GENDER DIVERSITY IN THE BOARDROOM. CONTEXT AND SPANISH CASE

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Abstract

In the wake of the 2008 economic financial crisis, several corporate governance issues have became more relevant in the daily corporate life, among them *Gender Diversity*. Institutional investors, due to the critical environment began to scrupulously analyze the companies, in which they invest, monitoring the level of compliance with corporate governance best practices, something which has been neglected in the past. This lead to the view that companies in line with best practice were able to reduce risks and consequently become more stable enabling them to increase company value.

Starting from 1977 several aspects of the gender diversity have been analyzed and several theories have been produced by experts in this field. In 1977, the author of *Men and Women of the Corporation,* Kanter, showed evidence of the benefits for a company to have a more balanced boardroom. In the last decade many researchers have dedicated their study on how more women directors could affect corporate value.
The flow of theories can be classified in two categories. At the beginning, gender diversity was considered as simply the need to have more women on board, then and more recently as diversity of skills, expertise, culture and backgrounds.

The interest for this argument has become wide spread, grabbing the attention of entities at different levels, including those in charge of regulating markets. Many European countries amended their Corporate Governance Codes and laws pushing for the increase of women on boards. With the intensification of different regulations, the European Commission issued a regulation, with the aim of encouraging higher participation of women at board level. Their aim was also to align all European countries rules, conscious of the relevance for companies operating in the same European environment, to work in a global market with common rules. The increased attention towards gender diversity also partly derived from the actions of proxy advisors and institutional investors.

All European countries implemented their regulations at different levels, giving suggestions of targets to be reached through their corporate governance codes or through laws, as far as establishing punitive measures in case of failure to reach the established target on time.

The present paper focuses on the Spanish market, an interesting jurisdiction because of the methods implemented and the progress witnessed at company level to reach the proposed targets. From 2007 to 2013 the percentage of women on boards passed from 5,78% to 14,56%. Significant the progress done in the last six years and, at the same time there is evidence that Spain moved earlier towards a balanced boardroom at legislative level, but without eliminates strong impact at corporate level except in very few cases.

Country regulations did not have an effective impact on the level of women serving on boards at executive and non-executive levels due to the particular market structure. Directors can serve on the board for twelve years maintaining the status of independent director and frequently directors are re-appointed for many subsequent years. Furthermore there is not any rule for the number of boards in which a director can serve. Due to this many directors participate in more than one company board. This together with the twelve years of board tenure is obstacles to the increase of women participating to the board life.

Another characteristic of the Spanish market that limits female presence on the boardrooms is the strong presence of families controlling the market. In this case many seats are covered by family representatives. This practice does not leave, much space, for external candidates to seat on the board and consequently limits the presence of women on boards.

A stronger level of compliance with gender diversity is more evident from the perspective of mix of background and expertise. This level increased by 29,33% during the period considered in this study (from 2007 to 2013) and reaching 30,79% in 2013. A board that experiences a good balance in gender mix and international directors together with experts in transversal fields bring to the board expertise and knowledge to develop the company business in a more proficiency direction. This is considered to be the right recipe to enhance on corporate governance and avoid risks that could affect company value. Once more in Spain main shareholders or founding families are an obstacle to the circulation of new experience and ideas, able to ensure that the board is provided with the adequate people to take better decision in the company's interest. Moreover, all board members have a background, in terms of academic qualifications, in line with the business of the company while there is a lack of transversal expertise.

The current Spanish situation shows that regulations at local or European level are not enough to reach a balanced boardroom for gender and professional profile of board diversity. Neither of the regulations coming from the European Commission and the Spain are considered punitive measures in case of no compliance. Records provided by Catalyst at the beginning of March 2014, highlight that Norway is the country with the highest level of compliance with 40,90% of board seats held by women[1]. Norway can be considered an example of how mandatory quota rules can work for companies.

Spain could reach a high level of compliance by adopting restrictive measures, in this case, neither those characteristic elements as the Directors' tenure or family owners, could limit or reduce the effectiveness of the measures proposed.

Keywords: Gender Diversity; Spain; Corporate Governance ; Corporate Board

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During the last decade investors and researches have showed an increasing interest in gender policy, but the interest for the issue is not something new.

In 1977, Kanter was among the first to outline the positive contribution of a more balanced boardroom[2]. Subsequently, other researchers started to investigate gender diversity, each included different variables in their analysis, which all converged to the same finding that women play an important role on board. Recently, in many European countries, Governance reforms stressed the importance of *gender diversity* in the boardroom.

Initially, "Gender Diversity" was considered simply as having more women on the boards of listed companies. The first country to face the issue was Norway, establishing in 2005, that at least 40% of directors should be women. Then in 2010, when the Swedish Corporate Governance Code amended equal

[1] http://www.catalyst.org/knowledge/women-boards
[2] R.M. Kanter, Men and Women of the Corporation, New York: Basic Books, 1977.

gender distribution on the board. Further the Swedish Code hinted that Directors "should collectively exhibit diversity and breath of qualifications, experience and background"[3] starting from here the idea of gender diversity started to evolve considering diversity from several angles. More recently this concept has been re-thought by one of the major institutional investors services firm, Glass Lewis, that believes "gender is just one aspect of diversity" able to drive corporate value[4].

In the next sections we provide an overview on international regulations and the European Union proposal to drive European countries initiatives towards a common direction and, above all, to accelerate the process in the twenty seven countries that are part of the European Union so that in 2020 all of them could be aligned. In particular we analyze how these regulations could affect the Spanish market in terms of local regulation and then, how these regulations are driving Spain toward the target proposed by the European Commission, of 40% non-executive board seats to be held by women. To better evaluate the several steps of the Spanish market, towards the proposed target, we also consider the steps taken by countries that started this alignment process before Spain. To aid in our analysis, ISS reports, company Annual Reports and public files will be analyzed for companies included in the IBEX 35 from 2007 to 2013. This time range takes into consideration the year (2007) in which Spain initiated to apply the Código Unificado[5]. From this starting point, we will evaluate Spain's progress year by year until 2014 and subsequently measure the gap between the European proposal (40% of non-executive seats held by women by 2020) and the progress of that relative year.

1. Gender Diversity in the wake of the financial crisis

To better understand the evolution of gender diversity policy and its impact on the Spanish market, we first explain the environment in which it was born and developed.

In the wake of the 2008 financial crisis, investors started to request that company boards lead their companies in new directions, to introduce fresh perspectives and focus more on risk mitigation with the aim to reduce risks that could affect company value and stability during an economic crisis. It was believed that these new ideas would be more likely to come from boards that were "diverse in race, gender, background and experience and that have appropriate levels of independence[6]".

The value of the concept of Gender Diversity has increased and eventually became considered as an essential element for company success and a key to ensure that the company was able to reach all segments of its market. According to Luis A. Aguilar, Securities and Exchange Commissioner, said: "in this ever more challenging business environment, the ability to draw on a wide range of viewpoints, backgrounds, skills and experience is critical to a company success[7]". "While some investors supported increasing board gender diversity simply as a matter of course, others suggested there was a strong business case for it. They believed it can lead to a more diverse workforce, better corporate governance practices and improved stakeholder relations, which, in turn, would result in better financial performance"[8].

During the last few years many researchers have investigated the link between women on board and company economic performance. These supported the theory that increasing the percentage of women on board enhances company performance[9]. One of the most recent researches, published by the DeGroote

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[3] Swedish Corporate Governance Code is available at http://www.corporategovernanceboard.se/media/45322/svenskkodbolagsstyrn_2010_eng_korrigerad20110321.pdf

[4] Glass Lewis, Mind the Gap: Board Gender Diversity in 2012, p. 5.

[5] The Código Unificado also known as the Unified Code was approved on May 22th, 2006. It is a summary and updating of the recommendations proposed in the Aldama paper in 2003 and the Olivencia one in 1998.

[6] C. Keatinge – D. Eaton, Mind the Gap: Board Gender Diversity in 2012, Glass Lewis & Co., p. 2.

[7] Luis A. Aguilar, Speech by SEC Commissioner: Diversity in the Boardroom Yields Dividends, September 2009.

[8] C. Keatinge – D. Eaton, Mind the Gap: Board Gender Diversity in 2012, Glass Lewis & Co., p. 2.

[9] R. B. Adams – D. Ferreira, Gender Diversity in the Boardroom, ecgi - Finance Working Paper n° 58/2004, 2004; G. Desvaux - S. Devillard-Hoellinger - P. Baumgarten, Women Matter. Gender diversity, a corporate performance driver, Gregory McQueen &Co., 2007; L. Joy - N.M. Carter - H.M. Wagener -

School of Business, states: "The results showed that female directors achieved significantly higher scores than their male counterparts on the CMR dimension which essentially involves making consistently fair decisions when competing interests are at stake. Since directors are compelled to make decisions in the best interest of their corporation while taking the viewpoints of multiple stakeholders into account, having a significant portion of female directors with highly developed CMR skills on board would appear to be an important resource for making these types of decisions and making them more effectively[10]". The aforementioned studies consider gender diversity as an element able to have a positive economic impact on the company structure. However they treat gender diversity as the concept women on boards and not in terms of the expertise or internationality of board members. Skills, cultural background and social values are the key elements of diversity able to increase company performance. These elements provide each board director with the right competencies to face risks that can arise managing a company in the best interest of shareholders.

2. Gender Diversity from Proxy Advisors and institutional investors' perspective

Proxy Advisors firms have also demonstrated a strong interest in Gender Diversity. The top two proxy firms Institutional Shareholder Services (ISS) and Glass Lewis are active supporters of this principles. Furthermore many institutional investors rely on their analysis especially on UK and US giving their recommendations a strong influence across many markets[11].

In 2011 Glass Lewis initiated their active research on gender diversity publishing their first paper at the end of that year. In 2012 and subsequently in March 2013 they updated this paper to include regulations and records of the 2013 season. They depicted diversity as not only female presence on the board, but as a broader range of aspects. Directors with more abilities and expertise in several markets and industries can improve company performance, "We believe that gender is just one aspect of diversity and boards should ensure that their directors, regardless of gender, possess the skills, knowledge and experience that will drive corporate performance and enhance and protect shareholder value[12]".

ISS have been less active in producing theories that could contribute to the development of gender diversity. In 2010, they published a report which stated: "As with the other disclosure enhancements, it's too early to speculate about potential policy changes. We believe that shareholders will welcome additional information clarifying directors' qualifications; this information will not be determinative in any recommendation but rather will provide additional insight that may be considered in overall evaluations, as warranted. We look forward to seeing substantive discussion of these issues[13]". Later, in September 2012, ISS organized three in-person roundtable discussions on European policies discussing several topics, including board diversity, with institutional investors[14]. The aim was to evaluate which topic most affected investor behavior. In their 2013 and 2014 updated policies for European markets, they stressed that: "principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short-term or long-term[15]". Although ISS continue to express an uncertain view on gender diversity, in 2012 they organized three round tables to retrieve investor's

S. Narayanan, The Bottom Line: Corporate Performance and Women's Representation on Boards, Catalyst Research Report, 15 October, 2007; R. B. Adams – D. Ferreira, Women in the Boardroom and their Impact on Governance and Performance, Journal of Financial Economics, 2009; G. Desvaux - S. Devillard - S. Sancier-Sultan, Women Matter 2010. Women at the top of corporations: Making it happen, Gregory McQueen &Co., 2010; E. M. Davies, Women on boards, 2011.

[10] C. Bart, G. & McQueen, Why women make better directors, 2012.

[11] Many institutional investors utilize proxy advisor firms and follow their recommendations with high reference having a mayor impact on the final result of shareholder meeting. Obviously the higher the presence of foreign investors in a company's free float the stronger the influence of proxy advisor firm's recommendations.

[12] Glass Lewis, Mind the Gap: Board Gender Diversity in 2013, pp. 5-6.

[13] ISS 2010 policy is available at http://www.issgovernance.com/policy/2010_NewUSDisclosureFAQ

[14] ISS, Corporate Governance Policy Updates and Process. Executive Summary 2013, p. 14.

[15] ISS, 2014 European Proxy Voting Summary Guidelines, 2013, p. 26; ISS, European Corporate Governance Policy 2013 Updates, 2012, p. 10.

opinions. Hence ISS is evidently conscious of the rising interest institutional investors are demonstrating on the topic[16].

Institutional investors also advocate a more balanced boardroom In 2011 CalPERS and Calstrs, the two largest public sector pension funds in US, with the aim to improve the diversity and quality of corporate directors, funded the creation of an electronic database of potential board applicants called the Diverse Director DataSource (or 3D). This tool could be useful to alter the composition of boardrooms in terms of gender mix beyond the typical ranks of corporate insiders. The actual economic environment see companies facing global challenges, in order to react to these changes effectively companies need to diversify the talent on their boards[17]. The initiative of these two pension funds exhibit the importance of the issue to institutional investors especially for those that strive toward good governance practices to enhance economic performance. Recently the opposition to male-dominated board became stronger. Several UK and French institutional investors such as Legal & General and Aviva plan to pile pressure on company boards voting against the re-election of directors of the Nomination Committee for those companies of the main indexes that do not have women directors on their boards starting from 2015[18].

3. Country regulations driving forward Gender Diversity

Companies' will improve governance due to the financial crisis and the pressures produced in the financial markets by the main investors have had different impacts on several countries. In this critical environment, Gender Diversity keeps the attention of governments and other entities that strive to create or implement the existing regulations concerning diversity.

3.1. First changes at country level

France, Switzerland and Norway voluntarily started to change their regulations with the aim to increase the number of women serving on the boards of the companies quoted on stock exchanges.

The first country to go in this direction has been Norway that, in 2005, established that at least 40% of directors should be women. Due to the low level of compliance with the gender representation quota (In July 2005 only 13% of public limited companies had achieved the required gender representation) the government decided that the quota rule would be mandatory and all companies that would not be aligned in two years would be dissolute. Moreover, for new registered public limited companies to be listed they must first achieve the aforementioned quota[19]. Norway appears as a pioneer, not only to be the first country adopting quotas, but it is also the first country that implemented the previous regulation with a punitive measure for companies that did not respect the amendment.

In 2008, Sweden updated its Code of Corporate Governance requiring all Swedish traded companies to disclosure information regarding their management in the annual reports[20]. Additionally, in 2010, the

[16] The behavior of ISS towards the issue is evident in their US 2013 policies: "Companies should seek a diverse board of directors who can add value to the board through specific skills or expertise and who can devote sufficient time and commitment to serve effectively." - 2013 SRI U.S. Proxy Voting Guidelines, p. 10. Certainly this is linked to the fact that in U.S. there are many civil rights laws that are enforced by the Equal Employment Opportunity Commission. The Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex and nationality. "However, discrimination on the basis of race, gender, religion, nationality, and sexual preference continues. The SEC's revised disclosure rules now require information on how boards factor diversity into the director nomination process, as well as disclosure on how the board assesses the effectiveness of its diversity policy." - 2013 SRI U.S. Proxy Voting Guidelines, 2013, p. 66.

[17] To know more in relation to the US pension fund initiatives read: D. McCrum, "*CalPERS and Calstrs launch diversity drive*", Financial Times, 2011; D. McCrum, "*US pension funds launch director database*", Financial Times, 2011.

[18] In relation to institutional investors initiatives to push on gender diversity on boards we suggest to read: M. Marriage, "*Male-only boards set for shareholder protests*", Financial Times, 2014.

[19] For more details in relation to the Norwegian regulations see: http://www.paulhastings.com/genderparity/countries/norway.html

[20] Swedish Corporate Governance Code available at: http://www.corporategovernanceboard.se/media/38404/comparisonrevisedcodeandpreviouscode.pdf

Swedish Corporate Governance Code was amended on a comply-or-explain basis to ensure that companies strive for equal gender distribution on the board. "The board members […] are collectively to exhibit diversity and breadth of qualifications, experience and background[21]". The Code does not state clearly that the composition of the board of directors has to be balanced in terms of gender, but it refers to diversity in terms of "expertise". This Governance code brought about a new definition of diversity by considering not gender only, but expertise and background.

In 2010, Germany amended its Corporate Governance Code to encourage companies to respect diversity and to initiate steps to promote it on their boards and hence aim for an appropriate consideration of woman when nominating Directors[22]. Companies must comply with these recommendations or annually explain reasoning for non-compliance. In 2011, companies of DAX30 adopted targets to increase the proportion of women in management positions, other than on the board, within four to nine years[23]. Furthermore, many large companies have voluntarily adopted a 30% quota for females on management boards[24].

In 2011, the French Parliament passed a bill that would require 20% of directors to be female by 2014 and 40% by 2017[25]. The law aim was to align France with other European countries that, thanks to quotas, reached a good level of gender representation in boardrooms. In addition, from 2017 onwards, if the 40% quota is breached, benefit payments normally received by board members, such as board meeting fees will be suspended[26].

Italy also aimed to balance women presence in the boards in 2011 through a law that required for women to be allocated one-third of board seats by 2015. The law applicable to public limited companies and state-owned companies considers a target of 20% for the transitional period. In the event of non-compliance there will be a progressive warning system which will eventually lead to the dissolution of the board[27].

Spain started to pay attention to the level of gender diversity on boards in 2006. Its Corporate Governance Code recommended that the board should have a proper level of diversity with women covering senior executive charges[28]. In 2007 through the amendment of the Spanish Organic Law, large companies were encouraged to increase gradually the percentage of female executives and non-executives directors on boards[29].

In 2010 the UK first amendment to the Corporate Governance Code requiring all listed companies to provide details about their diversity policies and targets. In 2011 Lord Davies of Abersoch[30] was tasked to review gender equality on boards. His review has been explained in a study entitled "*Women on Boards*"[31]. The study recommended that quoted companies should disclose the number of women on board every year and all the Chairmen of FTSE 350 companies should plan the exact number of women they aim to have on their boards by 2013 and 2015. The report also suggested to make few changes to the

[21] The 2010 amended version of the Swedish Corporate Governance Code can be read at: http://www.corporategovernanceboard.se/media/45322/svenskkodbolagsstyrn_2010_eng_korrigerad20110321.pdf

[22] German Corporate Governance Code is available at: http://www.corporate-governance-code.de/eng/download/kodex_2010/German-Corporate-Governance-Code-2010.pdf Art. 5.4.1

[23] Details in relation to DAX companies proposal to a sustainable development with binding targets are available at: http://www.k-plus-s.com/en/news/presseinformationen/2011/presse-111017.html

[24] C. Keatinge – D. Eaton, Mind the Gap: Board Gender Diversity in 2012, Glass Lewis & Co., p. 8.

[25] http://www.reuters.com/article/2011/01/13/us-france-equality-idUSTRE70C5ZA20110113

[26] A. Oliveira, Affirmative Action in Europe – The Case of Women on Company Boards, 2012, p. 3.

[27] Information in relation to the Italian regulation are available at: http://ec.europa.eu/justice/gender-equality/files/womenonboards/womenonboards-factsheet-it_en.pdf

[28] The English version of the Código Unificado is available as Unified Good Governance Code of Listed Companies, CNMV, 2006, p. 24.

[29] Organic Law 3/2007, Art. 75

[30] Lord Davies of Abersoch was Minister for Trade, Investment and Small Business from January 2009 to May 2010 moreover to be a non-executive Director in several company boards.

[31] E. M. Davies, Women on boards, 2011.

Code and consequently on May 2011 the Financial Reporting Council[32] started a consultation as to whether these Code amendments should be implemented. As a result the Code required companies to include in the Annual Report a description of the board's policy on diversity, including gender and any measurable objectives that it had set to implement and progress on achieving these objectives. These implementations were applied to the Code in the 2012 version and, applied to the financial year beginning on 1st October 2012. The amendments to the Code did not suggest a minimum number of gender diversity in the boardroom; it would push on voluntary changes. The fact that it did not lay down strict rules to be followed has fueled much criticism from those who believed UK has not had much progress in the direction toward a more balanced board. Additionally, the Code has an advisory intention only, it is not a law and as such does not impose quotas but remains an important tool to encourage change.

3.2. 2012 - European Commission proposal. A new starting point

An analysis, prepared by IFC in 2010, compared records of several European markets showed that women were still strongly outnumbered by men in the boardrooms of the largest listed companies in all EU countries. This indicated Italy (2,1%) and Germany (7,8%) as the least advocates of gender diversity. Likewise France (10,5%), Spain (10,6%) and UK (12,2%)[33], despite some improvements from governments introducing gender quotas or taking other initiatives to make further progress on the issue[34], reached substantially lower percentages in comparison to Norway (44,2%) who firstly introduced quotas.

Due to the small presence of women on European boards the European Commission also took part in the debate and proposed a legislation requiring its twenty seven member states to ensure that women hold 30% by 2015 and 40% of non-executive seats on public company boards by 2020[35]. The European Commission proposal took into consideration that the emergence of divergent national rules in this area in some Member States and, the lack thereof in others, may have a burden on the functioning of the internal market, such as the cross-border establishment of companies, or on the prospects for successful participation in public procurement abroad as in the case of international companies operating in several EU Member States that either have no quota law, or have all different quota rules[36].

The 2012 European Commission proposal seemed to initiate an important step in gender diversity by introducing a common target (quota) for all European countries to reach. However they did not establish any punitive measures to be applied to countries or companies that do not reach the proposed target in the predetermined time. The 2012 proposal, although a good intention, also did not consider that not all European countries had the same percentage of women on their board. Hence, it would be more effectively if that proposal was re-drafted specifying changes for countries and companies to implement relative to the percentage of women they have on their board.

3.3. Reactions at European level

After the 2012 European Commission proposal, for implementing a Law to align European countries and, apparently without obtaining any qualitative change toward the proposal target, on April 2013, the European Commission issued another proposal to increase diversity on board[37]. At this time the European Commission pushed on the transparency as the main element to enhance female participation in the boardrooms. The proposal stated:

[32] The Financial Reporting Council (FRC) is the independent regulatory body responsible for promoting confidence in corporate reporting and governance.
[33] CWDI/IFC 2010 Report: Accelerating Board Diversity.
[34] CWDI/IFC 2010 Report: Accelerating Board Diversity.
[35] Women in economic decision-making in the EU: Progress report. A Europe 2020 initiative, 2012, p. 5; http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF
[36] In a critical environment as could be the financial crisis, where many companies try to survive through the internationalization process, it is vital to have the same regulations at least in all European countries. For more details on this argument see: Women in economic decision-making in the EU: Progress report. A Europe 2020 initiative, 2012, p. 7.
[37] The 2013 EU Commission proposal can be read at: http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm

> *"…increase diversity in the boards of companies through enhanced transparency in order to facilitate an effective oversight of the management and robust governance of the company. […] insufficient diversity in the boards may lead to a similarity of views of the members of the board of directors (the so-called phenomenon of "group think") and more resistance to innovative ideas. This can lead to a negative impact on the challenge and oversight of the management by the board of directors and therefore on the performance of companies. Enhanced transparency on diversity policies could also make a considerable contribution to the promotion of equal treatment and to the fight against any discrimination in decision-making bodies of the companies. […] The identified problems may affect the overall performance of companies, their accountability, the ability of investors to assess and factor appropriately and timely all relevant information, and the efficiency of the EU financial markets. As a consequence, the Single Market potential for sustainable growth and employment may not always be fully exploited."*[38]

In this way the EU marked another step to increase the level of gender diversity on boardroom through transparency. If emphasized that the lack of diversity can have a negative impact on company performance because it could create the so called "group think", an obstacle to innovative ideas. All this would have a negative impact on the efficiency of the EU financial markets and consequently it will impact on single markets that endeavor to exploit its potential for growth.
Following this in November 2013 Germany attempted a similar approach through the introduction by the leaders of the German coalition government, of a law that requires that 30% of seats on German supervisory boards be held by women by 2016[39]. The German case marks an important step in the evolution of the rules on gender diversity. Germany went from the amendment of the Corporate Governance Code in 2010 to the introduction of a Law in 2013 which requires though a timeframe for implementation, of three years. This is a unique case in Europe, as no other European countries have recorded the passage from soften to mandatory rule for appointing more women in the boardroom.

4. Board Diversity on Spanish boards

Similar to other European countries, Spain tried to develop regulations able to balance female and male presence on boardrooms. The time in which measures and integrations were adopted demonstrates this country was one of the first to take care of gender equality on boardrooms.

4.1. Spanish rules to facilitate gender equality

In 2006 the Corporate Governance Code recommended adequate gender diversity on the board and, strived to extend female presence into the senior executive and directorship spheres[40]. Moreover, the Code stated: "the Board of Directors should have an adequate diversity of knowledge, gender and experience to perform its tasks efficiently, objectively and in an independent manner[41]".

One year after, in 2007, with the aim to increase the already low percentage of women on boards (5,78% in 2007), they edited the Spanish Organic Law on gender equality. The Article 75 of the Spanish Organic Law, encourages large companies to alter the membership of their boards gradually, until each gender strive to achieve at least 40%, including executives and non-executives, by 2015. This rule is a recommendation[42] and does not include sanctions for failure to comply. Spain is the first country that

[38] To read the whole text of the 2013 EU Commission proposal see: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013PC0207:EN:NOT
[39] C. Keatinge – D. Eaton, Mind the Gap: Board Gender Diversity in 2013, Glass Lewis & Co, p. 9.
[40] Unified Good Governance Code of Listed Companies (English version of the Código Unificado), CNMV, 2006, p. 24.
[41] Unified Good Governance Code of Listed Companies (English version of the Código Unificado), CNMV, 2006, p. 20.
[42] Organic Law 3/2007 of effective equality between women and men contains also some other provisions related to women on company boards or in management jobs. Art. 37.2 states that the public enterprise of radio and television (Radio Televisión Española, RTVE) will promote women's incorporation into management jobs. The equivalent requirement is set out in Art. 38.2 for the Spanish press agency EFE. While Art. 54 advices that the General State Administration and the public bodies connected with it, will

considers women on board covering executives and non-executive roles in its law. Spain is evidently a pioneer, implementing their regulation prior to the European proposal considering the increase of the female presence at an executive and non-executive level. Spain shows to be well conscious of the positive impact of women on boards, including their relevance serving in executive roles.

Then in 2013 the revised version of the Código Unificado remarked the importance of having more women on boards specifying that having a more balanced boardroom is not only an issue of ethics, it represents an important challenge to be planned at least in the medium term[43].

Looking at the current Spanish regulations in place, it seems that the CNMV (Comisión Nacional del Mercado de Valores)[44], the Spanish entity in charge to regulate the market, is well conscious of the positive impact gender diversity could have on the corporate business, not only in terms of gender mix but also in terms of background. The only drawback aspect that arises is that no punitive measure is considered, in case of absence of female or multi background individuals on the board.

4.2. The impact of Spanish regulations on market behavior

As mentioned previously, Spain implemented its regulations before the majority of European countries and impressively also before the European Commission proposal, establishing a target of 40% five years earlier than the European Commission in 2007. At this point two questions need to be clarified: Has been Spain able to reach its target? And if not yet, how much it is far from it?

To answer to these questions hereinafter will be analyzed how, the Spanish Organic Law, the European Commission proposal and other recommendations to be adopted voluntarily with the intention to improve women participation on company boards, have affected Spanish companies.

To better assess the impact of the above mentioned regulations, we analyzed the thirty-five companies contained in the IBEX 35 index[45] and, ISS reports together with companies' annual reports and public filings. Fundamentally, for the purpose of this study we paid particular attention to the dates when the mentioned regulations were adopted. Specifically, in March 2007 the Spanish Organic Law was adopted. Additionally, in November 2012 the European Commission proposed to reach 30% by 2015 and 40% by 2020. For this reason hereinafter both, 2007 and 2011, will be considered as the two main moments to evaluate the impact and the eventual changes in the Spanish Board "behaviors".
Although we consider a six year period (2007 to 2013), the total number of directors considered in this study[46] remains almost unchanged; from 510 in 2007 to 484 in 2013, which signifies just a 5,09% decrease. In this period the dominance of male directors adjusted from 94,12% to 85,74% indicating a decrease of 8,90% balanced by an increase of women in the boardrooms. In the total six years, the presence of women altered from 6,25% to 16,63% indicating a 166% increase as displayed on the graph below.

observe the principle of balance composition in the appointments for company boards, on those companies in whose capital the Administration participates.

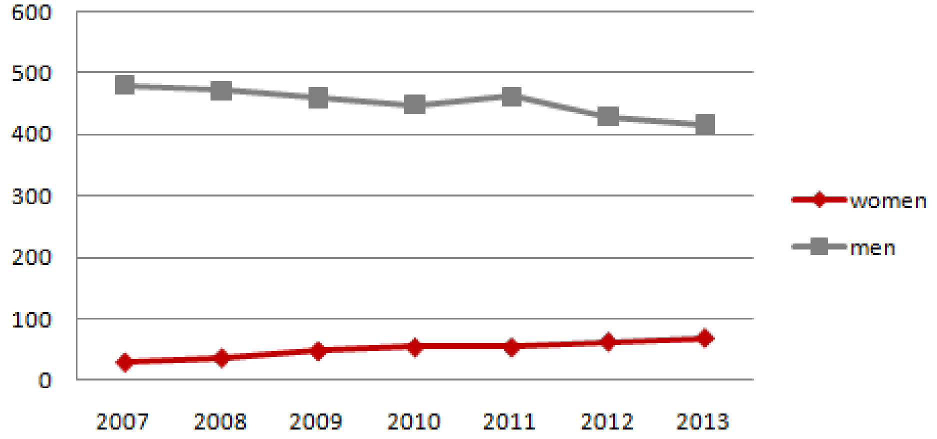
[43] CNMV, Código Unificado de buen gobierno de las sociedades cotizadas, 2013, p. 14.

[44] The Comisión Nacional del Mercado de Valores (CNMV) is the agency in charge of supervising and inspecting the Spanish Stock Markets and the activities of all the participants in those markets. It was created by the Securities Market Law, which instituted in-depth reforms of this segment of the Spanish financial system. Law 37/1998 updated the aforementioned Law and established a regulatory framework that is fully in line with the requirements of the European Union. The purpose of the CNMV is to ensure the transparency of the Spanish market and the correct formation of prices in them, and to protect investors. The CNMV promotes the disclosure of any information required to achieve these ends.

[45] The IBEX 35 is the benchmark stock market index of the Bolsa de Madrid, Spain's principal stock exchange. It is a market capitalization weighted index comprising the 35 most liquid Spanish stocks traded in the Madrid Stock Exchange General Index.

[46] Records reported in this document are the result of an analysis, conducted on the thirty-five companies included in the Ibex 35, from 2007 to 2013.

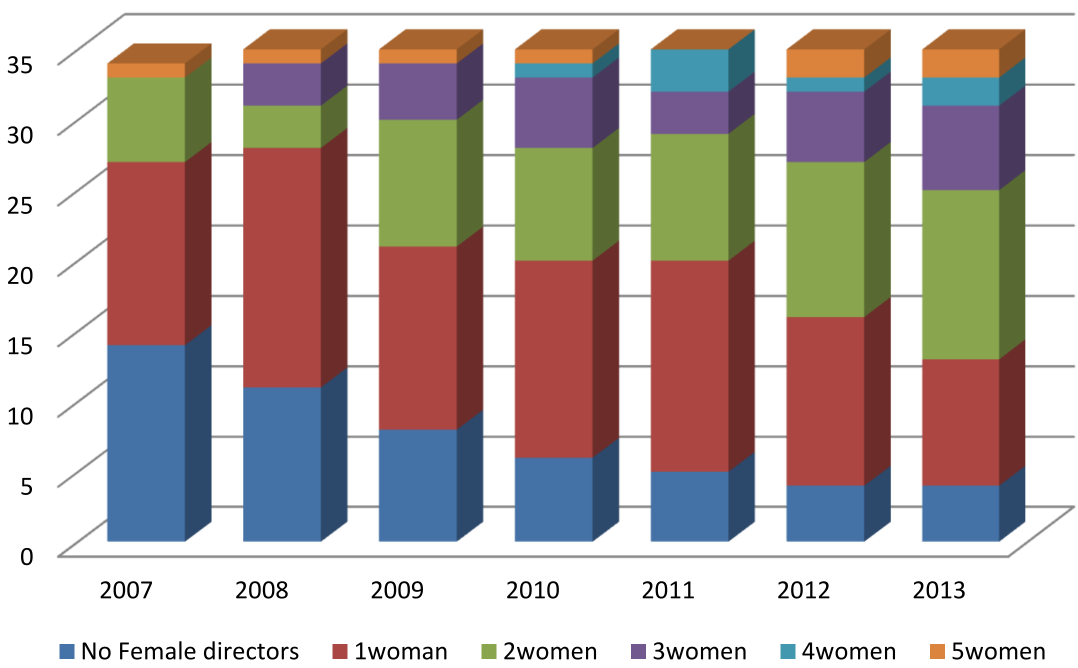
Figure 1. Men Directors vs Women Directors



Between 2008 and 2009, in the awake of the economic financial crisis, the reduction of men serving as board directors is directly proportional to the increase of women sitting on boards. In Spain, resigned man directors began to be replaced by women in line with recommendation 14 of the revised Código Unificado[47]. Then in 2011, Spain seemed to reverse relative to the previous years trend with the percentage of women recorded decreasing by 3,07% . It should be noted that the total number of women did not change over the one year period, and so it effectively did not decrease, however due to the increased male participation in boardrooms the percentage of women on average seemed to decrease.

Another relevant aspect, highlighted by this analysis, is the constant reduction of the number of companies, without women serving as directors.

Figure 2. Board of Directors increase in female participation



The number of companies without women serving as directors gradually decreased and, at the same time the number of companies increasing the percentage of women serving on boards became larger. In 2007

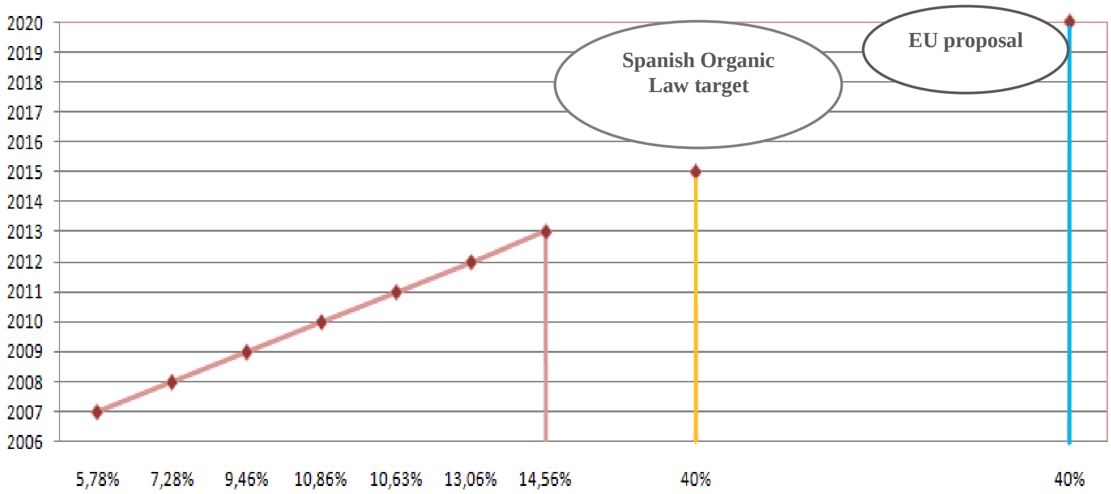
[47] The Código Unificado is available also in English. See Unified Good Governance Code of Listed Companies, CNMV, 2006, p. 24.

there were fourteen companies with no one woman on their board. After two years, this number decreased by 42,86%, so that in 2009, only eight companies had a board without women as directors. In 2010, this number continued to drop down regularly so that, in 2013, only four companies, between those that are part of the Ibex 35, had no female representative on their boards.

The number of women on company boards did not grow on a regular way during the time, even if, from 2007 to 2013, the total number of women serving on boards changed from thirty to sixty-nine. Among the companies analyzed, the construction sector demonstrated the strongest number of women on its board. This result was influenced mainly by the approach of one company[48].

Based on our analysis we found that regulations mentioned in the first part of this study[49] have had a relevant role in the increase of the percentage of women on board in the Spanish index, even if they did not reach their proposed and expected level according to local and EU regulations.

Figure 3. Women in the Spanish Boardrooms (average)



In fact as showed by the graph, in 2013 14,56% of women were serving in Spanish boardrooms[50]. Furthermore those companies with a high level of compliance with the regulations have had an elevate number of women that are shareholder representatives or family group members in their boards, due to this they are not independent. At the end of 2013 to bridge the gap with the local regulation, Spanish boards needed to increase female directors by 25,44% point percentage in the next two years. In order to reach the 2020 EU target, considering in 2013 there were 47 women serving as non-executive directors on 235 men out of the executive roles, which means 20% of women had non-executives positions, the percentage of women on the board should grow by 20% in the next six years. Moreover, sixteen companies[51] between those analyzed, experienced the benefits of women on the board, strictly increasing

[48] The board of one such company was composed by five women and sixteen men in 2007, but in 2013 the number of men decrease to thirteen whereas the number of women on board remained as five. For this reason the percentage of women on the board went from 24% to 28%. Although the aforementioned analyzed company located in the Ibex 35 seemed to comply with local and European recommendations more than others, in terms of gender balance on the board, it should be noted that the five mentioned women were connected with the shareholder group of control and hence this evidence is not a clear indicator. Similarly, another company serving in the financial field that, before the IPO with another company operating in the same market segment, had already a considerable number of women in the position of director, were shareholder representative and, even after the IPO, the five women forming the board were all representative of the two entities that had merged together.

[49] See section "Country regulations driving forward Gender Diversity" of this document p. 4.

[50] Note that the record (14,56% in 2013) considers executives and non-executives directors as mentioned in the art. 75 of the Spanish Organic Law.

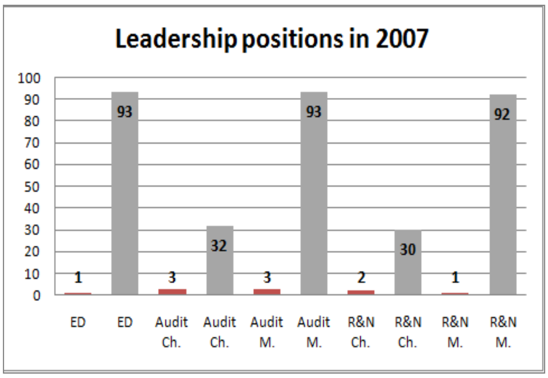
[51] Acciona S.A.; BBVA; Banco de Sabadell; Banco Español de Crédito (Banesto); Banco Popular Español S.A.; Banco Santander S.A.; Bolsas y Mercados Españoles S.A.; Caixabank S.A.; Enagás S.A.; Gamesa S.A.; Grifols S.A.; Iberdrola S.A.; Indra S.A.; Obrascon Huarte Lain S.A.; Red Eléctrica Corporación SA; Repsol S.A.

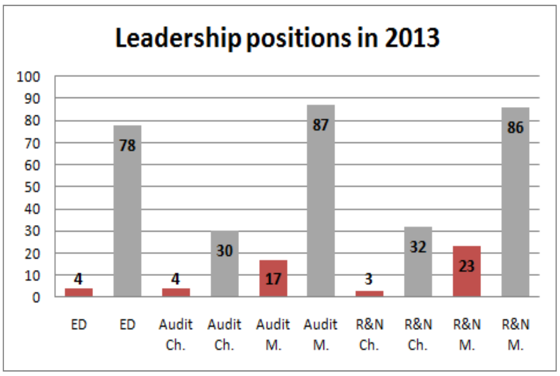
the presence of women year after year. The economic sector that has been the most proficient in this, gradually creating a gender balanced board to incorporate a good level of gender representatives, is the financial sector. Boards that have experienced diversity further recognize the value diversity brings to board decision-making and performance[52].

5. Gender diversity in leadership positions

Although the number of women appointed is increasing – in the last six years the percentage of women on the Spanish boardrooms has increased from 6,25% to 16,63% considering the total number of Directors present on the boards of the IBEX 35 listed companies-, their presence in leadership positions continue to be marginal.

Figure 4. Leadership positions in 2007 and 2013 (Roles covered by women are marked in red and those covered by men in grey)





The male presence continues to be predominant in roles that provide key governance responsibilities. To illustrate, the above graphs displays leadership positions for 2007 and 2013. We considered these years since, in 2007 the 2006 Código Unificado started to be adopted, furthermore due to the lack substantial yearly progress we made direct comparisons with the final progress in 2013. It is evident that in 2013 women gained a stronger presence on the boards but in roles like Committee chairman or CEO and Chairman gender is not yet balanced.

Although many rules have been adopted to increase women participation in the board also in leadership positions, only a minority of directors are covering key positions. All Spanish women serving as Directors in the IBEX 35 companies are qualified in terms of background, skill and expertise to be appointed in the Nomination, Remuneration or Auditing commission, but those positions are covered mainly by men. Aditi Mohapatra, senior sustainability analyst at Calvert, as reported in an article wrote by Joann Lublin for the Wall Street Journal in 2011, believes that several factors are an obstacle for board gender parity, highlighting the recruitment process, that is often limited to directors' own networks, usually made up mostly of older white men[53].

Even considering Diversity as a mix of professional skills, an aspect that is nowadays increasing in terms of importance, our data shows that there is progress, but at a slow rate.

6. International diversity on Boards

As mentioned throughout this study and highlighted at the beginning, European countries, in the last decade, have implemented their regulations to increase gender diversity in the boardrooms. All of them have concentrated their attention on the first word "gender" of this concept, which actually should be considered as a whole. The present paper is emphasizes that "gender diversity" should be considered in terms of skills, knowledge and experience, aside gender.

[52] Diversity drives diversity. From the boardroom to the C-suite, Ernest & Young LLP, 2013, p. 4.
[53] J. S. Lublin, Female Directors: Why So Few?, Wall Street Journal, 2011.

As the Código Unificado also states: "the Board of Directors should have an adequate diversity of knowledge, gender and experience to perform its tasks efficiently, objectively and in an independent manner[54]".

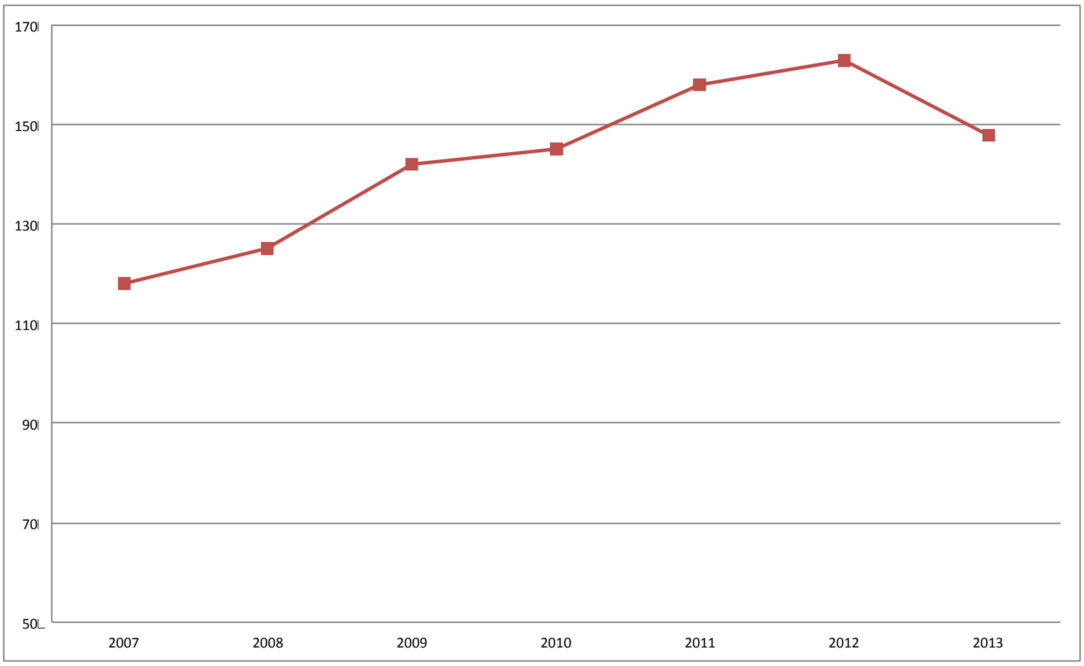
Diversity can bring to the board of directors several perspectives. The last financial crisis affected shareholders' expectation on company economic performances. Due to this it is fundamental for issuers to renew the trust and confidence in the corporate world. Companies need people who can bring diverse perspectives to board discussions and the adequate skills to change their previous strategy[55]. Diversity has to be considered as the combination of complementary skills and experiences that members bring to the table to better address the challenges the company is likely to face[56]. When drafting a company diversity policy, they should take care of regulations and recommendations at a local and European level and think of it in terms of skills, experience, age and tenure on the board too.

Based on the above considerations[57] we next verify how Spanish companies are in line with the idea of gender diversity. Internationality is also part of Board diversity.

According to our analysis in 2007, Spanish companies had a good level of international members serving on their boards[58].

[54] Unified Good Governance Code of Listed Companies (English version of the Código Unificado), CNMV, 2013, p. 11.
[55] Diversity is considered by Anita Skipper, Corporate Governance Director at Aviva Investors, as an element able to "bring diverse perspectives", she said: "The world has changed its expectations of companies as a result of the latest financial crisis.[…] Companies need to renew trust and confidence in the corporate world. They need to have people who can bring diverse perspectives to board discussions, and who will challenge "the way we've always done it".
Y. Argüden, Diversity at the Head Table: Bringing Complementary Skills and Experiences to the Board, IFC, 2013, p.2.
[56] Yılmaz Argüden considers the diversity as "the combination of complementary skills and experiences that members bring to the table to better address the challenges the company is likely to face". Y. Argüden, Diversity at the Head Table: Bringing Complementary Skills and Experiences to the Board, IFC, 2013, p. 4.
[57] See note n. 51 of this paper at p. 14. Dr. Yılmaz Argüden is the Chairman of ARGE Consulting and the Chairman of Rothschild investment bank in Turkey. He is a board member of numerous companies in different jurisdictions, an author, a columnist, and an adjunct professor of strategy at the Bosphorus and Koç Universities. A member of the Private Sector Advisory Group of the Global Corporate Governance Forum, Dr. Argüden is also National Representative of the UN Global Compact and Chairman of Turkish-American Business Councils. He was selected as a "Global Leader for Tomorrow" by the World Economic Forum. www.arguden.net
[58] Note that the author of the paper has considered here the *internationality* in terms of skills and experience obtained during a period of time spent abroad, to complete academic studies or to serve in companies based out of Spain.

Figure 5. International board directors



In 2007, 111 of the 510 (21,76%) directors were international, while in 2013, the number of international directors serving in Spanish boardrooms was 149 out of a total of 484 (30,79%). This means that one third of the universe analyzed were international. In the six year period the percentage of international directors increased by 29,33%.
The number of directors with diversified knowledge constantly increased, but it should be highlighted that the companies with the highest number of international director are those with business relations out of Spain like Arcelor Mittal or Iberia and Telecinco[59].

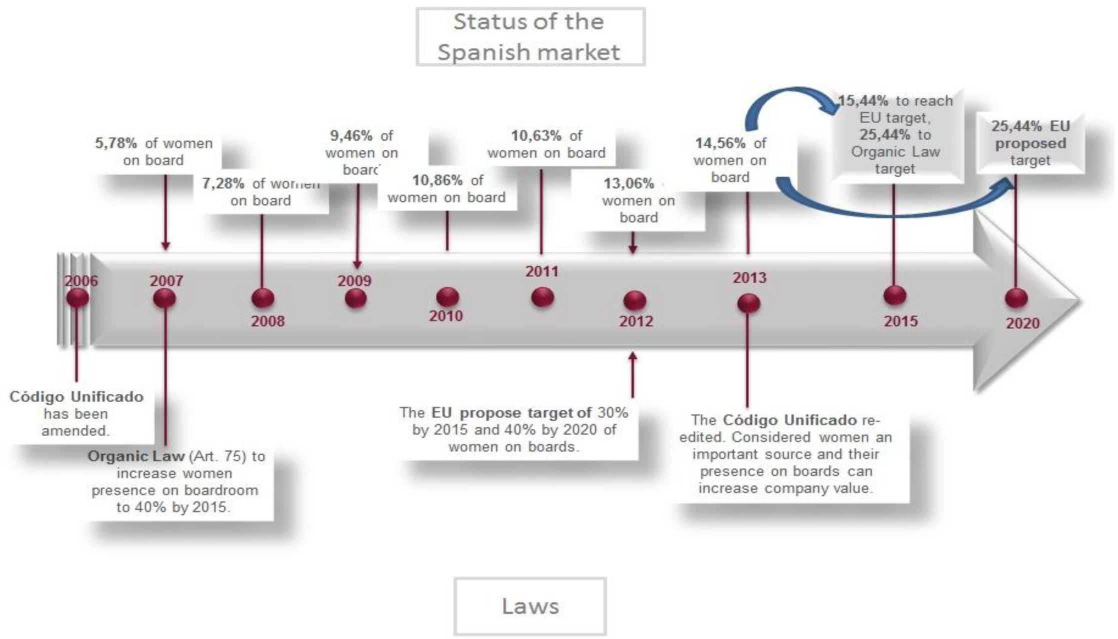
7. Conclusions

Gender diversity can be considered from different points of view. Researchers and experts working in the corporate governance field concentrate their attention on two aspects; the first one is considering gender diversity as more women on boards, while the second one is the mix of backgrounds and expertise. Both have been considered as able to increase company value and avoid corporate risks. The first aspect of gender diversity, here mentioned, has been the first to be investigated. The EU also emphasized the "gender" aspect with the aim of aligning all European countries, towards a global market with common rules.

All European countries faced the issue implementing their regulations at different levels, giving suggestions on targets to reach through their corporate governance codes or laws, in few cases establishing punitive measures in case of failure to reach the established target on time.

This paper has mainly focused on the Spanish market, which is considered interesting due to the implementations adopted and the progress achieved at company level to reach the proposed targets. The Spanish "history", from this point of view, can be summarized as follow:

[59] Iberia after being International Consolidated Airlines increased the percentage of international members on its board. The same for Mediaset España that after the acquisition from the Italian leader in the industry recorded an increase in the percentage of international members on its board.



The chart shows that a lot of progress has been done in the last six years and, at the same time Spain has evidently moved early toward a balanced boardroom at legislative level, however without a deep impact at corporate level except in a small number of cases.

Country regulations have not had an effective impact on Spain's level of women serving on boards at executive and non-executive levels due to the structure of the market. Directors can serve in a company for twelve years maintaining the status of independence, however many are frequently re-appointed breaching the twelve year period of independence and hence convert to non-independent directors. Furthermore there are no rules regulating the number of boards in which a director can serve, due to this many directors participate in more than one company board and this together with the long board tenure are obstacles to increasing women participating to the board life.

Another characteristic of the Spanish market that limits female presence on the boardrooms is the strong presence of families controlling the market. In this case many seats are covered by family representatives; this practice does not leave much space to external candidates to sit in the board and consequently limits the presence of women on the board. The level of compliance with gender diversity from the perspective of mix of background and expertise is stronger relative to the compliance of gender diversity considering it as the number of women on the board. It increased by 29,33% in the period of time here considered and in 2013 the percentage of international members for the aforementioned perspective is 30,79%. A board that experiences a good balance of gender mix and has a considerable number of international directors together with experts in transversal fields, which can bring expertise and knowledge able to develop the company in a more proficiency direction, could be the right recipe to enhance on corporate governance and avoid risks that could affect company value. Once more, main shareholders or founding families are an obstacle to the circulation of new experience and ideas, able to ensure that the board is provided with the person able to take better decision in the company's interest. Moreover, all board members have a background, in terms of academic qualifications, in line with the company affairs, while there is a lack of transversal expertise. For instance, on the boards analyzed there are no experts in communication with the media. This is helpful in order to establish a communicative strategy with the media or with the shareholders, just in case a governance issue arises or the board needs to explain the reason for its strategies, to gain media and shareholder support.

The current Spanish situation for regulations at local or European level are not enough to reach a balanced boardroom in both the aspects faced here. All the regulations coming from the European Commission and Spain do not consider punitive measures in case of no compliance. Actually three Spanish companies do not have women serving on their boards[60]. As in 2013 and 2014, these companies continue to not dismiss regulations created to increase the number of women in boardrooms.

[60] Gas Natural, Sacyr y Técnicas Reunidas, todavía sin mujeres en sus consejos, Expansión, 2014.

Records provided by Catalyst at the beginning of March 2014, highlight that Norway is the country with the highest level of compliance with 40,90% of board seats held by women[61]. More recently, the Norway quota rule has been strongly criticized and considered unsuccessful in lowering the presence of women in executive positions[62]. This point opens the space for another discussion on the level of regulations. Norway's law is very strict in terms of time to comply and the punitive measure for those companies that are not aligned, but it does not specify that the female presence on board has to increase at executive and non-executive level. Subsequently, although companies generally strive towards the quota, generally women are allocated non-executive positions. A part from this, I consider Norway an example of how quota rules can work, and demonstrates that it should be mandatory for companies to be aligned with the quota.

Spain could reach a high level of compliance by adopting restrictive measures. In this case none of those characteristic elements as the Directors' tenure or family owners, could limit or reduce the effectiveness of the measure. Actually in 2014 the Council of Ministers approved the proposal to bill amending the requirements to be reached by companies in good governance[63]. Within this initiative, the Government will force companies to self-impose a minimum target of women to promote gender equality on the boards of directors. According to the new bill the Nomination Committee has to set a goal of representation for the underrepresented gender on the board and develop guidelines on how to achieve that goal[64].They perceive that this new law will be effective at striving forward more women on board, however they have failed yet again to consider punitive measures.

References

1. R. B. Adams - D. Ferreira, Women in the Boardroom and their Impact on Governance and Performance, Journal of Financial Economics, 2009.
2. R. B. Adams – D. Ferreira, Gender Diversity in the Boardroom, ecgi - Finance Working Paper n° 58/2004, 2004.
3. Luis A. Aguilar, Speech by SEC Commissioner: Diversity in the Boardroom Yields Dividends, September 2009.
4. Y. Argüden, Diversity at the Head Table: Bringing Complementary Skills and Experiences to the Board, IFC, 2013.
5. C. Bart, G. & McQueen, Why women make better directors, 2012.
6. E. M. Davies, Women on boards, 2011.
7. G. Desvaux - S. Devillard-Hoellinger - P. Baumgarten, Women Matter. Gender diversity, a corporate performance driver, Gregory McQueen &Co., 2007.
8. G. Desvaux - S. Devillard - S. Sancier-Sultan, Women Matter 2010. Women at the top of corporations: Making it happen, Gregory McQueen &Co., 2010.
9. L. Joy; N.M. Carter - H.M. Wagener - S. Narayanan, The Bottom Line: Corporate Performance and Women's Representation on Boards, Catalyst Research Report, 15 October, 2007.
10. C. Keatinge – D. Eaton, Mind the Gap: Board Gender Diversity in 2011, Glass Lewis & Co., 2012.
11. C. Keatinge – D. Eaton, Mind the Gap: Board Gender Diversity in 2012, Glass Lewis & Co., 2013.
12. C. Keatinge – D. Eaton, Mind the Gap: Board Gender Diversity in 2013, Glass Lewis & Co., 2014.
13. J. S. Lublin, Female Directors: Why So Few?, Wall Street Journal, 2011.
14. M. Marriage, Male-only boards set for shareholder protests, Financial Times, 2014.
15. D. McCrum, CalPERS and Calstrs launch diversity drive, Financial Times, 2011.
16. D. McCrum, US pension funds launch director database, Financial Times, 2011.
17. Oliveira, Affirmative Action in Europe – The Case of Women on Company Boards, 2012.

[61] http://www.catalyst.org/knowledge/women-boards

[62] J. D. Stoll, Norway's Exemplary Gender Quota? Just Don't Ask About CEOs, The Wall Street Journal, 2014.

[63] See proposal to bill at: Proyecto de ley por la que se modifica la ley de sociedades de capital para la mejora del gobierno corporativo, Ministerio de Economía y Competitividad, 2014. See also Comisión de Expertos en materia de Gobierno Corporativo, Estudio sobre propuestas de modificaciones normativas, 2013 to better understand the process that drive to the proposal to bill.

[64] A. Romero, "*Las empresas tendrán que marcarse su propio objetivo de mujeres en el consejo*", El País, 2014; Proyecto de ley por la que se modifica la ley de sociedades de capital para la mejora del gobierno corporativo, 2014.

18. J. Quinn, EU quota for 40pc of women on boards moves step closer, The Telegraph, 2013.
19. CWDI/IFC 2010 Report: Accelerating Board Diversity.
20. J. D. Stoll, Norway's Exemplary Gender Quota? Just Don't Ask About CEOs, The Wall Street Journal, 2014.
21. Comisión de Expertos en materia de Gobierno Corporativo, Estudio sobre propuestas de modificaciones normativas, 2013.
22. Diversity drives diversity. From the boardroom to the C-suite, Ernest & Young LLP, 2013.
23. Gas Natural, Sacyr y Técnicas Reunidas, todavía sin mujeres en sus consejos, Expansión, 2014.
24. ISS, 2013 SRI U.S. Proxy Voting Guidelines, 2014.
25. ISS, Corporate Governance Policy Updates and Process. Executive Summary 2013.
26. ISS, 2014 European Proxy Voting Summary Guidelines, 2013.
27. ISS, European Corporate Governance Policy 2013 Updates, 2012.
28. Organic Law 3/2007 Art. 37.2, Art. 75.
29. Proyecto de ley por la que se modifica la ley de sociedades de capital para la mejora del gobierno corporativo, Ministerio de Economía y Competitividad, 2014.
30. Unified Good Governance Code of Listed Companies, CNMV, 2006.
31. Unified Good Governance Code of Listed Companies, CNMV, 2013.
32. Women in economic decision-making in the EU: Progress report. A Europe 2020 initiative, 2012.

Web sources

1. www.issgovernance.com/policy/2010_NewUSDisclosureFAQ
2. www.paulhastings.com/genderparity/countries/norway.html
3. www.corporategovernanceboard.se/media/38404/comparisonrevisedcodeandpreviouscode.pdf
4. www.corporategovernanceboard.se/media/45322/svenskkodbolagsstyrn_2010_eng_
5. korrigerad20110321.pdf
6. www.corporate-governance-code.de/eng/download/kodex_2010/German-Corporate-Governance-Code-2010.pdf Art. 5.4.1
7. www.k-plus-s.com/en/news/presseinformationen/2011/presse-111017.html
8. www.reuters.com/article/2011/01/13/us-france-equality-idUSTRE70C5ZA20110113
9. www.ec.europa.eu/justice/gender-equality/files/womenonboards/womenonboards-factsheet-it_en.pdf
10. www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF
11. http://www.catalyst.org/legislative-board-diversity
12. http://www.catalyst.org/knowledge/women-boards
13. http://ec.europa.eu/internal_market/accounting/non-financial_reporting/index_en.htm
14. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013PC0207:EN:NOT