

BOARD GENDER DIVERSITY: A PATH TO ACHIEVING SUBSTANTIVE EQUALITY IN THE UNITED STATES

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APPENDIX

ANALYSIS OF EU AND U.S. BOARD GENDER DIVERSITY

Location	Masculinity Score ¹	Power Distance Score ²	Uncertainty Avoidance Score ³	BGD Penalty for Failing to Meet Quota	Const.	Political Quota ⁴	Required BGD Quota	2019 Actual % of BGD ⁵	Initial Date of BGD Quota Enactment ⁶	Years given to Comply with BGD Quota ⁷	Success of BGD Quota and Years Taken to Meet Quota ⁸
France	43 ⁹	68 ¹⁰	86 ¹¹	Open seat and loss of fees ¹²	Pos. ¹³	Leg.	40 ¹⁴	45.3	2011 ¹⁵ (21.6)	5 - 2016 ¹⁶ (41.2)	5 - Met 2016 (41.2)
Italy	70 ¹⁷	50 ¹⁸	75 ¹⁹	Severe fines and loss of fees ²⁰	Pos. ²¹	Leg.	33 ²²	36.1	2011 ²³ (05.9)	4 - 2015 ²⁴ (28.6)	6 - Met 2017 (34)
Belgium	54 ²⁵	65 ²⁶	94 ²⁷	Open seat and loss of fees ²⁸	Pos. ²⁹	Leg.	33 ³⁰	35.9	2011 ³¹ (10.9)	6 - 2017 ³² (30.7)	8 - Met 2019 (34.4)
Netherlands	14 ³³	38 ³⁴	53 ³⁵	Comply or explain ³⁶	Anti-disc. ³⁷	Vol.	30 ³⁸	34.2	2013 ³⁹ (25.1)	3 - 2016 ⁴⁰ (27.5)	5 - Met 2018 (30.7)
Germany	66 ⁴¹	35 ⁴²	65 ⁴³	Open seat ⁴⁴	Pos. ⁴⁵	Vol.	30 ⁴⁶	35.6	2015 ⁴⁷ (26.1)	1 - 2016 ⁴⁸ (29.5)	2 - Met 2017 (31.9)
Austria ⁴⁹	79 ⁵⁰	11 ⁵¹	70 ⁵²	Open seat ⁵³	Pos. ⁵⁴	Vol.	30 ⁵⁵	31.3	2017 ⁵⁶ (19.2)	1 - 2018 ⁵⁷ (26.1)	2 - Met 2019 (31.3)
Spain	42 ⁵⁸	57 ⁵⁹	86 ⁶⁰	Incentives only ⁶¹	Pos. ⁶²	Leg.	40 ⁶³	26.4	2007 ⁶⁴ (06.2)	8 - 2015 ⁶⁵ (14.2)	Fail
Portugal	31 ⁶⁶	63 ⁶⁷	99 ⁶⁸	Open seat (potential fine after 360 days) ⁶⁹	Pos. ⁷⁰	Leg.	20/33.3 ⁷¹	24.6	2017 ⁷² (16.2)	2 - 2018/20 ⁷³ (21.6)	1 - 2018 Met/Open (21.6)
California	-	-	-	Fines ⁷⁴	Anti-disc. ⁷⁵	None	1/2 or 3 ⁷⁶ (# not %)	21.2 ⁷⁷	2018 ⁷⁸ (17.4%)	1 - 2019 ⁷⁹ (21.2%)	1 - Met 2019 ⁸⁰
United States	62 ⁸¹	40 ⁸²	46 ⁸³	None	Anti-disc. ⁸⁴	Vol.	-	20.4 ⁸⁵	-	-	-

Hofstede scores: ≥50 is relatively high (purple), <50 is relatively low (blue)

1. See *National Culture*, HOFSTEDÉ INSIGHTS, <https://hi.hofstede-insights.com/national-culture> [<https://perma.cc/W75N-5GCX>].
2. See *id.*
3. See *id.*
4. See *Gender Quotas Database*, INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, <https://www.idea.int/data-tools/data/gender-quotas/database> [<https://perma.cc/W86L-3FF3>] (for results in this column, chose the indicated country from “Geographic Scope” field, then click “Search”).
5. See *Largest Listed Companies: Presidents, Board Members and Employee Representatives*, EUR. INST. FOR GENDER EQUAL., https://eige.europa.eu/gender-statistics/dgs/indicator/wmidm_bus_bus_wmid_comp_compbm [<https://perma.cc/P448-GKX5>] (choose “2019-B2” from “Time Period” dropdown; then choose “Members” in the “Position” dropdown; then select the listed countries from the “Countries” dropdown; then click “Apply”).
6. BGD percentage in year of enactment. See *id.* (choose the indicated year in the “Time Period” dropdown; then click “Apply”).
7. See *id.* (choose the indicated year in the “Time Period” dropdown; then click “Apply”).
8. See *id.* (choose the indicated year in the “Time Period” dropdown; then click “Apply”).
9. *Country Comparison: France*, HOFSTEDÉ INSIGHTS, <https://www.hofstede-insights.com/country/france> [<https://perma.cc/MAD5-WGQD>].
10. *Id.*
11. *Id.*
12. Loi 2011-103 du 27 janvier 2011 relative à la représentation équilibrée des femmes et des hommes au sein des conseils d’administration et de surveillance et à l’égalité professionnelle [Law 2011-103 of January 27, 2011 on the balanced representation of women and men on administrative and supervisory boards and on professional equality], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [Official Gazette of France], Jan. 28, 2011, p. 1680 [hereinafter French Law].
13. 1958 CONST. art. I (Fr.).
14. French Law, *supra* note 12.
15. *Id.*
16. *Id.*
17. *Country Comparison: Italy*, HOFSTEDÉ INSIGHTS, <https://www.hofstede-insights.com/country-comparison/italy/> [<https://perma.cc/Y9MG-E4V2>].
18. *Id.*

19. *Id.*

20. Legge 12 luglio 2011, n.120, G.U. July 28, 2011, n.174 (It.) [hereinafter Italian Law].

21. Art. 3 COSTITUZIONE [COST.] (It.).

22. Italian Law, *supra* note 20.

23. *Id.*

24. *Id.* This was a temporary measure, expiring after three board renewals, but in 2018 the Corporate Governance Code was amended to maintain the improvements made. PAUL HASTINGS, *BREAKING THE GLASS CEILING: WOMEN IN THE BOARDROOM* 96-97 (2018).

25. *Country Comparison: Belgium*, HOFSTEDÉ INSIGHTS, <https://www.hofstede-insights.com/country-comparison/belgium/> [<https://perma.cc/KQQ9-3MYF>].

26. *Id.*

27. *Id.*

28. Wet van 28 juli 2011, die ervoor zorgt dat vrouwen zitting hebben in de raad van bestuur van staatsbedrijven, beursgenoteerde bedrijven en de nationale loterij [Law of 28 July 2011, to ensure that women have a seat on the board of directors of state-owned enterprises, listed companies, and the national lottery] (Belg.), M.B., Sept. 14, 2011, art. I [hereinafter Belgian Law].

29. 1994 CONST. (Belg.) art. 1.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Country Comparison: The Netherlands*, HOFSTEDÉ INSIGHTS, <https://www.hofstede-insights.com/country-comparison/the-netherlands/> [<https://perma.cc/Z8WC-75YX>].

34. *Id.*

35. *Id.*

36. Art. 2:391 para. 7 BW (Neth.) [hereinafter Dutch Law]. Although the law expired in 2016, Parliament threatened to change the law to include sanctions if a 20 percent target was not met by 2019 and a 30 percent target was not met by 2023. Sonja A. Kruisinga & Linda Senden, *Gender*

Diversity on Corporate Boards in the Netherlands: Waiting on the World to Change, in GENDER DIVERSITY IN THE BOARDROOM 177, 188-89 (Cathrine Seierstad et al. eds., 2017).

37. GW. [CONSTITUTION] art. 1 (Neth.).

38. Dutch Law, *supra* note 36, arts. 2:166 & 2:276.

39. *Id.*

40. *Id.* Although the initial law expired in 2016, it was renewed through 2020. HASTINGS, *supra* note 24, at 100.

41. *Country Comparison: Germany*, HOFSTEDINSIGHTS, <https://www.hofstede-insights.com/country-comparison/germany/> [<https://perma.cc/YX57-DGN7>].

42. *Id.*

43. *Id.*

44. Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst [Law for the Equal Participation of Women and Men in Management Positions in the Private and Public Sectors], Apr. 24, 2015, Bundesgesetzblatt, Teil I [BGBl I] at 655-56 (Ger.) [hereinafter German Law].

45. Grundgesetz [GG] [Basic Law], art. 3, translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0026 [<https://perma.cc/AN27-W9LS>] (Ger.).

46. German Law, *supra* note 44.

47. *Id.*

48. *Id.*

49. News Release, Eur. Comm'n, Austria Enacts Legislation for a 30% Quota of Women on Supervisory Company Boards (Nov. 23, 2017), <https://www.equalitylaw.eu/downloads/4510-austria-austria-enacts-legislation-for-a-30-quota-of-women-on-supervisory-company-boards-pdf-168-kb> [<https://perma.cc/AL9G-TE6H>].

50. *Country Comparison: Austria*, HOFSTEDINSIGHTS, <https://www.hofstede-insights.com/country-comparison/austria/> [<https://perma.cc/7M2R-ER83>].

51. *Id.*

52. *Id.*

53. Gleichstellungsgesetz von Frauen und Männern im Aufsichtsrat [Act on Equality of Women and Men on Supervisory Boards] Bundesgesetzblatt [BGBl I] No. 104/2017, as amended, § 1, ¶ 5, https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2017_I_104/BGBLA_2017_I_104.pdf [https://perma.cc/8DH6-PAB3] (Austria) [hereinafter Austrian Law].

54. BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] BGBl No. 1/1930, as last amended by Bundesverfassungsgesetz [BVG] BGBl I No. 2/2008, art. 7, ¶ 2, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138> [https://perma.cc/9MPQ-9CLY] (Austria).

55. Austrian Law, *supra* note 53.

56. *Id.*

57. *Id.*

58. *Country Comparison: Spain*, HOFSTEDE INSIGHTS, <https://www.hofstede-insights.com/country-comparison/spain/> [https://perma.cc/FLJ2-8Y5N].

59. *Id.*

60. *Id.*

61. Law for the Effective Equality of Women and Men art. 34 (B.O.E. 2007, 71) (Spain) [hereinafter Spanish Law].

62. CONSTITUCIÓN ESPAÑOLA, B.O.E. n. 14, Dec. 29, 1978 (Spain).

63. Spanish Law, *supra* note 61, art. 75.

64. *Id.*

65. *Id.*

66. *Country Comparison: Portugal*, HOFSTEDE INSIGHTS, <https://www.hofstede-insights.com/country-comparison/portugal/> [https://perma.cc/AGW8-R69B].

67. *Id.*

68. *Id.*

69. Decreto-Lei n.º 62/2017 de 1 de agosto [Decree-Law no. 62/2017], art. 6 (Port.) [hereinafter Portuguese Law].

70. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [C.R.P], art. 13, English translation available at <https://dre.pt/constitution-of-the-portuguese-republic> (Port.).

71. Twenty percent by 2018 and 33.3 percent by 2020. Portuguese Law, *supra* note 69, art. 5.

72. *Id.*

73. *Id.*

74. S.B. 826, 2018 Leg., Reg. Sess. (Cal. 2018) (codified as CAL. CORP. CODE §§ 301.3, 301.4, 2115.5 (West 2021)).

75. CAL. CONST. § 7(a).

76. Unlike member states' laws requiring a certain percentage, California requires one woman per board by December 31, 2019; two women must be on boards with five members or fewer, while three women must be on boards with six or more by December 31, 2021. *Id.*

77. 2020 WOMEN ON BDS., GENDER DIVERSITY INDEX: 2018 PROGRESS OF WOMEN CORPORATE DIRECTORS BY COMPANY SIZE, STATE AND INDUSTRY SECTOR 6 (2018), https://2020wob.com/wp-content/uploads/2019/09/2020WOB_GDI_Report_2018_FINAL.pdf [<https://perma.cc/SEV2-PK85>].

78. *Id.*

79. Cal. S.B. 826.

80. Ninety-six percent compliance by December 31, 2019. KPMG, THE WOMEN CHANGING CALIFORNIA BOARDROOMS: A LOOK AT THE EARLY IMPACT OF CALIFORNIA'S BOARD DIVERSITY MANDATE 2-3 (2000), <https://boardleadership.kpmg.us/content/dam/boardleadership/en/pdf/2020/the-women-changing-california-boardrooms.pdf> [<https://perma.cc/E4UB-VP5R>].

81. *Country Comparison: United States*, HOFSTEDE INSIGHTS, <https://www.hofstede-insights.com/country-comparison/the-usa/> [<https://perma.cc/HC6T-ASWY>].

82. *Id.*

83. *Id.*

84. U.S. CONST. amend. 14, § 1.

85. 2020 WOMEN ON BDS., *supra* note 77, at 6.