

GENDER DIVERSITY ON BOARDS OF DIRECTORS IN JOINT-STOCK CORPORATIONS IN TURKEY: COMBINING HARD AND SOFT LAW

TÜRKİYE'DE ANONİM ŞİRKET YÖNETİM KURULLARINDA CİNSİYET ÇEŞİTLİLİĞİ: SERT VE YUMUŞAK HUKUKUN BİRLEŞTİRİLMESİ

Araştırma Makalesi

İrem TORE*

ABSTRACT

The under-representation of women on corporate boards has received increased attention in terms of corporate governance over the last decade. The necessity of gender diversity on corporate boards is mostly based on economic rationale, which is insufficient due to two reasons; first, it is not always possible to find a correlation between female participation on boards and the interests of the shareholders, and second such a correlation for male members of the board is not sought. The economic rationale needs to be reinforced with an equality rationale that emphasizes women's rights to promote gender diversity on corporate boards. Equality rationale is precisely what corporate governance regulations can provide.

It is debatable which type of regulation is the most effective among the strategies to increase the share of women on the boards. The regulations can be grouped under two broad types. The first includes the introduction of mandatory quota for women on boards, along with sanctions. The second approach is of a more voluntary character. The Corporate Governance Principles of Turkey, which regulates gender diversity on the corporate boards, have been drawn up with the latter being preferred. However, statistics show that Turkey is showing slow progress in this regard. This signals that the soft law approach did not have the desired impact on increasing the proportion of women on the corporate boards.

DOI: 10.32957/hacettepehdf.1165177

Makalenin Geliş Tarihi: 22.08.2022

Makalenin Kabul Tarihi: 31.12.2022

*Dr. Öğr. Üyesi, Adana Alparslan Türkeş Bilim ve Teknoloji Üniversitesi İşletme Fakültesi Uluslararası Ticaret ve Finans Bölümü.

E-posta: itore@atu.edu.tr

ORCID: 0000-0003-2275-7664.

The abstract of this paper was presented in 2nd International Congress on Women organised by Ankara Hacı Bayram Veli University and E-Journal of Law, 20 June 2022.

The principles of research and publication ethics were followed in this article.

This article aims to put forward the reasons for the slow progress and demonstrate alternative legal routes to current regulations to enhance more representation of women on the corporate boards in Turkey. The research shows that the reason of slow progress is incompatibility between the corporate governance regulation and its implementation in Turkey. On the one hand, regarding Turkish corporate culture, enforcing hard law will not reach the targeted result. But on the other hand, non-sanctioned voluntary method is not an effective way to act beyond intent. The finding of this research is that strengthened voluntary method must be applied in Turkey to increase the representation of women in board management.

Keywords: Gender quota, Women on boards, Corporate governance, Soft law, Turkey.

ÖZ

Kadınların şirket yönetim kurullarında yeterince temsil edilmemesi, son on yılda kurumsal yönetim açısından artan bir ilgi görmüştür. Yönetim kurullarında cinsiyet çeşitliliğinin gerekliliği genellikle ekonomik gerekçeye dayanmaktadır ki bu gerekçe iki nedenden dolayı yetersizdir; birincisi, kadınların yönetim kuruluna katılımı ile pay sahiplerinin menfaatleri arasında her zaman bir ilişki bulmak mümkün değildir ve ikincisi, yönetim kuruluna erkek üyelerin katılımı için böyle bir ilişki aranmamaktadır. Ekonomik gerekçenin, şirket yönetim kurullarında cinsiyet çeşitliliğini teşvik etmek için kadın haklarına vurgu yapan bir eşitlik gerekçesi ile güçlendirilmesi gerekmektedir. Eşitlik gerekçesi, kurumsal yönetim düzenlemeleri ile sağlanabilir.

Kadınların yönetim kurullarındaki payını artırmaya yönelik stratejilerden hangisinin en etkili olduğu tartışmalıdır. Düzenlemeler iki ana grup altında toplanabilir. Bunlardan ilki, müeyyidelendirilmiş zorunlu kota uygulamasıdır. İkinci yaklaşım ise gönüllülük esasına dayanmaktadır. Türkiye’de yönetim kurullarında cinsiyet çeşitliliğini düzenleyen Kurumsal Yönetim İlkeleri ikinci yaklaşım tercih edilerek oluşturulmuştur. Ancak istatistikler, Türkiye'nin bu konuda yavaş ilerleme kaydettiğini göstermektedir. Bu, yumuşak hukuk yaklaşımının yönetim kurullarında kadın oranını artırmak için istenen etkiye sahip olmadığına işaret etmektedir.

Bu makale, bu yavaş ilerlemenin nedenlerini ortaya koymayı ve Türkiye’de kadınların yönetim kurullarında daha fazla temsil edilmesini sağlamak için mevcut düzenlemelere alternatif yasal yollar göstermeyi amaçlamaktadır. Araştırma, yavaş ilerlemenin nedeninin Türkiye’deki kurumsal yönetim düzenlemesi ile uygulaması arasındaki uyumsuzluk olduğunu göstermektedir. Bir yandan Türk şirketlerinin kurumsal kültürü dikkate alındığında, katı yasaların uygulanması hedeflenen sonuca ulaşmayacaktır. Ancak öte yandan, gönüllülük esasına dayalı yaptırımsız yöntem, niyetin ötesinde geçebilmek için etkili bir yol değildir. Bu araştırmanın bulgusu, yönetim kurullarında cinsiyet eşitliğini artırmak için Türkiye’de güçlendirilmiş gönüllülük yönteminin uygulanması gerektiğidir.

Anahtar Kelimeler: Cinsiyet kotası, Yönetim kurulunda kadın, Kurumsal yönetim, Yumuşak hukuk, Türkiye.

INTRODUCTION

The representation of women in management and the promotion of women managers who will provide representation to senior management levels prove significant in terms of gender equality. This is not only because of the necessity of eliminating inequality in terms of human rights but also there is a socio-economic aspect of diversity in corporate management. The presence of women in corporate boards positively affects financial performance of companies and provides an increase in welfare on a social scale.¹

The realisation of equal opportunities for the professional equality of men and women is a socio-political goal.² Article 5 of the Global Goals for Sustainable Development carried out by the United Nations Development Program in the presence of the United Nations lists ‘ensuring women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life’ as a target. In this context, *proportion of women in managerial positions* is among the targets as a problem that needs to be improved.³

Gender diversity is also an important topic of discussion in terms of corporate governance since it is promoted through almost every single modern corporate governance code. Formerly, it was argued that board composition was a matter for the company to decide and that any form of interference with that process would be inadmissible. With the rise of corporate governance, listed companies⁴ were required to

¹ ARARAT, Melsa / YURTOGLU, Burçin B., “Female Directors, Board Committees and Firm Performance: Time-Series Evidence from Turkey” **Emerging Markets Review**, Year: 2021, Vol.48, 100768.

² KOCH, Raphael, “Board Gender Quotas in Germany and the EU: An Appropriate Way of Equalising the Participation of Women and Men?”, **Deakin Law Review**, Year: 2015, Vol.20 No.1, (pp. 53-74).

³ United Nations, The Global Goals for Sustainable Development, Gender Equality Target 5.5.2 <https://www.kureselamaclar.org/en/global-goals/gender-equality/> (as accessed on 17.08.2022)

⁴Based on access to capital, the companies are classified into listed companies and unlisted companies. Listing implies a process in which the shares of a company are officially traded on the board of the Stock Exchange. Thus, a listed company is a public company which has issued shares of its stock through a stock

explain, under the ‘comply or explain’ principle, the composition of their boards. Board diversity started to take place in corporate governance understanding at a later stage. Concomitantly, gender diversity on boards started to be debated on a larger scale.

The subject of the board gender diversity has been dealt with from a rights-based perspective in some states, and legal regulations have been introduced for women to take more role in company management, as a result of which the debate received more attention. Although the scope of these regulations varies, they generally aim to impose a women quota in the boards of listed companies. These regulations may be seen in the nature of legal obligation or a recommendation.

The Turkish Commercial Code does not include any distinction based on sex.⁵ However, preparing the code with a gender-neutral approach is not sufficient to ensure gender equality in practice. This is because the recognition of equal rights by law does not make all individuals equal. Individuals have unequal positions in society based on gender.⁶ Therefore, it is necessary to take measures to remove the barriers based on gender by questioning the social structure in which the law exists in not to leave human rights on paper only. In addition to the principle of equality under the law, Article 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), of which Turkey is a party, emphasizes the measures aimed at realizing *de facto* equality.

As a response to the low rate of female members in the boards of directors in companies listed on the stock exchange in Turkey (BIST), regulations were made in Turkish Capital Markets Law. The first composed regulation brought in this context is

exchange for trading and each share represents an ownership of the company. They are acquired by several shareholders. A company must apply to an exchange to be listed. Each exchange sets its own requirements, which typically include minimum levels of cash flow, company assets and standards of corporate governance. An unlisted company refers to a company whose shares are not traded on a stock exchange. Unlisted companies are privately owned by private investors like founders, founders’ family and peers.

⁵ SONGUR, Damla, “Toplumsal Cinsiyet Eşitliği Perspektifinden Ticaret Hukuku ve Uygulamasına Genel Bakış”, **Hukuk ve Toplumsal Cinsiyet Çalışmaları**, (Ed. G. Uygur / N. Özdemir), Seçkin Yayıncılık, Ankara, 2019, (pp.413-432).

⁶ UYGUR, Gülriz, “Toplumsal Cinsiyet ve Adalet: Hukuk Adaletsizdir”, **Ankara Barosu Dergisi**, Year: 2015, Vol.4, (pp. 121-132).

the amendment made by the Capital Markets Board (CMB) in 2012 with the Communiqué No. 57 in the Communiqué No. 56 on Adoption and Implementation of Corporate Governance Principles dated 2011, which is valid for listed companies on BIST. Accordingly, the amendment envisaged that there should be at least one female member on the board of directors of listed companies. This regulation is recommended to the companies on a ‘comply or explain’ basis, in which non-compliance had to be explained with justifications in the corporate governance report they prepare. In 2014, the Corporate Governance Principles Communiqué numbered II-17.1 published by the CMB, changed ‘at least one female member’ advise to ‘a target set by companies for the rate of female members in the board of directors, provided that it is not less than 25%’, again as a recommendation.⁷ In addition to these, implementing awareness-raising and encouraging methods which will enable women to take a higher position in management and decision-making bodies in the private sector are among the targets of the government in the 11th Development Plan.⁸

Despite all these efforts, the Egon Zehnder 2016 Global Board Diversity Analysis listed Turkey among the states that showed negative progress with a lower board diversity in 2016 than 2014. It is difficult to state that much progress has been made in the next 4 years. In 2020, it is reported that Turkey departed from the group of states in which all the major companies have at least one female director. The average of boards with at least one woman is 50%, while this average falls to 16.7% for the boards with at least three women. The world averages for these data are 88.7% and 49.1%, respectively.⁹

The aforementioned data show that soft law approach of the lawmaker did not have the desired impact to increase the proportion of women in the company boards. This study provides an overview of current developments in Turkey and aims to discuss whether

⁷ Capital Markets Board of Turkey, II-17.1 Communiqué on Corporate Governance Official Gazette 03.01.2014, No. 28871 Section 4.3.9

⁸ Türkiye Cumhuriyeti Cumhurbaşkanlığı Strateji ve Bütçe Başkanlığı On Birinci Kalkınma Planı (2019-2023) <https://www.sbb.gov.tr/wp-content/uploads/2021/12/Eleventh_Development_Plan_2019-2023.pdf> (accessed on 17.08.2022)

⁹ The Egon Zehnder 2020 Global Board Diversity Tracker <https://www.egonzehnder.com/global-boarddiversity-tracker/customize-the-data> (accessed on 17.08.2022)

alternative proposals to current regulations be made in order to ensure more representation of women in the corporate boards? Discussions start with the rationale behind the board diversity. Afterwards, gender-quota regulations in various legal systems will be examined. Thus, pros and cons of different implementations can be seen. The constitutional hurdles of implementing quotas on women will be then taken into consideration. Before the conclusion part, the legal situation in Turkey will be evaluated and alternative ways of incorporating gender quotas into the existing legal system will be proposed.

I. The Rationale behind the Board Gender Diversity

In the past, it was argued that board composition was a matter for the company to decide and that there should not be any form of interference with that process. With the rise of corporate governance, the drive to increase the number of women on boards rapidly gained momentum around the world. Under the ‘comply or explain’ principle, listed companies became required to explain whether they meet the expectations of the relevant legislation and if not, explain the reasons by a soft-law approach.

The debate about board gender diversity received considerable attention after Norway introduced mandatory board gender quotas. However, only a few states followed the method of quota legislation. There is an apparent lack of interest in increasing the number of women on boards. The governments couch their initiatives in this area almost exclusively in economic-based justifications. This is understandable since the primary task of the board is to maximize the wealth of the shareholders, increasing the number of women on boards should similarly be rationalized in economics nature. However, it is argued that economic rationale is not sufficient to understand the roots of the problem.¹⁰ Therefore, the economic rationale behind increasing women on boards should be supported by equality grounds.

¹⁰ CHOUDHURY, Barnali, “New Rationales for Women on Boards” *Oxford Journal of Legal Studies*, Year: 2014, Vol. 34, No. 3, (pp. 511-542).

A. The Economic Rationale

In the economic sense, the purpose of companies means maximization of wealth. Therefore, contribution of women to the boards of companies is defined in terms of their effects on performance of the company. In the economic rationale, increased representation of women is thought in terms of board effectiveness.¹¹ It is asserted that boards should be seen as groups of decision-makers. Thus, the focus should be on the effects of decision-making process of the board to the performance of the company. The literature shows that this relation is indirect, meaning that demographic variables of board members only directly influence how effectively boards perform their tasks, but not how a board's overall effectiveness affects company performance.¹² This led the researchers to discuss the role of female directors in the decision-making process. The results show that women make unique contribution to three attributes of boards: effort norms, cognitive conflict and possession and use of knowledge and skills.

Effort norms are the expected standard of intensity that each board member will apply to task-performance behaviour such as to review information essential for board decisions prior to meetings.¹³ Studies have shown that women spend more time preparing for board meetings, trying to understand the logic of board work¹⁴; and better attend the meetings than men¹⁵. It is also seen that the presence of women on boards improves the attendance behaviour of male counterparts.¹⁶

¹¹ BJORKHAUG, Hilde / SORENSEN, Siri O., "Feminism without Gender? Arguments for Gender Quotas on Corporate Boards in Norway" in **Firms, Boards and Gender Quotas: Comparative Perspectives**, (Ed. F. Engelstad, / M. Teigen), Emerald Group Publishing Ltd., Bingley, 2012, (pp.185-209).

¹² FORBES, Daniel P. / MILLIKEN, Frances J., "Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision Making Groups", **Academy of Management Review**, Year:1999, Vol.24, No.3, (pp.489-505).

¹³ NIELSEN, Sabina / HUSE, Morten, "The Contribution of Women on Boards of Directors: Going Beyond the Surface", **Corporate Governance**, Year: 2010, Vol.18 No.2, (pp.136-148).

¹⁴ HUSE, Morten / SOLBERG, Anne Grethe, "Gender-Related Boardroom Dynamics: How Scandinavian Women Make and Can Make Contribution on Corporate Boards", **Women Manage Review**, Year: 2006, Vol. 21, (pp. 113-130).

¹⁵ ADAMS, Renee B. / FERREIRA, Daniel, "Women in the Boardrooms and their Impact on Governance and Performance", **Journal of Financial Economics**, Year: 2009, Vol.94, No.2, (pp.296-298).

¹⁶ HUSE/SOLBERG, 2006, n above 14.

The extensive preparation for meetings results in disagreements about the content of the task and enables women to make suggestive contributions to open discussions of task-related issues. Female board members encourage greater discussions over decisions and bring diverse viewpoints to these discussions.¹⁷ Studies have also documented that women prefer a participative style of decision-making in a collaborative way.¹⁸ All these, not only create an opportunity to listen to different ideas while making decisions but also increases communication among the board members. Eventually, board effectiveness is influenced by *cognitive conflict*.

Possession and use of knowledge and skills of women also have an impact on board effectiveness. Studies have shown that women have greater familiarity with consumer products and have greater influence over the customers than men.¹⁹ An example of this situation is Nestlé. Nestlé India's chair stated in Egon Zehnder, 2020 Global Board Diversity Tracker that "at a company like Nestlé India, where the majority of customers are women, it's actually counterproductive for a board not to have significant female representation."²⁰

The explanations outlined above show that women can bring unique benefits to board operations. Thus, it can be asserted that having roughly gender-balanced board often contributes to the purpose of the company. However, economic rationales, standing alone, are unlikely to persuade companies to strive for gender diversity in the boardroom. This is because normative changes that affect company behaviour are not easily driven by economic rationale. Therefore, while acknowledging the importance of an economic rationale, gender diversity on board should also be grounded in non-economic rationales.

¹⁷ KRAMER, Vicki W. / KONRAD, Alison. M. / ERKUT, Sumru, "Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance" Wellesley Center for Women – Report No.74 <<https://www.wcwonline.org/pdf/CriticalMassExecSummary.pdf>> (accessed on 17.08.2022).

¹⁸ Ibid.

¹⁹ DESVAUX, Georges / DEVILLARD-HOELLINGER, Sandrine / BAUMGARTEN Pascal, "Women Matter: Gender Diversity, A Corporate Performance Driver" (McKinsey and Co 2007) https://www.mckinsey.com/~media/mckinsey/business%20functions/people%20and%20organizational%20performance/our%20insights/women%20matter/women_matter_oct2007_english.pdf (as accessed on 17.08.2022)

²⁰ Egon Zehnder, 2020 Global Board Diversity Tracker, n above 9.

B. The Equality Rationale

Maintaining gender diversity on boards from an equality point of view begins with a claim for a balanced society, in which there is a just distribution of power, resources, participation and influence between men and women.²¹ However, interpreting *equality* by means of proportion of men and women on the boards would not stand for a tendency of distribution of power, resources and participation. Instead, an equality understanding that have roots in the notion of justice can contest for women to have the same opportunities as men to participate at director positions in corporate boards.²² It is argued that it is not sufficient to open positions formally to all. It is also required to give the same prospects of success to the ones who are equally skilled, willing and able by preserving the social conditions necessary for fair equality of opportunity.²³ Therefore, governments must ensure the conditions necessary for women's fair equality of opportunity while formulating formal opportunities by prohibiting legal discrimination based on gender. Indeed, the low representation of women at the boards indicates that the conditions necessary to preserve fair equality of opportunity for women in corporate life are inadequate. Incontrovertibly, the need to provide the social conditions for fair equality of opportunity is the reason that makes economic rationale, alone, insufficient to promote women on boards. Because focusing only on the economic interests of women's participation would possibly neglect the institutional changes needed to achieve greater representation of women on boards. Without rooted institutional changes, increasing the number of women in the boards cannot be achieved in a sustainable manner because the conditions that have impeded women's fair equality of opportunity are unlikely to be addressed. Thus, gender-neutral commercial law rules that regulate board structure are not suitable instruments for promoting social change since they are too general to address such a specific problem. Equality rationale is precisely what corporate governance can provide.

²¹ CHOUDHURY, 2014, n above 10.

²² FRASER, Nancy, "Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation" in **Redistribution or Recognition? A Political Philosophical Exchange**, (Ed. N. Fraser / A. Honneth), Verso, London, 2003, (pp. 7-109).

²³ RAWLS, John, **A Theory of Justice Revised Edition**, Harvard University Press, London, 1999.

Equally significant reason for advocating equality rationale for the board gender diversity is the human right side of the concept. Building gender equality in boards solely on economic rationale would not be acceptable since it basically depends on women's effects on financial performance of the company. This is unacceptable for two reasons; first, a correlation cannot always be found between female participation on boards and the maximized interests of the shareholders; second and more importantly, economic rationale does not quest after such a correlation for a male member of the board which results in a discrimination among men and women members. Equality rationale can be seen as emphasizing women's rights while economic rationale emphasizes shareholder rights. Therefore, economic rationale must be bolstered by equality rationale to promote gender diversity on corporate boards.

2. Regulations Regarding Gender Quota in Various Legal Systems

Research by Women on Board Association Turkey (WOB Turkey) found that the proportion of women on the management boards of the listed companies is not progressing with the expected momentum²⁴. The estimated time for significant change with this momentum is at least 10 years, which corresponds to 2035.²⁵ This under-representation of women on boards is not just a Turkish phenomenon. It is also seen in European countries. The necessity to introduce quotas on women is widely accepted, but the implementation of such quotas is fiercely disputed. Some states have opted for mandatory gender quota legislation whereas other states use voluntary corporate governance codes, and some left it to the investors.

A. Efforts at the EU Level

The under-representation of women on boards is considered as a problem that is seen almost in all Member States by the European Commission. To address this problem, the Commission submitted a proposal for a directive on gender balance among non-

²⁴ Women On Boards Turkey <https://www.yonetimkurulundakadin.org/sayfa/turkiyede-ve-dunyada-ykda-kadin> (accessed on 17.08.2022)

²⁵ Ibid.

executive directors²⁶ of companies listed on stock exchanges in November 2012.²⁷ Only listed companies fall under the scope of the directive. The proposal sets the aim of a minimum of 40% of non-executive members of the under-represented sex on company boards, to be achieved by 2020 in the private sector. Member states should also require listed companies to provide information to the competent national authorities once in a year about the gender representation on their boards, distinguishing between non-executive and executive directors, about the measures taken in this regard and to publish that information in an appropriate and accessible manner on their website (Article 5(2)). Sanctions can be imposed in the event of negative evaluations (Article 5(2) and 6(1)). The directive intends to ensure the balanced representation of both genders in EU member states and thus, do not specify a fixed quota for board members. Thus, too much interference in the company structure was prevented by a mixture of a fixed quota on the one hand and a voluntary implementation on the other.

The legislative procedure for adopting this Directive is not yet complete since not all Member States support EU-wide legislation stating that binding measures are not the best way to pursue the objective and the issue should be regulated at a national level. Nonetheless, today, most European states either already have some form of policies to increase the share of women on boards or are currently having debates about this issue.

B. Norway

Norway is the first state to introduce gender quotas for board positions. In order to promote equality of the highest standard, several initiatives have been made about increasing women's representation ranging from the public bureaucracy to the board of

²⁶ The term executive directors are responsible for the day-to-day management of the company working alongside the other board members. Non-executive director refers to a member of a company's board of directors who is not a company employee and thus, is not responsible for day-to-day management of the company but rather act as an independent advisor. Their responsibilities generally include monitoring executive directors and acting in the interest of the company stakeholders.

²⁷ 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)

state-owned enterprises.²⁸ Despite these initiatives, the share of women on the corporate boards in the private sector has remained low. Huse's work shows that from 1990 to 2002, the percentage of women on board was almost constant at a rate of near to 5%. This percentage increased to 40% from 2003 to 2008, which is the direct outcome of the introduction of the gender quota law.²⁹

With a law amendment made in 2003, a gender-based quota application was introduced in the boards of public joint stock companies. The quotas were initially voluntary. However, companies overall achieved little progress in female board membership. In 2006, the targets became mandatory. Norwegian Public Limited Liability Companies Act Chapter 6 Article 11a states that on the board of directors of public limited companies, both sexes shall be represented in the following manner: If the board of directors has two or three members, both sexes shall be represented; If the board of directors has four or five members, each sex shall be represented by at least two members; If the board of directors has six to eight members, each sex shall be represented by at least three members; If the board of directors has nine members, each sex shall be represented by at least four members; If the board of directors has more members, each sex shall represent at least 40% of the members of the board.³⁰ It is foreseen that the 40% quota to be met until 2008 in terms of public limited companies.

In order to ensure the successful implementation of the gender-quota, the Norwegian law maker envisaged sanctions. Among these, the most severe sanction is the dissolution of the company.³¹ Though, it is not an absolute implementation. The Norwegian Companies Law authorizes the Ministry of Trade and Industry not to impose

²⁸ The Norwegian Gender Equality Act no. 45 June 9th 1978
<https://www.ilo.org/dyn/natlex/docs/WEBTEXT/12790/64813/E78NOR01>

²⁹ HUSE, Morten, "The Golden Skirts: Changes in Board Composition Following Gender Quotas on Corporate Boards", **Australian and New Zealand Academy Meeting (28-30 November 2011)**, Wellington NZ, 2011.

³⁰ Norwegian Public Limited Liability Companies Act No.45 (13 June 1997).

³¹ Ibid Article 15-16

the dissolution sanction in the case of public interest, provided that a fine is paid until the quota conditions stipulated in the law are met.³²

As a result of the sanctioned quota application, Norway has managed to rank among the firsts in the world in the statistics of female company managers. According to the Global Gender Gap 2021, Norway is the third most gender-equal state globally.³³

C. Germany

The debate about women's representation in management is not new in Germany. In 2001, the government planned to introduce a law that would have included targets for increasing women's representation in boards which ended up unsuccessfully due to the oppositions from business groups. Instead, an agreement to support the equality of opportunity for women and men in the private sector was reached between the Government of the period and the leading organizations of the German economy. This agreement did not specifically address the under-representation of women on boards. Pfarr states that this agreement did not amount to more than a loose declaration of intent.³⁴

Over the time, the idea of eliminating discrimination based on gender and adopting a women's quota in managerial positions has brought to the agenda with the corporate governance thought.³⁵ The first steps were non-statutory regulations. In May 2010, the

³² Ibid Article 16-17

³³ World Economic Forum, Global Gender Gap Report 2021 Insight Report <<https://www.weforum.org/reports/global-gender-gap-report-2021>> (accessed on 17.08.2022)

³⁴ PFARR, Heide, **Ein Gesetz zur Gleichstellung der Geschlechter in der Privatwirtschaft**, Hans-Böckler-Stiftung, Düsseldorf, 2001. https://www.boeckler.de/pdf/p_edition_057.pdf (accessed on 17.08.2022)

³⁵ At this point, it will be instructive to understand the structure of German corporate boards. The governance structure of stock corporations is regulated in the Stock Corporation Act 1965. It mandates three corporate bodies: a shareholders' general meeting, a management board and a supervisory board. The two-tier board structure is a characteristic of German corporate law setting. The management board directs the company, is responsible for its operative management and represents it in and out of court. The supervisory board appoints, oversees, advises and dismisses the members of the management board, examines company records and assets, issues audit assignments to the auditor, and receives reports from the management board on intended business policy, profitability, the state of business, and transactions of considerable impact on the conditions of the company. The supervisory board does not issue instructions to the management board regarding the operative management of the company. The supervisory board consists of at least three members. It may be co-determined, meaning that a certain fraction of the supervisory board members is elected by the domestic workforce of the company. The shareholder

German lawmaker amended the Corporate Governance Code and recommended that a supervisory board ‘stipulate an appropriate degree of female representation’ in its objectives regarding its composition (section 5.4.1) and that supervisory boards aim for ‘an appropriate consideration of women’ when appointing members to management boards (5.1.2). A similar amendment was made for the management board stating that ‘when filling managerial positions in the enterprise the management board shall take diversity into consideration and, in particular, aim for an appropriate consideration of women.’ (4.1.5). Any deviation from these recommendations should be disclosed by the company. However, no sanction applies in case of non-compliance.

On 1 May 2015, the first mandatory quota for women in managerial positions was enacted. Accordingly, a statutory gender quota of 30% applies to the supervisory boards of listed companies from January 2016, onwards. Non-compliance has been subjected to several sanctions. Among these sanctions, the most important is the nullity of the general assembly decision regarding the election of the supervisory board member. Accordingly, in case of non-compliance with the quota regulation, member assignments would not be valid and seats intended for women members will remain vacant. The companies are responsible to disclose their compliance with the quota in their annual reports. In addition, the law obliges listed companies to set targets to increase the share of women on their supervisory boards and management boards. Companies must report and disclose their targets and whether these targets are met. The regulation can be criticized for not determining the lower limit of the target. The only limitation is that if the share of women on a board or on a management level is below 30%, the target is not permitted to be lower than the existing situation. The handicap of this situation is that if there are no women on a board or management level when the target is set, the target can be zero. Even though there is no sanction for not reaching the target, it is against the German Commercial Code not reporting on targets.³⁶

representatives on the supervisory board are elected by the shareholders’ general meeting. The Stock Corporation Act, amended in 2015, specifies that both genders must take place at least 30% of supervisory board members in listed companies to which the Co-determination Act applies. This is the first time that any reference to gender diversity is made in the Stock Corporation Act.

³⁶ Deutschland, Handelsgesetzbuch Gesetz vom 10.05.1897 (RGBl. I S. 219) §289a and §334

From 2010 to 2020, the rate of board seats held by women increased from 8.7% to 27.3% in Germany.³⁷ The increase in the rate shows that the developments both in the German Corporate Governance Code and the statutory regulation have facilitated women's access to the boards.

3. Constitutional Compliance of Regulations Regarding the Gender Quota

In the run-up to the quota's introduction, the regulation has been much debated in terms of its constitutionality.³⁸ On the one hand, there are possible constitutional challenges that could be raised against gender quota legislation. On the other hand, there are constitutional safeguards that could be used to justify the legislation. To start with, all constitutions in modern legal systems demand equality under the law without any discrimination based on gender as a fundamental right. However, quotas demanding the appointment of a certain number of board members from each sex can affect the fundamental rights of candidates of the opposite sex.³⁹ In the face of the existence of a male-dominated order in the current structure of the boards, it is highly likely that the introduction of the gender-based quota will act as a *women's quota*, which would at the end shade into violation of fundamental rights. In case there is a male with superior qualifications among the candidates, a mandatory female quota would violate the freedom of occupation and right of equality. Besides, on the assumption that the underrepresentation of women is a basis for discrimination, one can argue that the women's quota will likewise result in a discrimination against men. Another consequence of applying quotas is that there is the possibility that women will no longer be employed due to their qualifications and experience, but rather due to their gender. Du Plessis and others

<https://dejure.org/gesetze/HGB> (as accessed on 17.08.2022)

³⁷ The Egon Zehnder 2020 Global Board Diversity Tracker-Germany, n above 9.

³⁸ WAAS, Bernd, "Gender Quota in Company Boards: Germany" in **Gender Quotas for Company Boards**, (Ed. M. Vos and P. Culliford), Intersentia, Cambridge, 2014, (pp. 131–146)

³⁹ DU PLESSIS, Jean / SAENGER, Ingo / FOSTER Richard, "Board Diversity or Gender Diversity: Perspectives from Europe, Australia and South Africa" **Deakin Law Review**, Year: 2012, Vol. 17, No. 2, (pp. 207-249).

asserted that such a case would not only result in discrimination among candidates but also violates the shareholders' freedom of choice in appointing board members.⁴⁰ Thus, they concluded that company law, alone, is not sufficient to untie these possible problems and compliance with constitution is necessary for the protection of fundamental rights.

The constitutionality of the sanctions imposed is also worth considering. Severe sanctions, such as dissolution of the company, results rapidly. However, its consistency with the principle of proportionality should be questioned. It would not be wrong to state that such a severe sanction exceeds the purpose of limitation since the aim of the regulation is not to terminate the company but rather to ensure the continuity of the company based on gender equality.

Although monetary fines do not directly result in violation of a fundamental right, they may result in another serious problem; evasion of law. Companies that must reach a certain gender quota level but fail to do so may use the monetary fines as a way not to obey the law. Here, there is neither collusion nor abuse of a right. However, the intention to do so and its result are nullifying the regulation. This weakens the authority of law, and the will of the legislator is regarded as an obstacle that could be overcome with a bit of money. Since this situation will damage legal security, applying monetary fines would result in incompliance with the principle of the rule of law. Thus, applying monetary fines alone would not be the right approach for non-compliance with the quota regulation.

This article does not intend to give a comprehensive analysis of the situation from a constitutional law perspective. Instead, it attempts to remark some of the potential constitutional problems. Gender-based quota implementation has brought to the agenda in Turkey from the corporate governance perspective. Suffice it to say here that contrary to the sample states discussed above, the regulation in question stipulates a target no less than 25% female member in the board of directors of publicly traded companies on an advisory basis. The constitutionality of the regulation should be evaluated according to Article 10 of the Turkish Constitution. Accordingly, men and women have equal rights, and the state is liable for the realization of this equality. The article has been clearly stated

⁴⁰ Ibid.

that the measures to be taken by the state for the realization of equality cannot be interpreted contrary to the principle of equality.⁴¹ In this context, it can be concluded that the target for the board of directors of the listed companies does not contravene the principle of equality in terms of the Turkish Constitution.

4. Turkey's Approach to Corporate Gender Equality

Even though the CMB issued the corporate governance principles by taking reference the OECD Corporate Governance Principles in 2004, awakening regarding gender equality in corporate boards did not happen until 2012. In 2012 Turkish listed companies were recommended through the corporate governance principles to have at least one female member in their boards.⁴² In 2014, the CMB made another amendment in the corporate governance principles and required listed companies to set and disclose a voluntary target for female participation on their boards no less than 25% along with a target date they specify.⁴³ It is also demanded from listed companies to disclose their progress through their annual reports. It is not possible to examine these recommendations without considering the implications of the institutional context.

Most Turkish companies have controlling minority structure, which is characterised by the existence of one or more shareholders, most are generally family-members, and owning controlling blocks of shares.⁴⁴ Thus, a widespread shareholding of companies does not exist in Turkish capital market. As a logical extension of this, the controlling shareholders continue to have the management and control power of the company. As the result of such patterns of ownership, principles and regulations have been introduced to retain controlling shareholders' balance in the company management and protect non-controlling shareholders in Turkey. Although the gender quota regulation is also a tool for retaining the balance in management, since the corporate governance principles are

⁴¹ Constitution of the Republic of Turkey, Law No. 2709 Official Gazette 9.11.1982 Article 10.

⁴² Capital Markets Board of Turkey, Communiqué Serial:IV, No:57 on the Amendment of the Communiqué on the Determination and Implementation of Corporate Governance Principles, Official Gazette 11.02.2012, No. 28201 Article 7.

⁴³ Communiqué on Corporate Governance, Section 4.3.9, n above 7.

⁴⁴ DEMİRAĞ, İstemi / SERTER, Mehmet, "Ownership Patterns and Control in Turkish Listed Companies", **Corporate Governance**, Year: 2003, Vol.11 No.1, (pp. 40-51).

aimed at increasing transparency and accountability in the first stage, the gender quota regulation is left to the later stages.

For implementing corporate governance principles, Turkey followed ‘comply or explain’ approach. This approach is characterised by a voluntary implementation of the principles and mandatory disclosure of non-compliance. However, not having determined any standard for explaining non-compliance creates a drawback in corporate governance enforcement. Thus, companies can refrain from implementing principles provided that they disclosed some explanation.

Under the Turkish corporate culture where controlling shareholders dominate the boards and have the decision-making power in their hands, demanding companies to set female participation target on an advisory basis is a starting point. However, the data given above shows that Turkish listed companies are far out on the issue.

The reasons for the lack of interest are numerous. First of all, previous research has shown that Turkish listed companies tend to implement only mandatory corporate governance principles.⁴⁵ Nevertheless, the CMB follows a soft law approach regarding gender-equality implementation instead of putting a stronger emphasis on the hard law characteristics. The previous corporate governance implementation experience of Turkey shows that the soft law approach has an obvious setback. Owing to the voluntary approach, no sanction for non-compliance is applied as long as the reason for non-compliance is explained. This would not be a problem if minimum standard or method to verify the accuracy of explanations were determined but there is also not such a standard. Thus, companies are allowed to decide not to implement the principle, provided that they disclose some sort of explanation. Voluntary approach would have no effect if justifiable reasons for non-compliance were not explained. Research reported that non-compliance with the CMB recommendation is explained by the companies stating that it was not mandatory.⁴⁶ Hence, voluntary implementation of female representation on corporate

⁴⁵ ARARAT, Melsa, “Comply or Explain without Consequences: The Case of Turkey” in **Handbook on International Corporate Governance** (Ed. C. A. Mallin) Edward Elgar Publishing, Cheltenham, 2011, (pp. 355-370).

⁴⁶ Independent Women Directors Project (IWDP), 7th Annual Report

boards and lack of minimum standards to verify the accuracy of explanations for non-compliance are obstacles to the widespread use of the practice.

The conventional corporate governance understanding limits the controlling shareholders' ability to control the company by reinforcing the rights of shareholders to appoint the board members.⁴⁷ Even though the corporate governance principles serve this purpose on paper, this did not happen in practice in Turkey due to the ownership patterns in the listed companies. Research has shown that board members rarely change in Turkey.⁴⁸ In addition, the family members are generally appointed to the boards and sit on boards for life. In 2019, 67 new female directors were appointed to listed company boards and 13 of them are affiliated with controlling families.⁴⁹ It is seen that in a corporate culture where board member appointments are made in connection with family ties, the 'comply or explain' approach has delivered limited results because the controlling shareholders do not voluntarily give up the control power. This view is also supported by Ararat who states that recommendations that are related to control rights are largely disregarded because they are either not mandatory or costly for the controlling shareholders.⁵⁰

In the absence of binding laws, investors could be a pressure on the listed companies in case of non-compliance. Especially, institutional investors⁵¹ would be an effective force in encouraging the companies which regard non-compliance with the recommendation as losing reputation in the market. At the 2021, 0.4% of domestic investors are institutional investors in BIST. Besides, the share of foreign institutional

⁴⁷ KRAAKMAN, Reinier / ARMOUR, John / DAVIES, Paul and others, **The Anatomy of Corporate Law: A Comparative and Functional Approach**, OUP, Oxford, 2017.

⁴⁸ IWDP, 7th Annual Report, n above 46.

⁴⁹ Ibid.

⁵⁰ ARARAT, 2011, n above 45.

⁵¹ There are two major group of investors. Individual investors are non-professional investors who buy and sell securities or funds that contain a basket of securities. Institutional investors, such as mutual funds, pensions, and insurance companies, are companies or organizations that invest money on behalf of other people. Individual investors generally invest smaller amounts than larger, institutional investors. Institutional investors are considered savvier than the average investors since they have the resources and specialized knowledge for extensively researching a variety of investment opportunities not open to retail investors.

investors is 19%.⁵² The low percentage of institutional investors contributes to the dominance of controlling shareholders. Hence, at the current status institutional investors are hardly a pressure for non-compliance of gender diversity in the boards.

The conclusion to be drawn so far is that there is no one-size-fits-all method to increase female participation on corporate boards. Both Norway and Germany's success in increasing female participation in their listed companies by using different methods demonstrate that each state should adapt its own method to suit its own legal and cultural specifics. All the given data illustrates that requirements about the percentage of women directors through soft policies did not help in the implementation in Turkish listed companies. Since companies did not do enough on a voluntary basis, it become inevitable to take further action to increase women participation on the boards of Turkey's listed companies.

5. Methods for Turkish Listed Companies to Achieve Gender Equality on the Boards

Having established the factual and legal situation in the boards of Turkish listed companies, one can now take a closer look at alternative methods to current regulation to increase the presence of female directors on boards.

A. Mandatory Quota Regulation

Regarding the promotion of gender diversity on corporate boards, de facto progress in Turkey is slow. As it is mentioned previously, some progress has been noted but the overall picture is still far from gender-diverse boards. It seems to show that non-binding advises do not lead the companies to gender balanced boards. Thus, adapting a binding regulatory framework can be seen as a fruitful option to provide gender balance in boards. The question is whether a mandatory quota implementation is compatible with Turkey's corporate culture.

The answer would probably be no. When discussing legal strategies, it is important to understand the corporate culture in which the law will be applied. In Turkish

⁵² Turkish Investors Relations Society, BIST Trend Reports (2021) <https://www.tuyid.org/files/yayinlar/BorsaTrendleriRaporu-4C21.pdf> (accessed on 17.08.2022)

companies, it is to be expected that major hindering forces, the controlling families, would block the mandatory quota route. They would regard the mandatory quota regulation as an unjustified curtailment of their discretion. In addition to this, one can put forward that in listed companies, the freedom of shareholders to elect the board is sacrosanct, and any interference would be regarded as illegitimate. Such a corporate culture creates a lax ground for solid legal regulation. A gender equality policy requires the support of the corporate culture to be proved successful. Otherwise, companies can stay within the legal rules and yet not fully comply with the spirit, which may at the end lead them to evasive implementations of law. Thus, the unreadiness of the corporate culture to mandatory gender quota forms an obstacle for a successfully spreading the practice to become a business culture. Contrary to the view that quotas are the only proven method of advancing women into boardrooms in large numbers⁵³ and recalling that these potential reactions are themselves presumptive, the standpoint of this paper is that mandatory gender quota should be thought of as a final step to be taken if all the voluntary measures fail.

B. Strengthened ‘Comply or Explain’ Method

The Corporate Governance Principle of Turkey is requiring listed companies to set a gender diversity target of no less than 25% since 2014 (Section 4.3.9). However, companies continued to ignore the recommendation and the obligation to provide an explanation for non-compliance. It is stated that mandatory quotas will not be a remedy to transform the companies to inclusive organizations and achieve the desired female participation.⁵⁴ Strengthening the listed companies’ compliance with the recommendation is observed as an efficient method under Turkey’s current legal tradition and business culture.⁵⁵

⁵³ SWEIGART, Anne, “Women on Board for Change: The Norway Model of Boardroom Quotas as a Tool for Progress in the United States and Canada”, **Northwestern Journal of International Law & Business**, Year: 2012, Vol.32 No. 4, (pp. 83-105).

⁵⁴ IWDP, 6th Annual Report.

⁵⁵ IWDP, ‘3rd Annual Report

‘Comply or explain’ is the key to corporate governance implementation. For the success of this approach, careful consideration to explanations is essential. However, since the principle regarding gender diversity is intended merely to reach a target, no sanction is applied for non-compliance. Furthermore, nobody is responsible for evaluating explanations for non-compliance. There is no formal authority to monitor the quality of explanations provided for non-compliance. These limitations make it difficult to reach a gender balanced boards more widespread throughout the corporate sector.

As a first step to strengthen the ‘comply or explain’ method, listed companies must improve the quality of their explanations. For this to happen, monitoring the compliance with the corporate governance principles and reviewing the quality of the compliance statements are of vital importance. In order to put the ‘comply or explain’ method work better, the CMB must specify what constitutes a reasonable explanation for non-compliance. In the explanations of non-compliance, a company must illustrate why its practice deviates from a particular principle. It must assess the risks and describe any mitigating actions taken to address any additional risk. If deviation from a particular principle is intended to be time limited, expected date to conform to the principles must be indicated in the explanation.

The Corporate Governance Principles of Turkey is a part of legislation aiming to deliver high quality of corporate governance while providing flexibility for companies to adapt their corporate governance practices to their circumstances. As a consequent of flexibility, no provision is regulated regarding the sanctions the companies will be imposed if they do not disclose explanation. Obviously, comply or explain approach has delivered limited results regarding gender diversity on the corporate boards. Therefore, a second step to strengthen the ‘comply or explain’ method would be imposing sanctions on inaccurate or non-explanation. While imposing sanction, the principle of proportionality should not be overlooked, but companies must also be forced to disclose an explanation under the conditions mentioned in the first step. For instance, the sanction could be an administrative fine. In order to avoid evasion of the law, companies must continue to be required to disclose explanation under the specified conditions, even after the fine has been paid. Explanation and its reporting are regulated in Article 8 of the

Corporate Governance Communiqué (II-17.1). However, this article does not foresee any sanctions in case of inaccurate or non-explanation. In this case, Article 103 (1) of the Capital Markets Law, which states that "Persons who act in contravention of the regulations made on the basis of this Law... are fined by the Board from twenty thousand Turkish Liras to two hundred and fifty thousand Turkish Liras." may find implementation area. This regulation lays the groundwork for the implementation of administrative fines. By implementing this article, administrative fine may be put on the agenda.

The Corporate Governance and the Sustainability Indexes of BIST give weight to governance practices of companies in their methodology. However, neither these indexes require female representation on boards as a listing rule nor an index that is specific to gender equality has been developed in BIST. Regarding the interest of investors in the field of gender diversity, there is a need to introduce of an index to direct the investors' capital to the companies that have more gender diverse boards. Therefore, both creating a new index and making female representation on corporate boards as a listing rule for the two mentioned indexes will strengthen comply or explain method. Thus, as a third step the CMB should consider including gender diversity in boards as a listing requirement.

In addition to all these, incentives can be used to foster companies to provide a better explanation for non-compliance. The government may issue tax incentives and BIST may offer a discount on listing fee to the companies that meet the 25% female recommendation for the first time. Companies that want to benefit from these incentives will inherently implement gender diversity policy or make an adequate explanation in case of non-compliance.

CONCLUSION

The objective of this paper is to identify alternative routes to current regulations in order to ensure more representation of women on the corporate boards in Turkey. To this end, the rationales behind the corporate board gender diversity are discussed. Economic rationale alone is insufficient for two fundamental reasons; first, it is not always possible

to find a correlation between female participation on boards and the interests of the shareholders, and second such a correlation for male members of the board is not sought. Obviously, this is a result of conscious or unconscious gender biases that serve for discrimination among members. Thus, the economic rationale must be reinforced with an equality rationale which emphasis on women's rights to promote gender diversity on corporate boards.

One key question proposed gender diversity on board debate can be what type of regulation is the most effective in increasing the share of women on boards. The policies can be grouped under two broad types. The first approach involves the introduction of mandatory quota. Quotas with sanctions can be an effective way to reach a specific goal. However, it is not the only way of regulation. In the second approach, compulsory quotas are avoided by suggested and promoted targets. Mandatory law applied in Norway can be said to have had a snowball effect on the other European states. Nevertheless, there are substantial variations among the applied regulations. To some extent it is interesting that the debate which ultimately resulted in a quota in the EU did not spill over into Turkey. It is thought that this is because of the business culture of Turkish companies.

Turkey's corporate landscape is characterised by highly concentrated ownership. Besides, laws and principles have given companies great flexibility to appoint their board of directors. Soft law approach is preferred for the implementation of corporate governance principles. The slow progress in gender diversity on corporate boards in Turkey shows that soft law did not have the desired impact to increase the participation of women in the company boards. This slow progress cannot be attributed to the lack of governmental policy since the government has identified women's participation in business as one of the important development objectives in the 11th Development Plan. Additionally, the CMB recommend at least 25% women on boards of listed companies by Corporate Governance Principles Communiqué in 2014. The government's intention is clear, but the right steps must be taken for the action. The slow progress can be caused of three reasons. The first is conscious or unconscious gender biases. The second is weak governance regulations and practices that actually include equality dimension of the issue, but do not appropriately put forward the means to reach it. And lastly, lack of incentives

to promote gender diversity. Thus, improving gender diversity on corporate boards requires a combination of government policy, the willingness of companies and the combination of soft and hard law.

The standing point of this research is that enforcing hard law will not reach the targeted result, which is, ultimately, to obviate gender inequality in society. This is because hard law will result in the obligation to be fulfilled but will not place gender equality as an indispensable part of business life. Companies will stay within the rules, and yet not fully comply with the spirit of it. Therefore, introduction of quotas should be a final step to be taken if all the voluntary measures fail. The judgement of this research is that to strengthen corporate governance regulations, strengthened ‘comply or explain’ should be implemented. In this method, voluntary measures to reach gender diversity target should be freely chosen by companies. The standards for explanation of non-compliance should be predetermined by the CMB and failure to comply with these standards must be sanctioned. In addition to sanctioned non-compliance explanations, the CMB may put gender equality criteria to BIST Sustainability and BIST Corporate Governance Indexes or consider creating a gender equality themed index. Thus, government policy, the willingness of companies and the soft law works together. Incentives can be a means to promote gender equality as well. It is worth repeating that comply or explain method draws its power from the accuracy of the explanation. Therefore, standards for explanations must be set. If all voluntary measures fail, it would be a right step towards the quota implementation that listed companies would be required to include at least one female BOD member by the CMB. Future research should examine the implementation of strengthened comply or explain in order to test whether the proposed change will achieve its goal.

REFERENCES

- ADAMS, Renee B. / FERREIRA, Daniel, “Women in the Boardrooms and their Impact on Governance and Performance”, **Journal of Financial Economics**, Year: 2009, Vol.94, No.2, (pp.296-298).

ARARAT, Melsa, “Comply or Explain without Consequences: The Case of Turkey” in **Handbook on International Corporate Governance** (Ed. C. A. Mallin) Edward Elgar Publishing, Cheltenham, 2011, (pp. 355-370).

ARARAT, Melsa / YURTOGLU, Burçin B., “Female Directors, Board Committees and Firm Performance: Time-Series Evidence from Turkey” **Emerging Markets Review**, Year: 2021, Vol.48, 100768.

BJORKHAUG, Hilde / SORENSEN, Siri O., “Feminism without Gender? Arguments for Gender Quotas on Corporate Boards in Norway” in **Firms, Boards and Gender Quotas: Comparative Perspectives**, (Ed. F. Engelstad, / M. Teigen), Emerald Group Publishing Ltd., Bingley, 2012, (pp.185-209).

Capital Markets Board of Turkey, Communiqué Serial:IV No:56 on Determination and Implementation of Corporate Governance Principles, Official Gazette 30.12.2011, No.28158.

Capital Markets Board of Turkey, Communiqué Serial:IV, No:57 on the Amendment of the Communiqué on the Determination and Implementation of Corporate Governance Principles, Official Gazette 11.02.2012, No. 28201.

Capital Markets Board of Turkey, II-17.1 Communiqué on Corporate Governance Official Gazette 03.01.2014, No. 28871

CHOUDHURY, Barnali, “New Rationales for Women on Boards” **Oxford Journal of Legal Studies**, Year: 2014, Vol. 34, No. 3, (pp. 511-542).

Constitution of the Republic of Turkey, Law No. 2709 Official Gazette 9.11.1982

DEMİRAG, İstemi / SERTER, Mehmet, “Ownership Patterns and Control in Turkish Listed Companies”, **Corporate Governance**, Year: 2003, Vol.11 No.1, (pp. 40-51).

DESVAUX, Georges / DEVILLARD-HOELLINGER, Sandrine / BAUMGARTEN Pascal, “Women Matter: Gender Diversity, A Corporate Performance Driver” (McKinsey and Co 2007)

<https://www.mckinsey.com/~media/mckinsey/business%20functions/people%20and%20>

[organizational%20performance/our%20insights/women%20matter/women_matter_oct2007_english.pdf](#) (as accessed on 17.08.2022)

Deutschland, Handelsgesetzbuch Gesetz vom 10.05.1897 (RGL. I S. 219)
<https://dejure.org/gesetze/HGB> (as accessed on 17.08.2022)

DU PLESSIS, Jean / SAENGER, Ingo / FOSTER Richard, "Board Diversity or Gender Diversity: Perspectives from Europe, Australia and South Africa" **Deakin Law Review**, Year: 2012, Vol. 17, No. 2, (pp. 207-249).

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).

FORBES, Daniel P. / MILLIKEN, Frances J., "Cognition and Corporate Governance: Understanding Boards of Directors as Strategic Decision Making Groups", **Academy of Management Review**, Year:1999, Vol.24, No.3, (pp.489-505).

FRASER, Nancy, "Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation" in **Redistribution or Recognition? A Political Philosophical Exchange**, (Ed. N. Fraser / A. Honneth), Verso, London, 2003, (pp. 7-109).

Gesetz für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst < https://www.bgbl.de/xaver/bgbl/start.xav?sartbk=Bundesanzeiger_BGBI&jumpTo=bgbl115s0642.pdf#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl115s0642.pdf%27%5D_1645005667637>

Grundgesetz für die Bundesrepublik Deutschland, Official Gazette 23.05.1949.

HUSE, Morten, "The Golden Skirts: Changes in Board Composition Following Gender Quotas on Corporate Boards", **Australian and New Zealand Academy Meeting (28-30 November 2011)**, Wellington NZ, 2011.

HUSE, Morten / SOLBERG, Anne Grethe, "Gender-Related Boardroom Dynamics: How Scandinavian Women Make and Can Make Contribution on Corporate Boards", **Women Manage Review**, Year: 2006, Vol. 21, (pp. 113-130).

Independent Women Directors Project, (accessed on 17.08.2022)

‘3rd Annual Report Women on Board Turkey’ (2015)

https://www.yonetimkurulundakadin.org/assets/node_modules/source/pdf/women_on_board_turkey_2015_3rd_annual_report.pdf

‘6th Annual Report Women on Board Turkey’ (2016)

https://iwdturkey.sabanciuniv.edu/sites/iwdturkey.sabanciuniv.edu/files/women_on_board_turkey_2016_4th_annual_report.pdf

‘7th Annual Report Women on Board Turkey’ (2019)

https://iwdturkey.sabanciuniv.edu/sites/iwdturkey.sabanciuniv.edu/files/7th_annual_report_2.pdf

KIRSCH, Anja, “Women’s Access to Boards in Germany Regulation and Symbolic Change” in **Gender Diversity in the Boardroom Volume 1: The Use of Different Quota Regulations**, (Ed. C. Seierstad / P. Gabaldon / H. Mensi-Klarbach), Palgrave, London, 2017, (pp. 205-232).

KOCH, Raphael, “Board Gender Quotas in Germany and the EU: An Appropriate Way of Equalising the Participation of Women and Men?”, **Deakin Law Review**, Year: 2015, Vol.20 No.1, (pp. 53-74).

KRAAKMAN, Reinier / ARMOUR, John / DAVIES, Paul and others, **The Anatomy of Corporate Law: A Comparative and Functional Approach**, OUP, Oxford, 2017.

KRAMER, Vicki W. / KONRAD, Alison. M. / ERKUT, Sumru, “Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance” Wellesley Center for Women – Report No.74 <
<https://www.wcwonline.org/pdf/CriticalMassExecSummary.pdf>> (accessed on 17.08.2022).

McKinsey, 2007, Women Matter: Gender Diversity, A Corporate Performance Driver, <
<https://www.raeng.org.uk/publications/other/women-matter-oct-2007>> (accessed on 17.08.2022).

- NEDELICHEV, Miroslav, “Good Practices in Corporate Governance: One-Size-Fits-All vs. Comply-or-Explain”, **International Journal of Business Administration**, Year: 2013, Vol.4 No.6, (pp. 75-81).
- NIELSEN, Sabina / HUSE, Morten, “The Contribution of Women on Boards of Directors: Going Beyond the Surface”, **Corporate Governance**, Year: 2010, Vol.18 No.2, (pp.136-148).
- Norwegian Public Limited Liability Companies Act No.45 (13 June 1997).
- PFARR, Heide, **Ein Gesetz zur Gleichstellung der Geschlechter in der Privatwirtschaft**, Hans-Böckler-Stiftung, Düsseldorf, 2001. https://www.boeckler.de/pdf/p_edition_057.pdf (accessed on 17.08.2022)
- RAWLS, John, **A Theory of Justice Revised Edition**, Harvard University Press, London, 1999.
- SONGUR, Damla, “Toplumsal Cinsiyet Eşitliği Perspektifinden Ticaret Hukuku ve Uygulamasına Genel Bakış”, **Hukuk ve Toplumsal Cinsiyet Çalışmaları**, (Ed. G. Uygur / N. Özdemir), Seçkin Yayıncılık, Ankara, 2019, (pp.413-432).
- SWEIGART, Anne, “Women on Board for Change: The Norway Model of Boardroom Quotas as a Tool for Progress in the United States and Canada”, **Northwestern Journal of International Law & Business**, Year: 2012, Vol.32 No. 4, (pp. 83-105).
- The Deutscher Corporate Governance Kodex (26 May 2010) https://www.dcgk.de/files/dcgk/usercontent/en/download/code/D_CorGov_final_2010.pdf
- The Egon Zehnder 2016 Global Board Diversity Analysis <https://www.egonzehnder.com/what-we-do/board-advisory/insights/2016-global-board-diversity-analysis> (accessed on 17.08.2022)
- The Egon Zehnder 2020 Global Board Diversity Tracker <https://www.egonzehnder.com/global-board-diversity-tracker/customize-the-data> (accessed on 17.08.2022)
- The Norwegian Gender Equality Act no. 45 June 9th 1978 <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/12790/64813/E78NOR01>

Turkish Investors Relations Society, BIST Trend Reports (2021) <https://www.tuyid.org/files/yayinlar/BorsaTrendleriRaporu-4C21.pdf> (accessed on 17.08.2022)

Türkiye Cumhuriyeti Cumhurbaşkanlığı Strateji ve Bütçe Başkanlığı On Birinci Kalkınma Planı (2019-2023) <https://www.sbb.gov.tr/wp-content/uploads/2021/12/Eleventh_Development_Plan_2019-2023.pdf> (accessed on 17.08.2022)

UN Women, Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979 <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

United Nations, The Global Goals for Sustainable Development, Gender Equality <https://www.kureselamaclar.org/en/global-goals/gender-equality/>

UYGUR, Gülriz, “Toplumsal Cinsiyet ve Adalet: Hukuk Adaletsizdir”, **Ankara Barosu Dergisi**, Year: 2015, Vol.4, (pp. 121-132).

WAAS, Bernd, “Gender Quota in Company Boards: Germany” in **Gender Quotas for Company Boards**, (Ed. M. Vos and P. Culliford), Intersentia, Cambridge, 2014, (pp. 131–146)

Women On Boards Turkey <https://www.yonetimkurulundakadin.org/sayfa/turkiyede-ve-dunyada-ykda-kadin> (accessed on 17.08.2022)

World Economic Forum, Global Gender Gap Report 2021 Insight Report <<https://www.weforum.org/reports/global-gender-gap-report-2021>> (accessed on 17.08.2022)