly to achieve sustainable change. Subsequent governments may choose not to maintain the policy. However, given that it has been active since 1992 and consistently adopted by the different governments over the years it may be safe to also proffer changes to its design in the event that it remains active. In the absence of a more substantial political will to take more active steps to increase gender balance on SOE boards, this approach may continue to be relied on. Where this occurs, supporting the policy with the threat of a

⁵⁹ See discussion in Chapter Two p. 86.

legislative quota where SOEs fail to attain gender balance by a certain date could be useful.

V. A Co-existing Regulatory Environment

Although this research is aimed at identifying both regulatory types as alternatives, it does not exclude the fact that gender quotas and Corporate Governance Guidelines can mutually co-exist within the same regulatory environment, with both reinforcing the other. In fact, in most of the countries where legislative gender quotas has been implemented, such as Germany, Norway, Italy, Netherlands and Spain the issue of gender imbalance was first sought to be addressed through Corporate Governance Code recommendations.⁶⁰ Legal instruments in the UK and Australia are also shown to be mutually reinforcing to the Recommendations and Provisions of Corporate Governance Codes in both countries.⁶¹ The slow and uneven impact of the soft law instrument usually paved the way for more direct gender quota rules to be introduced. However, the introduction of the law did not result in the total exclusion of existing recommendations in relation to gender imbalance on boards. One way of identifying a mutual reinforcement of both instruments is that as regulatory instruments it can be expected that some influence, albeit one more than the other, is being exerted on companies/boards.

While traditionally Corporate Governance Codes may have less force and thus less potency in attracting compliance, there are companies/boards that are inclined to the highest standards of good governance and will implement the principles and recommendations of a Code even without coercion. These companies/boards are even more likely to sustain gender balance over a longer period than those coerced into it. They are also likely to grow hostility towards a coercive law. Introducing a quota law for Ireland's SOEs should therefore not

⁶⁰ *ibid.*

⁶¹ See discussion in Chapter Five p.268 on gender related disclosure requirements in both countries.

necessarily preclude an inclusion of gender balance related provisions in the Code of Practice as proposed above.

C. Addressing Non-Compliance with Regulatory Requirements

It may however occur in practice, that in spite of regulatory requirements, the required gender representation may not be achieved on SOE boards at all times. For this reason, it is recommended that the regulation includes terms for exceptions from the obligation of gender balance on SOE boards. Exceptions will apply where circumstances have meant that it has become reasonably impractical to achieve the gender representation requirements of both genders. To prove that such is the case, it will be required of the nominations committee of the board and the PAS to show that necessary efforts have been made towards attracting and identifying a suitable candidate of the under-represented gender for appointment on the board.⁶²

Necessary efforts will involve all the following actions having been taken:

- i. board vacancy advertised on www.stateboards.ie as required by the Guidelines and that the advertisement was structured in a way to attract a broad group of applicants across both genders. The advertisement should not have included required qualifications that are exclusionary to women;
- ii. relevant databases such as the Talent Bank⁶³ has been searched for potential suitable candidates of the under-represented gender;

⁶² A similar approach is included in the 2015 bill proposed for Government Boards in Australia (note 57 above).

⁶³ As proposed to be created by the Irish Government.

- iii. executive search firms that are in arrangement with the government have been consulted in the search for potential suitable candidates;
- iv. That following the above, a shortlist of both genders had been compiled and shortlisted candidates vetted and interviewed
- v. That each candidate had been assessed on a comparative basis in line with the criteria of merit.

Having undertaken the above steps, the appointment was then made in the absence of an equally qualified candidate of the under-represented gender. It is important that the entire appointment process from the search for candidates and the vetting process are carried on in a fair and transparent manner with relevant documentary evidence that this has been the case.

D. Independent Monitoring and Enforcement

Adequate and effective monitoring and enforcement are very essential components of an effective regulatory mechanism. They are even more essential with regard to regulating SOEs in light of the interest of the State in them. A conflict of interest is likely to arise where the State is the source of regulation while also having commercial interest in SOEs. The State may be reluctant to monitor and enforce regulation effectively if it perceives that such monitoring may stifle enterprise in the SOE.

An independent and adequately empowered regulatory agency is therefore recommended to perform this crucial role if any of the recommended regulations are to be utilised optimally. The agency will particularly be more effective where it is independent from the State and SOEs in areas of personnel and financial resources, has a capacity to make decisions independently and has the expectation of continuity in its role. It is also pertinent that a specific mandate in

relation to SOEs is given to the agency and is strengthened by legislation as this will further increase their independence and prevent any undue interference from the State. In Ireland, the creation of regulatory agencies such as the Office of the Director of Telecommunications Regulation (replaced by the Commission for Communications Regulation in 2002); the Competition Authority (replaced by the Competition and Consumer Protection Commission in 2014) created in 2002 and the Health and Safety Authority created in 1989 in performing monitoring and enforcement functions has historically been prompted by europeanisation and/or the need for a more independent and efficient system, free from Government interference.

The extent to which the State is mindful of the independence of these agencies is however not established. For instance, key officials of regulatory agencies are appointed by the relevant Minister which could be indicative of an allegiance to the Minister particularly in light of patronage appointments. By this, the independence of such appointees may not be guaranteed. Nonetheless it can be suggested that any interference of the State that is likely to undermine the autonomy of the agency could be prohibited under legislation requiring that the appointment of key officials of the agency become a parliamentary responsibility and also if there arises the need for the State to interfere in the operation of the agency, such interference should be shown to be necessitated as a matter of greater public interest. To this end also, it is recommended that the structure in the UK in relation to the Commissioner for Public Appointments be considered as a blueprint or best practice for replication in Ireland. The Commissioner for Public Appointments possesses significant independence through which he/she can effectively monitor the Minister's appointments to public bodies and thus act as a check on the Minister's powers in line with regulation.⁶⁴ A similar practice with that of the UK can be an effective monitor for Ministerial appointment power in Ireland,⁶⁵ and also be effective in monitoring an appointment system involving the board and PAS as recommended above. The Independence of the UK

⁶⁴ See discussion in Chapter Six.

⁶⁵ Under the current system where the Minister has the sole discretion in making final appointments.

Commissioner ensures she/he's ability as a monitor and regulator and thus Ireland can seek for this level of independence. The Commissioner is appointed by the Crown and not the State and thus is not a civil servant. The functions and expectations from the Commissioner are also provided for in the Public Appointment Order in Council, issued by the Crown, rather than the State.⁶⁶

E. Aiding and Supporting a Regulatory Framework

In Chapter Six certain structural changes in the workplace that particularly addresses the pipeline issue and availability of women generally, were proffered and recommended as relevant so as to support regulation and thus enhance regulatory effectiveness. Apart from these, there are also strategies which the Irish government could develop and participate in, which are aimed at supporting regulation in order to further its objective of gender balance on boards.

i. Extensive Advertisement of Board Vacancies

The Guidelines on Appointment to State boards 2014 provide for the publication of vacancies on State boards on stateboards.ie.⁶⁷ This appears to be a limited approach given that it aims to attract a wide array of applications from across the society. It could be the case that not as many people will access stateboards.ie to keep informed on vacancies as compared to where such vacancy adverts are disseminated through several other mediums. Advertisement through other mediums such as newspapers and online forums including Twitter, Facebook and

⁶⁶ Public Appointments Order in Council 2015. Available at: http://publicappointmentscommissioner.independent.gov.uk/wp-content/uploads/2015/08/CO-DC00-PRN01_Baljit-Rayit_0633_001-1.pdf. Accessed 19/04/16.

⁶⁷ Guideline on Appointments (note 1 above) guideline 7.2.

LinkedIn via a dedicated accounts, is therefore recommended to be included in the Guidelines as other forms through which vacancies can be advertised. A similar practice of extensive advertising in such forums is being utilised in respect of State boards in the UK and Australia.⁶⁸ More extensive advertisement will be required in Ireland in order to reach a greater number of potential applicants particularly women who do not belong to necessary networks through which they could get the information.

ii. Development and Consultation of Women's Databases

The availability of women to occupy board positions in fulfilment of regulatory requirement is crucial if the development of 'Golden Skirts' or a non-fulfilment of regulatory requirement (the situation of 'exceptional circumstance' discussed above) are to be avoided under a regulatory regime. In order to ensure that a lack of women does not jeopardise regulation, it is recommended that the government develop a Database of women such as 'Talent Bank' and that it is extensively promoted to attract usage. It is expected that the 'Talent Bank' already being developed in Ireland will become operational in no distant time. The Database should be refreshed as often as possible, at least every six months, to keep it up to date and include as many women that become available and interested. Reliance on a database of women is a practice in Norway, and the UK alongside regulation. The Female Future Program operating in Norway and in the UK the Cranfield School of Management publishes '100 Women to Watch', a reference point for identifying available women. In Australia, the government also operates BoardLinks which is a database system of available women as a support

⁶⁸ UK Cabinet Office, Increasing Diversity in Public Appointments (2013). Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268822/Public_appointments_diversity_plan.pdf. Accessed 21/04/16. See also Australian Government, Australian Government Board Vacancies. Available at: <https://www.ausgovboards.gov.au/vacancies>. Accessed 21/04/16.

towards meeting the 40 % target for female representation on Government boards and getting more women on private sector boards.⁶⁹

It is also recommended in this thesis that relationships and arrangements should be entered into with women organisations such as National Council of Women Ireland (NCWI), voluntary organisations and initiatives such as Boardmatch Ireland to encourage these organisations to refer their members, participants or identified candidates to apply for advertised vacancies. Women are more likely to participate in these kinds of environment which is usually dominated by women and may be apprehensive to come forward on their own despite having requisite leadership skills and qualification.⁷⁰ It will be a more concerted and robust effort to include organisations where women are more open to participate in, in the search and identification of female talent.

iii. Reliance on Executive Search Firms

This strategy is also aimed at addressing the availability of women to fill the required board positions. The use of executive search firms in sourcing for diverse directors on boards was recommended in the UK's Tyson Report⁷¹ and re-emphasised by Lord Davies as a relevant participant in the appointment process.⁷² This thesis recommends that for a wider and more robust search for women, the nominations committee and PAS should establish a relationship with executive search firms in the private sector to consult when applicants need to be attracted to apply for a vacancy. This would serve as support for all other processes put in

⁶⁹ Australian Government, BoardLinks: Supporting Women into Leadership. Available at: <http://www.boardlinks.gov.au/about>. Accessed 21/04/16.

⁷⁰ See discussion on women's labour participation in Chapter 4 and how a segregation of roles and marginalisation in the workplace or the society as a whole could lead to such apprehension on the part of Irish women. While this is not a generalised outcome for all Irish women it does reflect negatively on availability where certain people feel this way. The idea is to erase or prevent as much as possible a situation where such apprehension is a major drawback to the availability of a wide array of women for board positions.

⁷¹ See Tyson Report (note 8 above) p. 9.

⁷² Lord Davies, *Women on Boards* (Department for Business, Innovation and Skills, 2011) Recommendation 8.

place to enhance transparency of the process in Ireland. Search firms should be intimated when a vacancy arises and the under-represented gender needs to fill up the vacancy in order to attain the regulatory requirement. This will direct their search towards the needed gender.

iv. Provision of Mentoring and Training Opportunities for Women

Mentoring and training are a crucial support for regulatory objectives as they serve in preparing women for board positions and also serve to develop and entrench them with necessary skills and attributes while serving on the board. Women in Ireland may be reluctant to come forward for leadership positions believing that they lack the necessary skill and attributes for such roles. Mentoring and training will change this perception in women and encourage their participation on boards.⁷³ This thesis thus recommends that the government actively sets up mentoring and training structures for the purpose of increasing the availability of women with requisite attributes and skills for SOE boards and to provide frequent training and thus development even while serving on boards. Mentoring is also useful for the creation of a pipeline as through such a program, women in mid-level positions in the public service can also be targeted so as to encourage them in balancing demanding roles and staying on in their career rather than exiting the workplace. The European Commission highlighted coaching and mentoring of women in career development as a necessary element towards achieving gender balance in organisations.⁷⁴ It is however important that the mentoring relationship is designed in a way that the mentor and the mentee have adequate opportunities to interact so that the relationship is beneficial. In the UK, the Mentoring Foundation organises mentoring programmes for potential

⁷³ Noe R, 'Women and Mentoring: A Review and Research Agenda (1988) 13(1) *Academy of Management Review* 66.

⁷⁴ European Commission, *The Gender Balance in Business Leadership* (Commission Staff Working Paper SEC (2011) 246 final.p12.

board members and women in the pipeline.⁷⁵ The programmes are structured within a 12 month period during which a number of meetings of both parties are recommended and workshop, training and networking sessions for mentees are encouraged.⁷⁶ The Australian Institute of Company directors (AICD) initiative: Chair's Mentoring Programme, is also designed to increase female board representation.⁷⁷ The Programme is run for a 12 month period during which board Chairpersons and directors mentor potential talented women for board positions.⁷⁸ The AICD also partners with the Australian government to provide the Board Diversity Scholarship Programme. The programme is aimed at providing experienced women with the opportunity to partake in governance education and thus enhance their directorship knowledge.⁷⁹ In Finland, The Women Leaders Programme of Finland Chamber of Commerce includes a Mentoring Programme for women executives and annual studies with the aim of opening more boardroom opportunities to female executives.⁸⁰ The Irish government may choose to facilitate its mentoring programmes through partnerships with specialist organisations including Ireland's Institute of Directors (IoD) in the area of mentoring and training. The government could also engage in this activity through the organisation of public events that will attract attendance of men and women through which women and men can create more networking and women become more sensitised on taking up leadership positions. It is relevant that the government shows its involvement and commitment towards women's role in leadership as this will further encourage women to be more participatory.

⁷⁵ The FTSE 100 Cross-company Mentoring Executive Programme and The FTSE 100 Cross-Company Mentoring Next Generation Women Leaders Programme. Available at: <http://www.mentoringfoundation.co.uk/what-we-do/>. Accessed 13/04/16.

⁷⁶ *ibid.*

⁷⁷ Australian Institute of Company Directors, *Chair's Mentoring Program*. Available at: <http://www.companydirectors.com.au/director-resource-centre/governance-and-director-issues/board-diversity/mentoring-programs>

⁷⁸ *ibid.*

⁷⁹ Australian Government, *Board Diversity Scholarship Programme* (2014). Available at: <https://www.dpmc.gov.au/office-women/about-office-women/board-diversity-scholarship-programme>. Accessed 14/04/16.

⁸⁰ FINNCHAM, Women Leaders Program. Available at: <http://naisjohtajat.fi/en/women-leaders-program/>. Accessed 19/04/16.

v. Monitoring Progress

The experience of Australia, Finland and the UK show that monitoring progress with regard to gender balance on boards is a collaborative activity with regulatory intervention. Periodic and annual reports in all three countries were operational and are perceived to have encouraged more compliance with regulatory requirements. However, the activity in Australia and the UK which entailed more extensive and detailed reporting is likely to have had greater effect on company behaviour in this regard. The reports which measure and analyse company performances in terms of gender representation on their boards could have a naming and shaming effect on companies that are effecting change at a slower rate or not taking any action yet. In the UK, monitoring and periodic reporting is done by various institutions however a detailed reporting approach is only used by the Cranfield School of Management which publishes the FTSE Female Board Report annually and Lord Davies Review Committee which publishes a progress report on FTSE boards bi-annually. Similarly, in Australia although the obligation is shared by several including KPMG and AICD, the report by the Workplace Gender Equality Agency (WGEA) which contains highly performing companies with regard to gender representation in their organisations is in more detail and could thus be the report to make an impact on non-performing companies. Since 2010, Finland's Chamber of Commerce (KESKUS-KAUPPAKAMARI) has also published a 'Women Executives Report' which captures progress of gender balance on Finnish boards of listed companies generally rather than a detailed report of each company's progress.

This will be an effective initiative for Ireland's SOEs so as to garner reputational legitimacy from the public. StateBoards.IE presently performs a similar function for all State board memberships although not in a detailed manner as to impact the naming and shaming effect.⁸¹ The publication of accurate and detailed information and analysis of gender representation on all SOE boards are

⁸¹ STATEBOARDS.IE. Available at: <http://stateboards.ie/stateboards/>. Accessed 17/04/16.

necessary if the reports and monitoring structure are to be taken seriously. Having this responsibility performed independently, constantly updated, with greater detail and presented publicly in the media or other public platforms is likely to attract more critical attention and encourage greater performance. To this end, it is therefore also the recommendation of this thesis that the Irish government introduce a designated body or agency such as the Gender Equality Division of the Ministry of Justice to monitor and produce progress reports for State boards including SOEs so that it receives the priority it deserves. In addition, the government may also wish to encourage the participation of other private or voluntary initiatives to participate in this venture.

vi. Collaborative Participation: Getting the Men Involved

While no direct causal link can be identified between the involvement of men in the cause to improve gender balance on boards and increased female director appointments, it is notable that in Norway, Australia and the UK, where female appointments have increased, the participation of men is visible.⁸² Given that their domination in leadership positions is considered a barrier for women getting appointed to leadership positions in Ireland,⁸³ their involvement would mean that those barriers could be mitigated. This will serve in peeling off the patriarchal culture in Ireland and thus beneficial for regulatory effectiveness.

By participating in mentoring and training schemes, male leaders could be useful in identifying and preparing women to take up higher responsibilities including board roles. Mentoring is considered as an avenue through which developmental

⁸² See discussion in Chapter Four and Five.

⁸³ See Institute of Directors, Women on Boards in Ireland 2015 Survey 2015.(IOD Survey 2015) p.10. Available at: <https://www.iodireland.ie/sites/default/files/documents/Women%20on%20Boards%20In%20Ireland%202015%20FINAL.pdf>. Accessed 20/04/16.

experience can be enhanced in preparation for board roles.⁸⁴ Mentors could advance a protégé's career by nominating him or her for promotion and by providing opportunities to demonstrate his or her competence. Women who have a mentor could gain access to resources and senior management through their mentor.⁸⁵ Mentors could help to buffer women from discriminatory practices and thus overcome obstacles to their attaining top management positions.⁸⁶ The 30 percent club, a club made up of Chairs and CEOs of companies (mostly male) which originated in the UK in 2010 has to date, expanded its activities into five more countries including Canada, Hongkong and Ireland.⁸⁷ In Australia, the 'Male Champions of Change' created in 2010, has also grown significantly over the years with more powerful and influential men becoming members.⁸⁸ Both initiatives operate in a manner that is collaborative to existing legislation or policies to get more female directors on boards.⁸⁹ Of more significance is their influence on other male leader colleagues, hence the increasing participation. The breaking down of the gender-bias culture is fundamental to any changes that may occur regarding improving gender balance.

Their participation suggests a conviction that female talent is lacking on boards and leadership positions, a conviction which in itself does seem unlikely to become wide spread or universal in light of a history of gender-bias within the workplace and in societies.⁹⁰ Given the more universal gender-bias male attitude, it can be safe to suggest that while male participation/ involvement appears to be

⁸⁴ Powell G, 'The Glass Ceiling: Explaining the Good and Bad News' in Davidson M, and Burke R, (eds) *Women in Management , Current Research Issues Volume II* (London: SAGE Publications, 2000) p. 244.

⁸⁵ Headlam-Wells, J. 'E-Mentoring for Aspiring Women Managers' (2004) 19 *Women Management Review* 212.

⁸⁶ Ragins, B. 'Gender and Mentoring Relationships: A Review and Research Agenda for the Next Decade' in Powell, G. (ed) *Handbook of Gender and Work* (Thousand Oaks, CA: SAGE, 1999) p. 84.

⁸⁷ 30% Club. Available at: <http://30percentclub.org/about/who-we-are>. Accessed 14/04/16. 30% Club (note 1188 above).

⁸⁸ Male Champions of Change, Available at: <http://malechampionsofchange.com/champions/>. Accessed 14/04/16.

⁸⁹ See 30% Club, (note 87 above); see also Male Champions of Change, *Progress Report 2014*. Available at: <http://malechampionsofchange.com/progress-report-2014/>. Accessed 17/10/15.

⁹⁰ See discussion in Chapter 6.

a significant influence in increasing gender balance on boards, it is likely to remain a resource which will be largely limited in supply for a long time. The importance of their influence however indicates that efforts need to be made to get men more involved and hopefully change their conviction.

The involvement of even a few influential men in Ireland is likely to attract recognition and influence convictions. A gender balance in decision-making ideology being championed by men is likely to influence other men who are involved in appointing women to boards including male Ministers in the case of SOEs. The launch of the 30percent club in Ireland in the first quarter of 2015 may have set the stage for more men to get involved in the discussion and activities on board gender-diversity.⁹¹ However, as at the time of writing this thesis, it is still early to assess what the level of involvement will be. So far, the founding members are predominantly male, while the Steering Committee of 13 members includes only one man.⁹²

It is the recommendation of this thesis that the Irish government should seek ways of getting more involved in encouraging and lending support to male participation so as to boost it and ultimately attract more men in the society. It will also be useful if a government-initiated club as the 30 percent is set up to concentrate more on state board pipeline and board talent development. There is however no reason why there shouldn't be a collaboration between the private sector initiative and the government initiative in producing a more influential and far-reaching initiative.

F. Final Remarks

It has become imperative with the revelations of the 2007/2008 Economic crisis and changing global standards and values that a more result-oriented approach

⁹¹ 30% Club (note 87 above).

⁹² *ibid.*

needs to be explored in Ireland in order to include more women in economic decision-making in Ireland. As regulation has increasingly proven effective in this regard in certain jurisdictions, a definitive regulatory approach should be utilized in furthering the stagnated growth of women on boards of SOEs. However, in spite of its proven efficacy, the introduction of a regulatory approach in Ireland will need to be strongly backed by the State in ideology and in practice if the effects of regulation are to be sustained in the long term. In other words, absolute commitment is needed from all relevant parties involved in the drafting of the regulation through to its implementation and monitoring as this will ensure an appropriate regulation suited to Ireland is introduced and implementation and monitoring is carried out to the requisite standard. Finally, regulation can only offer the sought solution for Irelands SOE boards if it is not only introduced but also practicalised and the spirit of the regulation imbibed by all relevant participants so as to bring about the necessary conducive culture that is significantly lacking in Ireland.

Appendix

Appendix 1

List of Companies on the Helsinki Stock Exchange, Surveyed.

Ahlstrom Corporation Plc	Afarak Group Plc
Affecto Plc	Alma Media Plc
Amer Sports Plc	Apetit Plc
Aspo Plc	Aspocomp Group Plc
Asiakastiego Plc	Atria Group Plc
Basware Plc	Biotie Therapies Plc
Capman Plc	Cargotec Plc
Caverion Corporation Plc	Citycon Plc
Componenta Plc	Comptel Plc
Destia Group Plc	Digia Plc
Dovre Group	Electrobit Plc
Elisa Plc	Endomines Plc
eQ Plc	Etteplan Plc
Exel Composites Plc	Finnair Plc
Finnlines Plc	Finnvera Plc
Fiskars Plc	Fortum Plc

F-Secure Plc	Glaston Plc
Honkarakenne Plc	Huhtamaäki Plc
Incap Plc	Innofactor Plc
Ixonos Plc	Kemira Plc
Kesko Plc	Kesla Plc
KONE Corporation Plc	Konecranes Plc
Lassila and Tikanoja Group Plc	Lemminkäinen Group Plc
Marimekko Plc	Martela Plc
Metsä Board Plc	Munksjö Plc
Neo Industrial Plc	Nokia Plc
Norvestia Plc	Neste Oil Plc
Nurminen Logistics	Okmetic Plc
Olvi Plc	Orava Residential Reit Plc
Oriola KD	Orion Plc
Outotec Plc	Outokumpu Plc
Panostaja Plc	PKC Group Plc
Ponsse Plc	QPR Software Plc
Raisio Group Plc	Ramirent Plc
Raute Plc	Restamax Plc
Ruukki Group Plc	Saga Furs Plc
Sampo Plc	Sanoma Plc
Scanfil Plc	Sievi Capital Plc
Solteq Plc	Soprano Plc
Sponda Plc	SSH Communications Security Plc
SRV Group Plc	Stora Enso Plc

Suominen Plc	Takoma Plc
Talentum Plc	Tecnotree Plc
Teleste Plc	TeliaSonera Plc
Tieto Corporation Plc	Tikkurila Plc
UPM-Kymenne Plc	Uponor Plc
Vahto Group Plc	Valmet
Vaisala Plc*	Viking Line Plc
Wärtsilä Plc	Wulff Group Plc
YIT Plc	

Appendix II

List of Norwegian SOEs Surveyed

Ambita AS	Aerospace Industrial Maintenance Norway SF
Argentum	Aker Kvaerner Holding AS
Baneservice	DNB ASA
Entra	Electornic Chart Centre
Eksportini finans ASA	Flytoget AS
GIEK Keditl Forsikring AS	Investinor AS
Kommunalbanken (Norway)	Kongsberg Gruppen ASA
Mesta AS	Nammo ASA
Norsk Hydro ASA	NSB AS
Posten Norge AS	SAS AB
Statkraft SF	Store Norske Spitsbergen Kulkompani AS
Statoil	Telenor
Veso	Yara International

Bibliography

Articles

Abbott K and Snidal D 'Hard and Soft Law in International Governance' (2000) 54(3) *International Organization* 421

Adams R and Ferreira D 'Women in the Boardroom and their Impact on Governance and Performance' (2009) 94(2) *Journal of Financial Economics* 291

Adams R and Kirchmaier T 'From Female Labor Force Participation to Boardroom Gender Diversity' (2013) *Financial Markets Group Discussion Paper* 715

Adams R, Hermalin B and Weisbach M 'The Role of Boards of Directors in Corporate Governance: A Conceptual Framework and Survey'(2010) 48(1) *Journal of Economic Literature* 58

Adler N 'An International Perspective on the Barriers to Advancement of Women Managers' (1993) 42(4) *Applied Psychology: An International Review* 289

Aguilera R and Cuervo-Cazarra A 'Codes of Good Governance Worldwide: What is the Trigger?' (2004) 25(3) *Organizational Studies* 415

Ahern K and Dittmar A 'The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation (2012) 127(1) *Quarterly Journal of Economics* 137

Amason A 'Distinguishing the Effects of Functional and Dysfunctional Conflict on Strategic Decision-Making: Resolving a Paradox for Top Management Teams' (1991) 39 (1) *Academy of Management Journal* 123

Anthea J Should Corporate Governance Guidelines be Legislated? Don't Do It'.(2008)

[.http://www.mervynking.co.za/news/archives/08_08_sairr_gov_guidlines_legislation.htm](http://www.mervynking.co.za/news/archives/08_08_sairr_gov_guidlines_legislation.htm).

Arfken D, Bellar S and Helms M, 'The Ultimate Glass Ceiling Revisited: The Presence of Women on Corporate Boards' (2004) 50 *Journal of Business Ethics* 177

- Baldez L, 'The Pros and Cons of Gender Quota Laws: What Happens When You Kick Men Out and Let Women In' (2006) 2(1) *Politics & Gender* 102
- Baldwin R and Black J, 'Really Responsive Regulation' (2008) 71(1) *The Modern Law Review* 59
- Banbridge S, 'The Board of Directors as Nexus of Contracts' (2003) 88 *Iowa Law Review* 1
- Bantel K and Jackson S, 'Top Management and Innovations in Banking: Does the Composition of the Top Team Make a Difference?' (1989) 10(2) *Strategic Management Journal* 107
- Barrington T, 'Public Enterprises in Ireland' (1985) 56 (3) *Annal of Public and Co-operative Economy* 28
- Baysinger B and Butler H, 'Corporate Governance and the Board of Directors: Performance Effects of Changes in Board Composition' (1985) 1 *Journal of Law, Economics and Organization* 101
- Bear S, Rahman N and Post C, 'The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation' (2010) 97(2) *Journal of Business Ethics* 217
- Bebenroth R, 'German Corporate Governance Code and Most Commonly Unaccepted Recommendations: Introduction and Some Explanations' (2005) 3 (2) *Corporate Ownership and Control* 10
- Becker G, 'Investment in Human Capital: A Theoretical Analysis' (1962) 70(5) *Journal of Political Economy* 9
- Bell J 'Path Dependence and Legal Development' (2013) 87(4) *Tulane Law Review* 787
- Bennett P, 'Why Corporate Australia's Gender Policies Need to Be Wound into their DNA' (2014). <https://www.blackrock.com/au/individual/literature/whitepaper/blackrock-why-corporate-australia-gender-policies-need-to-be-wound-into-their-dna-en-au.pdf>.
- Bennett P, 'Achieving Gender Diversity in Australia: The Ugly, The Bad and The Good' (2015). <http://www.blackrock.com/corporate/en-us/literature/whitepaper/achieving-gender-diversity-in-australia-en-au.pdf>

- Bernthal P and Insko C, 'Cohesiveness without Groupthink: The Interactive Effects of Social and Task Cohesion' (1993) 18 *Group and Organisation Management* 66
- Bilimoria D and Piderit S, 'Board Committee Membership: Effects of Sex-based Bias' (1994) 18(1) *Academy of Management Journal* 1453
- Bingham L, Nabatchi T and O'Leary R, 'The New Governance: Practices and Processes for Stakeholder and Citizen Participation in the Work of Government' (2005) 65(5) *Public Administration Review* 547
- Black J, 'New Institutionalism and Naturalism in Socio-Legal Analysis: 'Institutionalist Approaches to Regulatory Decision-Making' (1997) 19(1) *Law & Policy* 51
- Black J, Hopper M and Band C, 'Making a Success of Principles Based Regulation' (2007) 1 *Law & Financial Market Review* 199
- Black J, 'Forms and Paradoxes of Principles-based Regulation' (2008) 3(4) *Capital Markets Law Journal* 427
- Blair M and Stout L, 'Trust, Trustworthiness and the Behavioural Foundations of Corporate Law' (2001) 149(6) *University of Pennsylvania Law Review* 1735
- Bohren O and Strom R, 'The Value Creating Board: Theory and Evidence' (2005) *Research Report 8/2005*, BI Norwegian School of Management
- Bohren O and Strom R, 'Governance and Politics: Regulating Independence and Diversity in the Boardroom' (2010) 37(9) & (10) *Journal of Business Finance and Accounting* 1281
- Bhagat S and Black B, 'The Uncertain Relationship between Board Composition and Firm Performance' (1999) 54 *Business Lawyer* 921
- BlackRock, 'Glacial Change in Diversity at ASX 200 Companies: Can Corporate Australia Escape the Imposition of Diversity Quotas?' (2012). https://www.wgea.gov.au/sites/default/files/BlackRock_Glacial_Change_in_Diversity_at_ASX200_companies.pdf
- Bloom N, Kretschmer T and Van Reenen J, 'Are Family-Friendly Workplace Practices a Valuable Firm Resource?' (2011) 32(4) *Strategic Management Journal* 343
- Boone A et al. 'The Determinant of Corporate Board Size and Composition: An Empirical Analysis' (2007) 85(1) *Journal of Financial Economics* 69

- Bovaird T and Loffler E, 'Evaluating the Quality of Public Governance: Indicators, Models and Methodologies' (2003) 69 *International Review of Administrative Sciences* 9
- Braithwaite J, 'Rules and Principles: A Theory of Legal Certainty' (2002) *Australian Journal of Legal Philosophy* 27
- Brammer S, Millington A and Pavelin, S. 'Corporate Reputation and Women on the Board' (2009) 20 (1) *British Journal of Management* 17
- Branson D, 'Teaching Comparative Corporate Governance: The Significance of 'Soft Law' and International Institutions' (2000) 34 *Georgia Law Review* 669
- Brenkert G, 'Freedom, Participation and Corporations: The Issue of Corporate (Economic) Democracy' (1992) 2(3) *Business Ethics Quarterly* 251
- Brennan N, 'Boards of Directors and Firm Performance: Is There an Expectations Gap?' (2006) 14(6) *Corporate Governance: An International Review* 577
- Brennan N and Solomon J, 'Corporate Governance, Accountability and Mechanisms of Accountability: An Overview' (2008) *Accounting, Auditing and Accountability Journal* 21(7) 885
- Brennan N and McCafferty J, 'Corporate Governance Practices in Irish Companies' (1997) 18(1) *Irish Business and Administrative Research* 116
- Bronstein V and Morné O, 'An Evaluation of the Regulatory Framework Governing State-Owned Enterprises (SOEs) in the Republic of South Africa' (2011) An Annexure to the Presidential Review Committee Report on State-owned Enterprises 2011.
http://www.thepresidency.gov.za/electronicreport/downloads/volume_4/Governance_and_Ownership/SOE_project_29feb.pdf
- Brown D, Brown D and Anastasopoulos V, 'Women on Boards, Not Just the Right Thing but the 'Bright' Thing' (2002) *The Conference Board of Canada*.
http://www.europeanpwn.net/files/women_on_boards_canada.pdf
- Buckalew E, Konstantinopoulos A, Russell J and El-Sherbini S, 'The Future of Female CEOs and their Glass Ceiling' (2012) 3(4) *Journal of Business Studies Quarterly* 145
- Buckley F, 'Women and Politics in Ireland: The Road to Sex Quotas' (2013) 28(3) *Irish Political Studies* 341

Buckley F, Galligan Y and McGing C, 'Someday Girls, Someday': Legislating for Gender Quotas in Ireland' (2013). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2236481

Buckley F, Mariani M and White T, 'Will Legislative Gender Quotas Increase Female Representation in Ireland? A Feminist Institutionalism Analysis' (2014) 50(4) *Representation* 471

Burke R, 'Women on Corporate Boards of Directors: The Timing is Right' (2003) 18(7) *Women in Management Review* 347

Burnes B, 'No Such Thing AsA "One Best Way" to Manage Organisational Change' (1996) 34(10) *Management Decision* 11

Campbell J, 'Why Would Corporations Behave in Socially Responsible Ways' (2007) 32(3) *Academy of Management Review* 946

Carpenter M and Westphal J, 'The Strategic Context of External Network Ties: Examining the Impact of Director Appointments on Board Involvement in Strategic Decision-Making' (2001) 44 *Academy of Management Journal* 639

Carrasco A. et al. 'Appointing Women to Boards: Is There a Cultural Bias?' (2015) 129 (2) *Journal of Business Ethics* 429

Carter D, Simkins B and Simpson W, 'Corporate Governance, Board Diversity and Firm Value' (2003) 38(1) *Financial Review* 33

Carter D, D'Souza F, Simkins B and Simpson W, 'The Gender and Ethnic Diversity of U.S. Boards and Board Committees and Firm Financial Performance' (2010) 18(5) *Corporate Governance: An International Review* 396

Chang M, 'The Evolution of Sex-Segregation Regimes' (2000) 105(6) *The American Journal of Sociology* 1658

Choudhury B, 'Gender Diversity on Boards: Beyond Quotas' (2015) 26(1) *European Business Law Review* 229

Clarke B, 'The Takeover Directive: Is a Little Regulation Better than No Regulation?' (2009) 15 (2) *European law Journal* 174

Clarke B, 'Takeover Regulation: Through the Regulatory Looking Glass' (2007) 8 *German Law Journal* 381

Clarke J and Gibson-Sweet M, 'The Use of Corporate Social Disclosures in the Management of Reputation and Legitimacy: A Cross Sectoral Analysis of UK Top 100 Companies' (1999) 8(1) *Business Ethics: A European Review* 5

Connolly E, 'Parliaments as Gendered Institutions: The Irish Oireachtas' (2013) 28 (3) *Irish Political Studies* 360

Connolly P, 'The Development of Women as Leaders in the Public Sector' (2008) 56(3) *Administration* 177

Cornwall A, *Introduction: New Democratic Spaces? The Politics and Dynamics of Institutionalized Participation* 35(2) *IDS Bulletin New Democratic Spaces*

Crane A, Matten D and Moon J, 'Stakeholders as Citizens? Rethinking Rights, Participation and Democracy' (2004) 53(1) *Journal of Business Ethics* 107

Cross C and Linehan M, 'Barriers to Advancing Female Careers in the High-Sector: Empirical Evidence from Ireland' (2006) 21(1) *Women in Management Review* 28

Cuervo A, 'Corporate Governance Mechanisms: A Plea for Less Code of Good Governance and More Market Control' (2002) 10(2) *Corporate Governance an International Review* 84

Dahlerup D and Freidenvall L, 'Quotas as a 'Fast Track' to Equal Representation of Women: Why Scandinavia is No Longer the Model' (2005) 7(1) *International Feminist Journal of Politics* 26

Daily C, Certo S and Dalton D, 'A Decade of Corporate Women: Some Progress in the Boardroom, None in the Executive Suite' (1999) 20(1) *Strategic Management Journal* 94

Daily C and Dalton D, 'Women in the Boardroom: A Business Imperative' (2003) 24(5) *Journal of Business Strategy* 8

Daily C, Johnson J and Dalton D, 'On the Measurements of Board Composition: Poor Consistency and a Serious Mismatch of Theory and Operationalisation' (1999) 30 (1) *Decision Sciences* 83

Dalton D et al. 'Number of Directors and Financial Performance: A Meta Analysis' (1999) 42(6) *The Academy of Management Journal* 679

Demsetz H, 'The Structure of Ownership and the Theory of the Firm' (1983) 26 *Journal of Law and Economics* 375

Donaldson T, 'The Ethical Wealth of Nations' (2001) 31(1) *Journal of Business Ethics* 25

Donnelly R and Mulcahy M, 'Board Structure, Ownership and Voluntary Disclosure in Ireland' (2008) 16(5) *Corporate Governance: An International Review* 416

Eagly A and Carli L, 'The Female Leadership Advantage: An Evaluation of the Evidence' (2003) 14 *The Leadership Quarterly* 807

Eagly A and Johnson B, 'Gender and Leadership Style: A Meta-Analysis' (1990) 108 *Psychological Bulletin* 233

Eagly A and Karau S, 'Role Congruity Theory of Prejudice toward Female Leaders' (2002) 109(3) *Psychological Review* 573

Ellwood S and Garcia-Lacalle J, 'The Influence of Presence and Position of Women on the Boards of Directors: The Case of NHS Foundation Trusts' (2015) 130(1) *Journal of Business Ethics* 69

Elstad B and Ladegard G, 'Women on Corporate Boards: key Influencers or Tokens?'(2012) 16(4) *Journal of Management and Governance* 595

Eng L and Mak Y, 'Corporate Governance and Voluntary Disclosure' (2003) 22(4) *Journal of Accounting and Public Policy* 325

Fama E, 'Agency Problems and the Theory of the Firm' (1980) 88(2) *Journal of Political Economy* 288

Fama E and Jensen M, 'Separation of Ownership and Control' (1983) 26 (2) *Journal of Law and Economics* 301

Farrell K and Hersch P, 'Additions to Corporate Boards: The Effect of Gender' (2005) 11 (1-2) *Journal of Corporate Finance* 85

Fields M and Keys P, 'The Emergence of Corporate Governance from Wall St. to Main St.: Outside Directors, Board Diversity, Earnings Management and Management Incentives to Bear Risk' (2003) 38 (1) *Financial Review* 1

Fitch E and Shivdasani A, 'Are Busy Boards Effective Monitors?' (2006) 61(2) *Journal of Finance* 689

Fondas N and Sassalos S, 'A different Voice in the Boardroom: How the Presence of Women Directors Affects Board Influence over Management' (2000) 12 *Global Focus* 13

Forbes D and Miliken F, 'Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups' (1999) 24(3) *Academy of Management Review* 489

Friedman A and Miles S, 'Socially Responsible Investment and Corporate Social and Environmental Reporting in the UK: An Exploratory Study' (2001) 33(4) *British Accounting Review* 528

Fung A, 'Survey Article: Recipes For Public Spheres: Eight Institutional Design Choices and their Consequences' (2003) 11(3) *Journal of Philosophy* 338

Gillan S and Starks L, 'Corporate Governance Proposals and Shareholder Activism: The Role of Institutional Investors' (2000) 57 (2) *Journal of Financial Economics* 275

Gilson R, 'Corporate Governance and Economic Efficiency: When Do Institutions Matter?' (1996) 74 *Washington University Law Quarterly* 327

Goodman J, Fields D and Blum T, 'Cracks in the Glass Ceiling: In What Kinds of Organizations do Women Make it to the Top?' (2003) 28(4) *Group Organization Management* 475

Goodstein J, Gautam K and Boeker W, 'The Effects of Board Size and Diversity on Strategic Change' (1994) 15 *Strategic Management Journal* 241

Grossman S and Hart O, 'Takeover Bids, The Free-Rider Problem, and the Theory of the Corporation' (1980) 11(1) *The Bell Journal of Economics* 42

Guzman A and Meyer T, 'International Soft Law' (2010) 2 (1) *Journal of Legal Analysis* 171

Hammer T, Currall S and Stern R, 'Worker Representation on Boards of Directors: A Study of Competing Roles' (1991) 44(4) *Industrial and Labor Relations Review* 661

Hardimann N and Scott C, 'Ordering Things: The Irish State Administration Database' (2012) 27(1) *Irish Political Studies* 1-22

Hart O, 'Corporate Governance: Some Theory and Implications' (1995) 105 *The Economic Journal* 678

Harweth N, 'The Diversity Advantage: How Regulation and Competition are Bringing More Women into the Boardroom' (2011) *FTI Journal* (online).
<http://www.ftijournal.com/article/the-diversity-advantage>

Hathaway O, 'Path Dependencies in the Law: The Course and Pattern of Legal Change in a Common Law System' (2000) 86(2) *IOWA Law Review* 101

Hermalin B and Weisbach M, 'Boards of Directors as an Endogenously Determined Institution: A Survey of the Economic Literature' (2003) 9 (1) *FRB New York- Economic Policy Review* 7

Hermalin B and Weisbach M, 'The Role of Board of Directors in Corporate Governance: A Conceptual Framework and Survey' (2010) 48(1) *Journal of Economic Literature* 58

Hermalin B and Weisbach M, 'Information Disclosure and Corporate Governance' (2012) 67(1) *The Journal of Finance* 195

Higgins E, 'Non-Executive Directors on Boards in Ireland: Co-option, Characteristics and Contributions' (2002) 10(1) *Corporate Governance: An International Review* 19

Hilb M, 'New Corporate Governance: From Good Guidelines to Great Practice' (2005) 13(5) *Corporate Governance: An International Review* 569

Hillman A and Keim G, 'Shareholder Value, Stakeholder Management and Social Issues: What's the Bottom Line?' (2001) 22(2) *Strategic Management Journal* 125

Hillman A, Shropshire C and Cannella A, 'Organisational Predictors of Women on Corporate Boards' (2007) 50(4) *Academy of Management Journal* 941

Hitt M and Tyler B, 'Strategic Decision Models: Integrating Different Perspectives' (1991) 12(5) *Strategic Management Journal* 327

Horak H and Bodiřoga-Vukobrat N, 'EU Member States Experience with the 'Comply or Explain' Principle in Corporate Governance' (2011) 7 (7) *Croatian Yearbook of European Law and Policy* 179

Huse M, 'Accountability and Creating Accountability: A Framework for Exploring Behavioral Perspectives of Corporate Governance' (2005) 16 *British Journal of Management* 65

Huse M, Nielsen S and Hengen I, 'Women and Employee Elected Board Members and Their Contributions to Board Control Tasks' (2009) 89(4) *Journal of Business Ethics* 581

Huse M and Solberg A, 'Gender Related Boardroom Dynamics: How Women Make and Can Make Contributions on Corporate Boards' (2006) 21(2) *Women in Management Review* 113

Ibrahim N and Angelidis J, 'Effects of Board Members' Gender on Level of Involvement in Strategic Management and Corporate Social Responsiveness Orientation' (1991) 10(1) *Journal of Applied Business Research* 35

Inwinkl P, Josefsson S and Wallman M, 'The Comply or Explain Principle: Stakeholders' View on How to Improve the 'Explain' Approach' (2013) Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2331285

Jackson J, 'Irish Public Assets: Establishment, Control and Privatisation of State-owned Assets' (2010) 5(1) *International Journal of Public Policy* 74

James O, 'Regulation Inside Government: Public Interest Justifications and Regulatory Failures' (2000) 78(2) *Public Administration* 327

Jensen M, 'The Modern Industrial Revolution, Exit and the Failure of Internal Control Systems' (1993) 48(3) *Journal of Finance* 831

Jensen M and Meckling W, 'Theory of the Firm: Managerial Behaviour, Agency Costs and Capital Structure' (1976) 3 (4) *Journal of Financial Economics* 305

Johnson J, Ellstrand A and Daily C, 'Boards of Directors: A Review and Research Agenda' (1996) 22 (3) *Journal of Management* 409

Jones T and Goldberg L, 'Governing the Large Corporation: More Arguments for Public Directors' (1982) 7(4) *Academy of Management Review* 603

Karlsson-Vinkhuyzen S and Vihma A, 'Comparing the Legitimacy and Effectiveness of Global Hard and Soft Law: An Analytical Framework' (2009) 3(4) *Regulation and Governance* 400

Kakabadse N. et al. 'Gender Diversity and Board Performance: Women's Experiences and Perspectives' (2015) 54(2) *Human Resources Management* 265

Kanter R, 'Some Effects of Proportion on Group Life: Skewed Sex Ratios and Responses to Token Women' (1977) 82(5) *American Journal of Sociology* 968

Katz D and McIntosh L, 'Gender Diversity on Public Company Boards' (2012) *New York Law Journal*. <http://corpgov.law.harvard.edu/2012/10/12/gender-diversity-on-public-company-boards/>

Kelley L, Whatley A and Wothley R, 'Assessing the Effects of Culture on Managerial Attitudes: A Three Culture Test' (1987) 18(2) *Journal of International Business Studies* 17

Kenworthy L and Malami M, 'Gender Inequality in Political Representation: A World-wide Comparative Analysis' (1999) 78(1) *Social Forces* 235

Kiel G and Nicholson G, 'Evaluating Boards and Directors' (2005) 13 (5) *Corporate Governance: An International Review* 613

Kirchmeyer C, 'Determinants of Managerial Career Success: Evidence and Explanation of Male/Female Differences' (1998) 24(6) *Journal of Management* 673

Klettner A, Clarke T and Boersma M, 'The Impact of Soft Law on Social Change: Measurable Objectives for Achieving Gender Diversity on Boards of Directors' (2013) 28 *Australian Journal of Corporate Law* 148

Klettner A, Clarke T and Boersma M, 'Strategic and Regulatory Approaches to Increasing Women in Leadership: Multilevel Targets and Mandatory Quotas as Levers for Cultural Change' (2014) *Journal of Business Ethics* .
<http://link.springer.com/article/10.1007%2Fs10551-014-2069-z>

Kochan T, 'Restoring Trust in American Corporations: Addressing the Root Cause' (2003) 7 (3) *Journal of Management and Governance* 223

Konrad A, Kramer V and Erkut S, 'Critical Mass: The Impact of Three or More Women on Corporate Boards' (2008) 37(2) *Organizational Dynamics* 145

Krook M, Gender Quotas, Norms and Politics (2006) 2(1) *Politics and Gender* 110

Langevort D, 'The Human Nature of Corporate Boards: Law, Norms and the Unintended Consequences of Independence and Accountability' (2000) 89 *Georgetown Law Journal* 797

Langevort D, 'Commentary: Puzzles About Corporate Boards and Board Diversity' (2011) 89 *North Carolina Law Review* 841

LaPorta R, Lopez-de-Silanes F, Shleifer A and Vishny R, 'Law and Finance' (1998) 106(6) *Journal of Political Economy* 1113

Lau D and Murnighan J, 'Demographic Diversity and Fault Lines: The Compositional Dynamics of Organizational Groups' (1998) 23(2) *Academy of Management Review* 325

Letendre L, 'The Dynamics of the Boardroom' (2004) 18 *Academy of Management Executive* 101

Lioukas S, Bourantas D and Papadakis V, 'Managerial Autonomy of State-Owned Enterprises: Determining Factors' (1993) 4 (4) *Organization Science* 645

Lynch P, 'Some Problems of Public Enterprise' (1954) 2 (1) *Administration*

Lynch-Fannon I, 'The End of the Celtic Tiger: An Irish Case Study Presenting an Initial Analysis of the Failure of Corporate Governance and Company Law' (2015) 66 (1) *Northern Ireland Legal Quarterly* 1

Lynn T and Clarke B, 'The Irish Corporate Governance System' (2010) Research Paper No. 38/2010 *UCD Working Papers in Law, Criminology & Socio-Legal Studies*.

https://www.researchgate.net/profile/Blanaid_Clarke/publication/228210837_The_Irish_Corporate_Governance_System/links/02e7e52ceaf59a6255000000.pdf

MacAvoy P and Millstein I, 'The Active Board of Directors and Its Effects on the Performance of the Large Publicly Traded Corporation' (1999) 11(4) *Journal of Applied Corporate Finance* 8

MacCarthaigh M, 'Managing State-Owned Enterprises in an Age of Crisis' (2010) Mapping the Irish State Project, Geary Institute, University College Dublin. <http://www.ucd.ie/geary/static/publications/workingpapers/gearywp201040.pdf>

MacNeil I and Li X, 'Comply or Explain: Market Discipline and Non-Compliance with the Combined Code' (2006) 14 *Corporate Governance: An International Review* 486

Majone G, 'The Rise of the Regulatory State in Europe' (1994) 17(3) *West European Politics* 77

Majumdar S and Marcus A, 'Rules versus Discretion: The Productivity Consequences of Flexible Regulation' (2001) 44(1) *Academy of Management Journal* 170

Mansbridge J, 'Quota Problems: Combating the Dangers of Essentialism' (2005) 1 (4) *Politics & Gender* 622

Matsa D and Miller A, 'A Female Style in Corporate Leadership? Evidence from Quotas' (2013) 5(3) *American Economic Journal: Applied Economics* 136

Mattis M, 'Advancing Women in Business Organizations: Key Leadership Roles and Behaviours of Senior Leaders and Middle Managers' (2001) 20(4) *Journal of Management Development* 371

Mavin S, 'Queen Bees, Wannabees and Afraid to Bees: No More 'Best Enemies' For Women in Management?' (2008) 19 (Issue Supplement s1) *British Journal of Management* 575

McCormac M, 'The Devlin Report- A review' (1969) 17(3) *Administration* 309

McGregor J, 'New Zealand's Board Room Blues-Time for Quotas?' (2014) 28(2) *Women's Studies Journal* 4

Meier P, 'Quotas, Quotas Everywhere From Party Regulations to Gender Quotas for Corporate Management Boards: Another Case of Contagion' (2013) 49(4) *Representation* 453

Menzio A, Urutiaga M and Vannomi D, 'Board Composition, Political Connections and Performance in State-Owned Enterprises' (2012) 21(3) *Industrial and Corporate Change* 671

Milliken F, 'Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision-Making Groups' (1999) 24(3) *Academy of Management Review* 489

Milliken F and Martins L, 'Searching For Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups' (1996) 21(2) *Academy of Management Review* 402

Milliken F and Volrath D, 'Strategic Decision-Making Tasks and Group Effectiveness: Insights from Theory and Research on Small Group Performance' (1991) 44 (12) *Human Relations* 1229

Minow N, 'Shareholders, Stakeholders and Boards of Directors' (1992) 21 *Stetson Law Review* 197

Mitchell R, Agle B and Wood D, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22(4) *Academy of Management Review* 853

Mizruchi M, 'Who Controls Whom? An Examination of the Relation between Management and Boards of Directors in Large American Corporations' (1983) 8(3) *The Academy of Management Review* 426

Moran M, 'Understanding the Regulatory State' (2002) 32(2) *British Journal of Political Science* 391

Morrison J, 'Legislating for Good Corporate Governance: Do We Expect Too Much?' (2004) (2004) 15 *The Journal of Corporate Citizenship* 121

Natividad I, 'There is no Denying the Effectiveness of Quotas' (2010). Available at: http://www.globewomen.org/summit/2010/New_Folder/Natividad%20Article.pdf

Oakley J, 'Gender-based Barriers to Senior Management Positions: Understanding the Scarcity of Female CEOs' (2000) 27(4) *Journal of Business Ethics* 321

O'Connor M, 'The Enron Board: The Perils of Groupthink' (2003) 71 *University of Cincinnati Law Review* 1233

O'Higgins E, 'Non-Executive Directors on Boards in Ireland: Co-option, Characteristics and Contributions' (2002) 10(1) *Corporate Governance: An International Review* 19

Paxton P, 'Women in National Legislatures: A Cross-National Analysis' (1997) 26(4) *Social Science Research* 459

Pfeffer J, 'Size and Composition of Corporate Boards of Directors: The Organisation and Its Environment' (1972) 17(2) *Administrative Science Quarterly* 218

Pierson P, 'Increasing Returns, Path Dependence and the Study of Politics' (2000) 94(2) *Political Science Review* 251

Pieters K, 'More Efforts Needed to Improve Gender Equality in Corporate Governance in the EU' (2012) 13(3) *European Business Organization Law Review* 475

Plessis J, Saenger I and Foster R, 'Board Diversity or Gender Diversity? Perspectives from Europe, Australia and South Africa' (2013) 17(2) *Deakin Law Review* 207

Prosser T, 'Regulation and Social Solidarity' (2006) 33(3) *Journal of Law and Society* 364

Ragins B, Townsend B and Mattis M, 'Gender Gap in the Executive Suite: CEOs and Female Executives Report on Breaking the Glass Ceiling' (1998) 12(1) *The Academy of Management Executive* 28

Rhode D and Packel A, 'Diversity on Corporate Boards: How Much Difference does Difference Make?' (2014) 39(2) *Delaware Journal of Corporate Law* 377

Roberts J, Sanderson P, and Seidl D, 'Soft Regulation': Conforming with the Principle of 'Comply or Explain' (2010) *Centre For Business Research, University of Cambridge Judge Business School*

Robinson G and Dechant K, 'Building a Business Case for Diversity' (1997) 11 (3) *Academy of Management Executive* 21

Romano C, 'All A-board! The Composition of the Boardroom is Changing-Albeit Slowly' (1993) 82, (10) *Management Review* 5

Ruigrock W, Peck S and Keller H, 'Board Characteristics and Involvement in Strategic Decision Making' (2006) 43(5) *Journal of Management Studies* 1201

Schafer A, 'Resolving Deadlock: Why International Organizations Introduce Soft Law' (2006) 12(2) *European Law Journal* 194

Schrader C, Blackburn V and Iles J, 'Women in Management and Firm Financial Performance: An Exploratory Study' (1997) 9 (3) *Journal of Managerial Issues* 355

Schwartz F, 'Invisible Resource: Women for Boards' (1980) 58(2) *Harvard Business Review* 6

Schweiger D, Sandberg W and Ragan J, 'Group Approaches for Improving Strategic Decision-Making: A Comparative Analysis of Dialectical Inquiry, Devils Advocacy and Consensus' (1986) 28 *Academy of Management Journal* 51

Seidl D, 'Standard Setting and Following in Corporate Governance: An Observation-Theoretical Study of the Effectiveness of Governance Codes' (2007) 14(5) *Organization* 705

Seidl D, Senderson P and Roberts J, 'Applying the 'Comply or Explain' Principle: Discursive Legitimacy Tactics with Regard to Codes of Corporate Governance' (2013) 17(3) *Journal of Management & Governance* 791

Seidman H, 'The Government Corporation: Organization and Controls' (1954) 14(3) *Public Administration Review* 183

Seierstad C and Opsahl T, 'For the Few not the Many? The Effect of Affirmative Action on Presence, Prominence and Social Capital of Women Directors in Norway' (2011) 27(1) *Scandinavian Journal of Management* 44

Senden L, 'Soft Law and its Implications for Institutional Balance in the EC' (2005) 1 (2) *Utrecht Law Review* 79

Senden L, 'The Multiplicity of Regulatory Responses to Remedy the Gender Imbalance on Company Boards' (2014) 10(5) *Utrecht Law Review* 51

Sergakis K, 'EU Corporate Governance: A New Supervisory Mechanism for the 'Comply or Explain' Principle?' (2013) 10(3) *European Company and Financial Law Review* 394

Shaffer G and Pollack M, 'Hard vs. Soft Law: Alternatives, Complements and Antagonists in International Governance (2010) 94(3) *Minnesota Law Review* 706

Sheridan A and Milgate G, 'Accessing Board Positions: A Comparison of Female and Male Board Members' Views' (2005) 13(6) *Corporate Governance: An International Review* 847

Shilton J, McGregor J and Tremaine M, 'Feminizing the Boardroom: A Study of the Effects of Corporatization on the Number and Status of Women Directors in New Zealand Companies' (1996) 11 (3) *Women in Management Review* 20

Shleifer A and Vishny R, 'Large Shareholders and Corporate Control' (1986) 94(3) *The Journal of Political Economy* 461

- Simpson W, Carter D and D'Souza F, 'What Do We Know About Women on Boards' (2010) 20 *Journal of Applied Finance* 27
- Sinclair D, 'Self-Regulation Versus Command and Control? Beyond False Dichotomies' (1997) 19(4) *Law & Policy* 529
- Singh V and Vinnicombe S, 'The 2002 Female FTSE Index and Woman Directors' (2003) 18(7) *Women in Management Review* 349
- Singh V and Vinnicombe S, 'Why So Few Women Directors in Top UK Boardrooms? Evidence and Theoretical Explanations' (2004) 12 (4) *Corporate Governance: An International Review* 479
- Singh V, Vinnicombe S and James K, 'Constructing a Professional Identity: How Young Female Managers Use Role Models' (2006) 21(1) *Women in Management Review* 67
- Spender P, Gender Diversity on Boards in Australia- waiting for the Great Leap Forward? (2012) 27 *Australian Journal of Corporate Law* 22
- Spiegel S, Grant-Pillow H and Higgin E, 'How Regulatory Fit Enhances Motivational Strength During Goal Pursuit' (2004) 34 *European Journal of Social Psychology* 39
- Spira L, 'Enterprise and Accountability: Striking a Balance' (2001) 39(9) *Management Decision* 739
- Staines G, Travis C and Jayerante T, 'The Queen Bee Syndrome' (1973) 7(8) *Psychology Today* 55
- Storvik, A. and Teigen, M. 'Women on Board: The Norwegian Experience' (2010) International Policy Analysis, Friedrich Ebert Stiftung
- Sweigart, A. 'Women on Board for Change: The Norway Model of Boardroom Quotas As a Tool For Progress in the United States and Canada' (2012) 32(4) *Northwestern Journal of International Law and Business* 81
- Terpan F, 'Soft Law in the European Union: The Changing Nature of EU Law' (2015) 21(1) *European Law Journal* 68
- Terjesen S, Sealy R and Singh V, 'Women Directors on Corporate Boards: A Review and Research Agenda' (2009) 17(3) *Corporate Governance: An International Review* 320
- Terjesen S and Singh V, 'Female Presence on Corporate Boards: A Multi-Country Study of Environmental Context' (2008) 83(1) *Journal Business Ethics* 55

Tharenou P, Latimer S and Conroy D, 'How Do You Make It To the Top? An Examination of Influences on Women's and Men's Managerial Advancement' (1994) 37(4) *Academy of Management Journal* 899

The Institute of Chartered Accountants in England and Wales (ICAEW), 'Shareholder Responsibilities and the Investing Public: Exercising Ownership Rights through Engagement' (2006)

Thynne I, 'Ownership as an Instrument of Policy and Understanding in the Public Sphere: Trends and Research Agenda (2011) 32(3) *Policy Studies* 183

Thynne I and Wettenhall R, 'Public Enterprises: Many Faces, Much Questioning, New Challenges' (2001) 6(1) *International Review of Public Administration* 1

Torchia M, Calabro A and Huse M, 'Women Directors on Corporate Boards: From Tokenism to Critical Mass' (2011) 102 (2) *Journal of Business Ethics* 299

Trinidad C and Normore A, 'Leadership and Gender: A Dangerous Liaison?' (2005) 26 (7) *Leadership & Organization Development Journal* 574

Tripp A and Kang A, 'The Global Impact of Quotas: On the Fast Track to Increased Female Legislative Representation' (2008) 41 (3) *Comparative Political Studies* 338

Trubek D, 'Hard and Soft Law in the Construction of Social Europe: The Role of the Open Method of Co-ordination' (2005) 11(3) *European Law Journal* 343

Trubek D, Cottrell P and Nance M, 'Soft Law', 'Hard Law' and European Integration: Toward a Theory of Hybridity' (2005) *University of Wisconsin Legal Studies Research Paper No. 1002*

Turner T and McMahon J, 'Women and Occupations in the Irish Economy: An Era of New Opportunities?' (2008) 56 (1) *Administration* 111

Van der Berghe L and Levrau A, 'Evaluating Boards of Directors: What Constitutes a Good Corporate Board?' (2004) 12 (4) *Corporate Governance: An international Review* 461

Van Der Walt N and Ingley C, 'Board Dynamics and the Influence of Professional Background, Gender and Ethnic Diversity of Directors' (2003) 11(3) *Corporate Governance: An International Review* 218

Vaughan B, 'State Agencies: Once and Future Kings?' (2006) 53(4) *Administration* 50

Veasey N, 'Should Corporation Law Inform Aspirations for Good Corporate Governance Practices or Vice Versa?' (2001) 149 (6) *University of Pennsylvania Law Review* 2179

Verma A and Weststar J, 'Token Presence or Substantive Participation? A Study of Labor Trustees on Pension Boards' (2011) 32 (1) *Journal of Labour Research* 39

Villiers, C. 'Achieving Gender Balance in the Boardroom: Is It Time for Legislative Action in the UK?' (2010) 30(4) *Legal Studies* 533

Vinnicombe S and Singh V, 'Locks and Keys to the Boardroom' (2011) 26(3) *Gender in Management: An International Journal* 325

Wanous J and Youtz M, 'Solution Diversity and the Quality of Group Decisions' (1986) 29 (1) *Academy of Management Journal* 149

Watson W and Michaelsen L, 'Group Interaction Behaviours that Affect Group Performance on an Intellective Task' (1988) 13 *Group and Organisation Studies* 495

Wellens K and Borchardt G, 'Soft Law in European Community Law' (1989) 14(5) *European Law Review* 267

Werder A, Talaulicar T and Kolat, G, 'Compliance with the German Corporate Governance Code: An Empirical Analysis of the Compliance Statements by German Listed Companies' (2005) 13(2) *Corporate Governance: An International Review* 178

Wong C, 'Improving Corporate Governance in State-Owned Enterprises: An Integrated Approach' (2004) 7 (2) *Corporate Governance International* 5

Wu Y, 'The Impact of Public Opinion on Board Structure Changes, Director Career Progression, and CEO Turnover: Evidence from CalPERS' Corporate Governance Program' (2004) 10 (1) *Journal of Corporate Finance* 199

Youtz M, 'Solution Diversity and the Quality of Group Decisions' (1986) 29 (1) *Academy of Management Journal* 149

Zattoni A and Cuomo F, 'Why Adopt Codes of Good Governance? A Comparison of Institutional and Efficiency Perspectives' (2008) 16(1) *Corporate Governance: An International Review* 1

Zerilli F, 'The Rule of Soft Law: An Introduction' (2010) 56 *Focaal- Journal of Global and Historical Anthropology* 3

Books and Book Chapters

Alvarez-Antolinez C, Brennan D, et al, *Leadership, Structures and Accountability in the Public Service: Priorities for the Next Phase of Reform* (Dublin: IPA, 2007)

Baron D, 'Design of Regulatory Mechanism and Institutions' in Schmalensee, R. and Willig, R. (eds.) *Handbook of Industrial Organization* Vol. 2 (Amsterdam: Oxford, 2007) 1347-1447

Baldwin R, Cave M and Lodge M, *Understanding Regulation: Theory, Strategy and Practice* (2nd edn.) (Oxford: Oxford University Press, 2012)

Bayne N, 'Hard Law and Soft Law in International Institutions: Complements, not Alternatives' in Kirton J and Trebilock M, (eds.) *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (Aldershot, England: Ashgate Publishing Company, 2004)

Bilimoria D and Wheeler J, 'Women Corporate Directors: Current Research and Future Directions' in Davidson, M. and Burke, R. (eds.) *Women in Management: Current Research Issues, Vol. II* (London: Paul Chapman Publishers, 2000)

Beveridge F, 'Going Soft'? Analysing the Contribution of Soft and Hard Measures in EU Gender Law and Policy' in Lombardo, E. and Forest, M. (eds.) *The Europeanization of Gender Equality Policies: A Discursive-Sociological Approach* (Basingstoke: Palgrave Macmillan, 2012)

Black J, 'Using Rules Effectively' in McCrudden, C. (ed.) *Regulation and De-* (Oxford: Oxford University Press, 1999) 95-121

Brennan N, 'A Review of Corporate Governance Research: An Irish Perspective' in Hogan, F., Donnelly, P. and O'Rourke, B. (eds.) *Irish Business and Society:*

Governing, Participating and Transforming in the 21st Century (Dublin: Gill & McMillan, 2010)

Branson D, *No Seat at the Table- How Corporate Governance and Law Keep Women out of the Boardroom* (New York: New York University Press, 2007)

Brennan N, 'A Review of Corporate Governance Research: An Irish Perspective' in Donnelly, P., Hogan, J. and O'Rourke, B. (eds) *Irish Business and Society. Governing, Participating and Transforming in the 21st Century* (Dublin: Oak Tree Press, 2010)

Carter C and Lorsch J, *Back to the Drawing Board: Designing Corporate Boards for a Complex World* (Harvard Business School, 2004)

Chubb B, *The Government and Politics of Ireland* (Third Edition) (London: Longman, 1992)

Christensen T and Laegreid P, (eds.) *Autonomy and Regulation: Coping with Agencies in the Modern State* (Cheltenham, UK: Edward Elgar Publishing, 2006)

Coakley J and Gallagher M, (eds.) *Politics in the Republic of Ireland*, (5th edn.) (New York: Routledge, 2010)

Dahl R, *A Preface to Economic Democracy* (Oxford: Basil Blackwell, 1985)

Davidson M and Cooper C, *Shattering the Glass Ceiling: The Woman Manager* (London: Paul Chapman Publishing Ltd, 1992)

Dhir A, *Challenging Boardroom Homogeneity* (New York: Cambridge University Press, 2015)

Doldor E, 'Gender Diversity on UK Boards' in Groschl, S and Takagi, J. (Eds) *Diversity Quotas, Diverse Perspectives : The Case of Gender* (Surrey,England: Gower Publishing, 2012)

Erkut S, Kramer V and Konrad A, 'Critical Mass: Does the No. of Women on Corporate Board Make a Difference?' in Vinnicombe S, Singh V, Burke R, Bilimoria D and Huse M, (eds) *Women on Corporate Boards of Directors: International Research and Practice* (Cheltenham, UK : Edward Elgar, 2008)

Fagan C, Rubery J and Smith M, *Women's Employment in Europe: Trends and Prospects* (London: Routledge, 1999)

Fagan C, Gonzalez Menendez M and Gomez Anson S, (eds) *Women on Corporate Boards and in Top Management: European Trends and Policy* (Basingstoke, UK: Palgrave Macmillan, 2012)

Fine-Davis M, *Gender Roles in Ireland: Three Decades of Attitude Change* (London, Routledge, 2015)

Forest M and Lombardo E, (eds) *The Europeanization of Gender Equality Policies: A Discursive-Sociological Approach* (Basingstoke: Palgrave Macmillan, 2012)

Finnegan R and Wiles J, *Women and Public Policy in Ireland: A Documentary History 1922-1997* (Dublin: Irish Academic Press, 2005)

Fondas N, 'Women on Boards of Directors: Gender Bias or Power Threat?' in Burke R and Mattis M, (eds.) *Women on Corporate Boards of Directors* (The Netherlands: Kluwer Academic Publishers, 2000)

Franceschet S, Krook M and Piscopo J, (eds) *The Impact of Gender Quotas* (New York: Oxford University Press, 2012)

Gonzalez M and Martinez G, 'Spain on the Norwegian Pathway: Towards a Gender Balanced Presence of Women on Corporate Boards' in Fagan C, Gonzalez M and Gomez S (eds) *Women on Corporate Boards and in Top Management: European Trends and Policy* (Chippenham, UK: Palgrave, 2012)

Gunningham N and Grabosky P, and Sinclair, D. *Smart Regulation: Designing Environmental Policy* (Oxford, UK: Oxford University Press, 1998)

Gunningham N and Sinclair D, 'Designing Smart Regulation' in Gunningham N, Grabosky P and Sinclair D, *Smart Regulation : Designing Environmental Policy* (Oxford, UK: Oxford University Press, 1998)

Hawkesworth C and Edmondson L, (eds.) *More Equal Than Most: Essays on Women in Finnish Society and Culture* (London, University of London: School of Slavonic and East European Studies, 1992)

Huse M, 'The "Golden Skirts": Lessons from Norway About Women on Corporate Boards of Directors' in Groschl S and Takagi J, (eds) *Diversity Quotas, Diverse Perspectives: The Case of Gender* (Surrey, England: Gower Publishing, 2012)

Huse M, *Boards, Governance and Value Creation* (Cambridge: Cambridge University Press, 2007)

Irving J, *Victims of Groupthink: A Psychological Study of Foreign Policy Decisions and Fiascos* (Boston: Houghton Mifflin, 1972)

Irish Congress of Trade Unions, *A New Governance Structure for State Companies* (Dublin: ICTU, 2005)

Irving J, *Victims of Groupthink: A Psychological Study of Foreign Policy Decisions and Fiascos* (Boston: Houghton Mifflin, 1972)

Jackson S, 'Consequences of Group Composition for the Interpersonal Dynamics of Strategic Issue Processing' in Dutton, J., Huff, A. and Shrivastava, P. (eds) *Advances in Strategic Management Vol. 8* (Greenwich, CT: JAI Press, 1992) 345

Janis I, *Groupthink: Psychological Studies of Policy Decisions and Fiascoes* 2nd edn. (Boston: Houghton Millin, 1983)

Joskow P and Noll R, 'Regulation in Theory and Practice: An Overview' in *Fromm, G. (ed.) Studies in Public Regulation* (Cambridge, MA: MIT Press, 1981)

Keller H, 'Corporate Codes of Conduct and their Implementation: The Question of Legitimacy' in Wolfrum, R. and Roben, V. (eds) *Legitimacy in International Law* (Berlin: Springer, 2008)

Kettl D, *The Transformation of Governance: Public Administration for Twenty First Century America* (Baltimore: The John Hopkins University Press, 2002)

Leighton D, 'Making Boards Work: Recruiting for Balance, Competence and Results' in Burke, R. and Mattis, M. *Women on Corporate Boards of Directors: International Challenges and Opportunities* (The Netherlands: Kluwer Academic Publishers, 2000)

Lemass S, *The Role of State-sponsored Bodies in the Economy* (Dublin: IPA, 1959)

Lorsch J. *Pawns or Potentates: The Reality of America's Corporate Boards* (Boston: Harvard Business School Press, 1989)

Lynch-Fannon I 'Women and Labour Legislation in Ireland' in Connelly A *Gender and the Law in Ireland* (Dublin: Oaktree Press, 1993)

MacCarthaigh, M. *The Corporate Governance of Commercial State-Owned Enterprises in Ireland* CPMR Research Report 9 (Dublin: IPA, 2009)

Mallin, C., *Corporate Governance* (Oxford, Oxford University Press, 2013)

McCarthy E, 'Women in Management in Ireland' in Davidson, M and Burke, R. (eds.) *Women in Management Worldwide: Facts, Figures and Analysis* (England: Ashgate, 2004)

Machold S, Huse M, Hansen K and Brogi M, *Getting Women on to Corporate Boards: A Snowball Starting in Norway* (eds) (Cheltenham, UK : Edward Elgar Publishing Limited, 2013)

Martin S, 'Monitoring Irish Government' in O'Malley E and MacCarthaigh M, (eds) *Governing Ireland* (Dublin: IPA, 2012)

Mórt U, (ed) *Soft Law in Governance and Regulation: An Interdisciplinary Analysis* (Cheltenham: Edward Elgar, 2004)

Monks R and Minow N, *Corporate Governance* 5th edn (West Sussex: John Wiley & Sons, 2011)

McGinnity F and Russell H, *Gender Inequalities in Time Use the Distribution of Caring, Housework and Employment among Women and Men in Ireland* (Dublin: Equality Authority, 2008)

Mullins L, *Management and Organisational Behaviour* (Harlow, England: Pearson, 2013)

O'Connor P, *Emerging Voices: Women in Contemporary Irish Society* (Dublin: IPA, 1998)

Pfeffer J and Salancik G, *The External Control of Organizations: A Resource Dependence Perspective* (New York, NY: Harper & Row, 1978)

Quinn B and Connaughton B, 'Mediating Forces and the Domestic Polity' in Rees N, Quinn B and Connaughton B *Europeanisation and New Patterns of Governance Patterns in Ireland* (Manchester: Manchester University Press, 2010)

Rainey H, *Understanding and Managing Public Organizations*, 5th edn. (San Francisco, CA: Jossey Bass, 2014)

Rasmussen J and Huse M, 'Corporate Governance in Norway: Women Directors and Employee Elected Board Members' in Mallin C, *International Corporate Governance* (Elgar: Cheltenham, 2011)

Raustiala K and Victor D, 'Conclusions' in David et al, (eds.) *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice* (Cambridge, MA: MIT Press, 1998)

Rees N, 'The Irish Economy and Europe' in Rees N, Quinn B and Connaughton B, *Europeanisation and New Patterns of Governance Patterns in Ireland* (Manchester: Manchester University Press, 2010)

Russell H and McGinnity F, Callan T and Keane C , *A Woman's Place- Female Participation in the Labour Market* (Dublin: Equality Authority, 2009)

Salamon L, *The Tools of Government: A Guide to the New Governance* (New York: Oxford University Press, 2002)

Scott C, 'Regulation in the Age of Governance: The Rise of the Post Regulatory State' in Jordana J and Levi-Faur, D. (eds.) *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance* (Cheltenham, UK: Edward Elgar, 2004)

Senden L, *Soft Law in European Community Law* (Portland, Oregon: Hart Publishing, 2004)

Singh V, Vinnicombe S and Terjesen S, 'Human and Social Capital of Female Directors' in Burke R, Singh V, Bilimoria D, Huse M and Vinnicombe S (eds.) *Women on Corporate Boards of Directors: International Research and Practice* (Cheltenham: Edward Elgar, 2008)

Stevens A, *Women, Power and Politics* (Basingstoke, UK: Palgrave Macmillan, 2000)

Stivers C, White O and Wolf J, 'Public Administration and the Governance Process: Shifting the Political Dialogue' in Wamsley G. et al. (eds.) *Re-founding Public Administration* (Newbury Park: SAGE Publications, 1990)

Teigen M, 'Gender Quotas for Corporate Boards in Norway: Innovative Gender Equality Policy' in Fagan C, Gonzalez Menendez M and Gomez S. (eds) *Women on Corporate Boards and in Top Management: European Trends and Policy* (London: Palgrave, 2012)

Teigen M, 'Gender Quotas in Corporate Boards: On the Diffusion of a Distinct National Policy Reform' in Engelstad F and Teigen M, (eds) *Firms, Boards and Gender Quotas: Comparative Perspectives* (Comparative Social Research, Bingley: Emerald Publishers, 2012)

Vogel D and Kagan R. (eds.) *Dynamics of Regulatory Change: How Globalization Affects National Regulatory Policies* (Berkeley, CA: University of California Press, 2004).

Whelan J and Wood R, *Targets and Quotas for Women in Leadership: A Global Review of Policy, Practice and Psychological Research* (Melbourne: Centre for Ethical Leadership, The Melbourne Business School, 2012)

The World Bank, *Corporate Governance of State-owned Enterprises-A Toolkit* (Washington, World Bank, 2014)

Yukl, G, *Leadership in Organisation*, 8th edn. (Essex, New York: Pearson, 2013)

Zeitlin J, 'Introduction: Governing Work and Welfare in a New Economy: European and American Limits' in Zeitlin J and Trubek D. (eds) *Governing Work*

and Welfare in a New Economy: European and American Experiments (Oxford: Oxford University Press, 2003)

Working Papers

Ahern D and Clarke B, 'Listed Companies' Engagement with Diversity: A Multi-Jurisdictional Study of Annual Report Disclosures' (2013) ECGI Law Working Paper No. 221/2013

<http://www.ecgi.org/presidency/dublin2013/Listed%20Companies%20Engagement%20with%20Diversity%20-%20A%20Multi-Jurisdictional%20Study%20of%20Annual%20Report%20Disclosures.pdf>

Ayuso S, 'Maximising Stakeholders' Interests: An Empirical Analysis of the Stakeholder Approach to Corporate Governance' (2007) IESE Business School Working Paper No. 670 <http://iese.edu/research/pdfs/DI-0670-E.pdf>

Ayuso S and Argandona A, 'Responsible Corporate Governance: Towards a Stakeholder Board of Directors?' (2007) IESE Business School Working Paper No. 701 <http://www.iese.edu/research/pdfs/DI-0701-E.pdf>

Bertrand M, Black S, Jensen S and Lleras-Muney A, 'Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labour Market Outcomes in Norway' (2014) NBER Working Paper No. 20256 <http://www.nber.org/papers/w20256>

Bohren O and Staubo S, 'Female Directors and Board Independence: Evidence from Boards with Mandatory Gender Balance' Working Paper (BI Norwegian Business School, 2013) http://www.bath.ac.uk/management/news_events/events/corp-cgr-2013/pdf/StauboSiv.pdf

Braund C, 'Investigating the Effects of Gender Quotas on Public Listed Company Boards in Norway and the Progress of the Public Policy Debate in the UK and France' (Fellowship of Winston Churchill Memorial Trust 2012) <http://www.womenonboards.org.au/pubs/reports/churchill.htm>

Dawson M, 'Soft Law and the Rule of Law in the European Union: Revision or Redundancy?' (2009) EUI Working Papers, RSCAS 2009/24, Robert Schuman Centre for Advanced Studies http://cadmus.eui.eu/bitstream/handle/1814/11416/RSCAS%202009_24.pdf?sequence=1&isAllowed=y

Egan A, Maughan R and Coughlan J, 'The Nomination and Motivations of Irish Non-Executive Directors of Listed Companies' (2009) Dublin Institute of

Technology Conference Papers, Irish Accountancy & Finance Association Annual Conference.

<http://arrow.dit.ie/cgi/viewcontent.cgi?article=1012&context=buschaccon>

Frederick W, 'Enhancing the Role of the Boards of Directors of State-Owned Enterprises' (2011) OECD Corporate Governance Working Papers, No.2, OECD Publishing http://www.oecd-ilibrary.org/governance/enhancing-the-role-of-the-boards-of-directors-of-state-owned-enterprises_5kg9xfg6n4wj-en?crawler=true

Hardiman N, 'Economic Crisis and the Public Sector Reform: Lessons from Ireland' (2010) University College Dublin Geary Institute Working Paper No. 2010/13 <http://www.ucd.ie/geary/static/publications/workingpapers/gearywp201013.pdf>

Jordan C, 'Cadbury Twenty Years On' (2012) Centre For Transnational Legal Studies, Faculty Papers and Publications http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1003&context=ctls_papers

Karpoff J, 'The Impact of Shareholder Activism on Targeted Firms: A Survey of Empirical Findings' (2001) University of Washington Working Paper http://papers.ssrn.com/sol3/papers.cfm?abstract_id=885365

Laegreid P. et al 'The Structural Anatomy of the Norwegian State 1947-2003' (2003) Working Paper 21, Stein Rokkan Centre for Social Studies <http://www.ub.uib.no/elpub/rokkann/N/N21-03.pdf>

Murphy M, 'Forty Years of EU Influencing Social Policy in Ireland- A Glass Half-Full?' (2014) Politics Power and Society Working Paper Series, University of Maynooth. [https://www.maynoothuniversity.ie/sites/default/files/assets/document/Murphy,_MP_2014_EU_influencing_social_policy_in_Ireland_\(2\).pdf](https://www.maynoothuniversity.ie/sites/default/files/assets/document/Murphy,_MP_2014_EU_influencing_social_policy_in_Ireland_(2).pdf)

Nobel C, 'Few Women on Boards: Is There a Fix?' (2013) Harvard Business School Working Knowledge, Available at: <http://hbswk.hbs.edu/item/7159.html>

Nygaard K, 'Forced Board Changes: Evidence from Norway' (2011) Discussion Paper, Norwegian School of Economics and Business Administration http://www.sv.uio.no/econ/english/research/news-and-events/events/guest-lectures-seminars/Friday-seminar/2011/papers/paper_nygaard.pdf

Pande R and Ford D, 'Gender Quotas and Female Leadership: A Review' (2011) Background Paper for the World Development Report on Gender http://scholar.harvard.edu/files/rpande/files/gender_quotas_-_april_2011.pdf

Ramos Martin N, 'Positive Action in EU Gender Equality Law' (2013) Working Paper 139 Amsterdam Institute for Advanced Labour Studies (AIALS), University of Amsterdam <http://regulation.upf.edu/dublin-10-papers/4A2.pdf>

Sanderson P. et al. 'Flexible or Not? The Comply-or-Explain Principle in UK and German Corporate Governance' (2010) Working Paper 407, Centre for Business Research, University of Cambridge <http://regulation.upf.edu/dublin-10-papers/4A2.pdf>

Scott C, 'Understanding Variety in Public Agencies' (2008) Geary Institute Working Paper, University College Dublin <http://www.ucd.ie/geary/static/publications/workingpapers/gearywp200804.pdf>

Seidl D, 'Regulating Organizations through Codes of Corporate Governance' (2006) Centre for Business Research Working Paper No. 338, University of Cambridge http://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/working-papers/wp338.pdf

Seidl D, Sanderson P and Roberts J, 'Applying "Comply or Explain": Conformance with Codes of Corporate Governance in the UK and Germany' (2009) Centre for Business Research Working Paper No. 389, University of Cambridge http://www.cbr.cam.ac.uk/fileadmin/user_upload/centre-for-business-research/downloads/working-papers/wp389.pdf

Slominski P, 'Taking Hybridity of Hard and Soft Forms of Governance Seriously: Concept, Choice and Interaction of Legal Instruments in the EU' Paper Prepared for the ECPR Standing Group in the European Union Pan-European Conference, Riga, 27-28 September, 2008 <http://www.jhubc.it/ecpr-riga/virtualpaperroom/089.pdf>

Teigen M, 'Norwegian Quota Policies' Institute for National Research, Paper Presented at Nineteenth Meeting of the Helsinki Group on Women and Science, Brussels, 4-5 November, 2005; ISF Paper 2008:12

Vagliasindi M, 'Governance Arrangement for State-owned Enterprises' (2008) Worldbank Policy Research Working Paper 4542 <http://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-4542>

Reports

Australian Government, Department of Social Services, *Gender Balance on Australian Government Boards Report 2014-2015: A Statistical Analysis of the Government's Performance against the Gender Diversity Target (2015)*

Barnett N, Morley K and Piterman H, *Gender Agenda: Unlocking the Power of Diversity in the Boardroom* (An InSynCS Survey Study in Conjunction with Gender Worx and Board Benchmarking, 2010)

Catalyst, 'The Bottom Line: Connecting Corporate Performance and Gender Diversity' (2004)
http://www.catalyst.org/system/files/The_Bottom_Line_Connecting_Corporate_Performance_and_Gender_Diversity.pdf

Catalyst, *2014 Catalyst Census: Women Board Directors* (New York: Catalyst, 2015). <http://www.catalyst.org/knowledge/2014-catalyst-census-women-board-directors>

Central Statistics Office Ireland, *Women and Men in Ireland Report 2011* (Dublin: Stationery Office, 2011).
<http://www.cso.ie/en/media/csoie/releasespublications/documents/otherreleases/2011/Women,and,Men,in,Ireland,2011.pdf>

Central Statistics Office Ireland, *Women and Men in Ireland Report 2013* (Dublin: Stationery Office, 2013). <http://www.cso.ie/en/releasesandpublications/ep/p-wamii/womenandmeninireland2013/>

Clancy P, O'Connor N and Dillon K, *Mapping the Golden Circle* (Dublin: TASC, 2010)

Credit Suisse, *The CS Gender 3000: Women in Senior Management* (2014)
<https://publications.credit-suisse.com/tasks/render/file/index.cfm?fileid=8128F3C0-99BC-22E6-838E2A5B1E4366DF>

*COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Action Plan: European company law and corporate governance-a modern legal framework for more engaged shareholders and sustainable companies/*COM/2012/0740 final*/*

Corporate Women Directors International (CWDI), *CWDI 2013 Report: Women Board Directors of Fortune Global 200 and Beyond*.
http://www.boarddiversity.ca/sites/default/files/2046_001.pdf

Deloitte, *Women in the Boardroom: A Global Perspective, Fourth Edition* (Deloitte Centre for Corporate Governance, 2015).
<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-cg-women-in-the-boardroom-a-global-perspective4.pdf>

Department of Justice and Equality, *Towards Gender Parity in Decision-Making in Ireland* (An Initiative of the National Women's Strategy 2007-2016) (2013). <http://www.justice.ie/en/JELR/FINALTowards%20Gender%20Parity.pdf/Files/FINALTowards%20Gender%20Parity.pdf>

Department of Justice and Equality, *Government Approves New Measures to Promote Gender Balance on State Boards*, 2014

Devlin, L. *Report of the Public Service Organization Review Group* (Dublin: Stationery Office, 1969)

Doldor E, Vinnicombe S, Gaughan M and Sealy R, 'Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms' (2012) *Equality and Human Rights Commission Research Report 85*

Durbin A, 'Optimising Board Effectiveness with Gender Diversity: Are Quotas the Answer?' (2011) 21(8) *Private Sector Opinion*, A Global Corporate Governance Forum Publication, World Bank. <https://www-wdronline-worldbank-org.elib.tcd.ie/handle/10986/11069>

Egon Zehnder, '2014 European Board Diversity Analysis' (2015). <http://www.egonzehnder.com/EBDA-2014-map>

Equal Opportunity for Women in the Workplace Agency (EOWA), 2010 Australian Census of Women in Leadership. https://www.wgea.gov.au/sites/default/files/2010_census_tag.pdf

Ernst and Young, 'Female Directors Transform Thinking- Getting on Board: Gender Diversity on Corporate Boards' (2012). http://www.ey.com/US/en/Issues/Governance-and-reporting/Getting-on-board_Female-directors-transform-thinking

European Women's Lobby, *Women on Boards in Europe from a Snail's Pace to a Giant Leap?* EWL Report on Progress, Gaps and Good Practice (2012) <http://www.womenlobby.org/spip.php?article3188>

European Women's Lobby, *Women on Boards in Europe-Second Progress Report: Cracks in the Glass Ceiling or Just a Trick of Light?* (2015). <http://womenlobby.org/spip.php?article7103>

European Women's Lobby, *Cracks in the Glass Ceiling or Just a Trick of the Light?* (2015) *Women on Boards in Europe: Second Progress Report*.

<http://www.womenlobby.org/spip.php?article7115>

European Women on Boards, *Gender Diversity on European Boards- Realizing Europe's Potential: Progress and Challenges* (2016) <http://european.ewob-network.eu/ewob-publishes-landmark-report-on-the-progress-of-women-on-the-boards-of-major-european-companies/>

Financial Reporting Council (UK), *What Constitutes an Explanation under 'Comply or Explain'?* (Report of Discussions between Companies and Investors, 2012)

Financial Reporting Council (UK), *Developments in Corporate Governance and Stewardship* (2014)

Finland Chamber of Commerce (FINNCHAM) Women Executive Report, *The Glass Ceiling is Cracking, Self-Regulation Beats Quotas* (2012)

Finland Chamber of Commerce (FINNCHAM) Women Executive Report, *Women Executives Stepping Up for More Executive Responsibility* (2014)

Grant Thornton, *Plotting a New Course to Improved Governance* (Corporate Governance Review 2014) http://www.grant-thornton.co.uk/Global/Publication_pdf/Corporate-Governance-Review-2014.pdf

Gladman, K. and Lamb, M. 'Director Tenure and Gender Diversity in the United States: A Scenario Analysis' (2013) *GMI Ratings*

Gladman, K. and Lamb, M. '2013 Women on Boards Survey (2013) *GMI Ratings*

Haughey, N. 'Report of a Consultation with Civil Society Representatives and Citizens on Ireland's Participation in the OGP' (Transparency International Ireland, 2013)

House of Lords, European Union Committee 5th Report of Session 2012-2013, *Women on Boards Report* (London: The Stationery Office Limited, 2012)

Institute of Directors In Ireland, *State Boards Report 2012: Challenges for the Future* (2012)

Institute of Directors In Ireland, *Women on Boards in Ireland 2013: Progress Made and Obstacles Remaining* (2013)

Institute of Directors In Ireland, *State Boards in Ireland 2015: Views from the Boardroom Table* (2015)

Institute of Directors In Ireland, *Women on Boards in Ireland 2015* (2015)

Jakobsson U and Korkeamäki T, 'Ownership and Governance of Large Finnish Firms' *Prime Minister's Office Reports 6/2014* (Finland: Prime Minister's Office, 2014)

Kamonjoh E, 'Gender Diversity on Boards: A Review of Global Trends' (Institutional Shareholder Services, (ISS) 2014) .
<http://www.issgovernance.com/file/publications/2014-iss-global-board-diversity-report.pdf>

KPMG, *ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of 31 December 2011 Year End Disclosures* (2012)

KPMG, *ASX Corporate Governance Council Principles and Recommendations on Diversity: Analysis of Disclosures for Financial Years Ended between 31 December 2011 and 30 December 2012* (2013)

Lee L, Marshall R, Rallis D and Moscardi M, *Women on Boards: Global Trends in Gender Diversity on Corporate Boards* (2015) MSCI ESG RESEARCH INC
<https://www.msci.com/documents/10199/04b6f646-d638-4878-9c61-4eb91748a82b>

Lord Davies, *Women on Boards* (Department of Business, Innovation and Skills, 2011)

Lord Davies, *Women on Boards Annual Report* (Department of Business, Innovation and Skills, 2015)

McKinsey and Company, *Women Matter: Gender Diversity, A Corporate Performance Driver* (2007)

McKinsey and Company, *Women Matter: Making the Breakthrough* (2012)

McKinsey and Company, *Women in the Workplace 2015* (2015)

North-South Inter-Parliamentary Association, *Women in Public Life* Joint RAISE/L & RS Paper 4 of 2015

OECD, *Public Sector Leadership for the 21st Century* (Paris: OECD Publishing, 2001)

OECD, *Principles of Corporate Governance* (Paris: OECD Publishing, 2004)

OECD Guidelines on Corporate Governance of State-owned Enterprises (Paris: OECD Publishing, 2005)

OECD, *Accountability and Transparency: A Guide for State Ownership* (Paris: OECD Publishing, 2010)

OECD, *The Role of Institutional Investors in Promoting Good Corporate Governance* (Paris: OECD Publishing, 2011)

OECD, *Gender Equality in Education, Employment and Entrepreneurship: Final Report to the MCM 2012*. C/MIN(2012)5.
www.oecd.org/employment/50423364.pdf

OECD, *Recommendation of the Council on Gender Equality in Education, Employment and Entrepreneurship* (Paris: OECD, 2013).
[http://www.oecd.org/gender/C-MIN\(2013\)5-ENG.pdf](http://www.oecd.org/gender/C-MIN(2013)5-ENG.pdf)

OECD, *Recommendations of the Council on Guidelines on Corporate Governance of State-Owned Enterprises* (2015).
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=323&InstrumentPID=359&Lang=en&Book=False>

RiskMetrics Group, *Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States* (2009) (CONTRACT No. ETD/2008/IM/F2/126) (2009)

Sealy, R., Singh, V. and Vinnicombe, S. *'The Female FTSE Report 2007: A Year of Encouraging Progress*, (Cranfield, England: Cranfield University School of Management, 2007)

Sealy, R. and Vinnicombe, S. *The Female FTSE Board Report 2013: False Dawn of Progress for Women on Boards?* (Cranfield, England: Cranfield University School of Management, 2013)

Sealy, R., Turner, C, Pryce, P and Vinnicombe, S. *Women on Boards: Progress Following the 2012 Corporate Governance Code* (Cranfield, England: Cranfield University School of Management, 2014)

Selandec G and Senden L, *Positive Action Measures to Ensure Full Equality in Practice between Men and Women, Including Company Boards* (European Commission, 2011)

Statistics Finland, *Women and Men in Finland 2014*

Statistics Norway, *Women and Men in Norway 2010*

Statistics Norway, *Population's Level of Education 2013*

Statistics Norway, *Labour Force Survey Q4, 2014*

The Scottish Government, *'Women on Board: Quality through Diversity' Scottish Government Consultation on the Introduction of Gender Quotas on Public Boards* (2014)

Tyson, L. *The Tyson Report on the Recruitment and Development of Non-Executive Directors* (London: London Business School, 2003)

Vinnicombe, S., Doldor, E and Turner, C. *The Female FTSE Board Report 2014: Crossing the Finish Line* (Cranfield, England: Cranfield University School of Management, 2014)

Vinnicombe, S., Doldor, E., Sealy, R., Pryce, P. and Turner, C. *The Female FTSE Board Report 2015: Putting the UK Progress into a Global Perspective* (Cranfield, England: Cranfield University School of Management)

Regulatory Instruments

ASX Corporate Governance Council (Australia), *Corporate Governance principles and Recommendations (2nd Edition, 2010)*

ASX Corporate Governance Council (Australia), *Corporate Governance Principles and Recommendations (3rd Edition, 2014)*

Companies Act 2006 (Strategic report and Director's Report) Regulation 2013(UK)

Companies Act 2014 (Ireland)

Department of Finance (Ireland), *Code of Practice for the Governance of State Bodies*, 2009.

Department of Public Expenditure and Reform (Ireland), *Guidelines on Appointments to State Boards*, 2014

Financial Reporting Council (UK), *UK Corporate Governance Code 2010*

Financial Reporting Council (UK), *UK Corporate Governance Code 2014*

Financial Reporting Council (UK), Final Draft: The UK Corporate Governance Code 2016

Limited Liability Companies Act- Finland (624/2006; Osakeyhtiölaki)

Ministry of Social Affairs and Health (Finland), *Act on Equality between Men and Women (No. 609/1986) (Amendment 232/2005)*

Norwegian Public Limited Liability Companies Act 1997

Securities Market Association, *Finnish Corporate Governance Code 2010*

Securities Market Association, Finnish Corporate Governance Code 2015

Securities Market Association, Guideline on Departure from the Recommendations of the Finnish Corporate Governance Code 2012

The Norwegian Code of Practice for Corporate Governance (2014)

Workplace Gender Equality Agency (Australia), Workplace Gender Equality Act 2012

European Commission/European Union Recommendations and Documents

Council of the European Union, Council Conclusions on the European Pact for gender equality for the period 2011-2020 (European Pact for Gender Equality 2011-2020)

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/119628.pdf

European Commission, *DIRECTIVE 2006/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings* OJ L 224, 16.8.2006

European Commission, *DIRECTIVE 2014/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups* L330/1, 15.11.2014

European Commission, *Strengthening the Commitment to Equality between Women and Men: A women's Charter (Women's Charter) COM (2010) 78 Final.* <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:em0033>

European Commission, *Strategy for Equality between Women and Men 2010-2015* (2010) http://ec.europa.eu/justice/gender-equality/files/documents/strategy_equality_women_men_en.pdf

European Commission, *Strategy for equality between women and men 2010-2015* (COM (2010) 491 final) http://ec.europa.eu/justice/gender-equality/files/documents/strategy_equality_women_men_en.pdf

European Commission, *Green Paper, The EU Corporate Governance Framework*
COM (2011)164 final 5.4.2011
http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf

European Commission, *Action Plan: European company law and corporate governance-a modern legal framework for more engaged shareholders and sustainable companies*, /* COM/2012/0740 final */ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0740>

European Commission, *Women in Economic Decision-Making in the EU: Progress Report. A Europe 2020 Initiative* (2012) http://ec.europa.eu/justice/gender-equality/files/women-on-boards_en.pdf

European commission, *Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures* Brussels 14.11.2012
COM (2012) 614 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF>

European Commission, *Women and Men in Leadership Positions in the European Union* (Luxembourg: Publications Office of the European Union, 2013)
http://ec.europa.eu/justice/gender-equality/files/gender_balance_decision_making/131011_women_men_leadership_en.pdf

European Commission, *Report on Equality between Women and Men 2014* (2014)
http://ec.europa.eu/justice/gender-equality/files/annual_reports/150304_annual_report_2014_web_en.pdf

European Commission, *COMMISSION RECOMMENDATION of 9 April 2014 on the quality of corporate governance reporting ('comply or explain')* (2014/208/EU)
April 2014 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014H0208>

European Commission, *Database of Women and Men in Decision-Making* (2014)
http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/politics/national-parliaments/index_en.htm

European Commission, *Gender Balance on Corporate Boards: Europe is Cracking the Glass Ceiling* (2014) http://ec.europa.eu/justice/gender-equality/files/documents/140303_factsheet_wob_en.pdf

European Commission, *Gender Balance on Corporate Boards: Europe is Cracking the Glass Ceiling* (2015) <http://ec.europa.eu/justice/gender->

equality/files/womenonboards/factsheet_women_on_boards_web_2015-10_en.pdf

Walby, S. and Armstrong, J. *Gender Quotas in Management Boards* (Brussels: European Parliament Directorate-General for Internal Policies, 2012)

Newspaper Articles

Anthea Mc Tiernan, 'Women Could Make up Half of State Boards if All Goes to Plan' *The Irish Times*, 5 February 2015

Barrett C, 'Gender Quotas Feel Coercive but Appear to Work' *Financial Times* 15 May, 2014

Christina Finn, 'Women 'Talent Bank' to Improve Gender Balance on State Boards' *thejournal.ie*, 24 July, 2014

Gwladys Oslo, 'Quarter of Norway's Firms Face Shutdown as Female Directors Deadline Approaches' *The Guardian* 27 December, 2007

Hefferman, M. ' "Hardwiring" Helps Close Gender Gap' *Morning Herald*, 10 June 2013

James Fontanella-Khan, 'UK Musters Support to Block EU Quota' *Financial Times*, 16 September, 2012

James Kanter, 'European Proposal to Get More Women on Boards Faces Test' *New York Times*, October 22, 2012

Jill Treanor, 'Norway's Female Boardroom Pioneer Rejects Quotas for Women' *The Guardian* 24 January, 2013

Kanter, J. 'Push for Gender Balance on Boards Gains Steam' *The New York Times* 24 January, 2013

Liz Bolshaw, 'Glass Ceilings Starting to Crack across Europe' *Financial Times*, 12 December, 2011

Mary Regan, 'State Boards need more 'awkward' women', according to Lynch', *The Irish Examiner* 9 January 2014

Mary Teresa Bitti, 'Bringing Women onto Board by Quota' *Financial Post*, 5 November, 2010

Richard Milne, 'Skirting the Boards' *Financial Times* 15 June, 2009

Shane Phelan, 'Pressure on Coveney over Lack of Women on State Boards' *Independent.ie* 31 January, 2015

Stephen Castle, 'European Plan to Put More Women on Boards Runs into Opposition' *New York Times* September 17, 2012