MANDATORY GENDER QUOTA LEGISLATION. WILL AUSTRALIA FOLLOW EUROPE?
20 OCTOBER 2014

2014 ICGL FORUM - MELBOURNE (AUSTRALIA)
BACKGROUND

In early 2013 Professor Jean du Plessis, School of Law, Deakin University (Australia), was awarded the Anneliese Maier Research Award by the German Alexander von Humboldt Foundation.

He was nominated for this award by Professor Ingo Saenger, University of Muenster (Germany). The award covers the period 1 March 2013 – 28 February 2018. The central theme of research for the five year duration of the award is the further internationalisation of the German corporate law and corporate governance systems. This is done under the general banner, International Corporate Governance and Law (ICGL). The first major initiative sponsored by this award was a Forum held in Muenster, Germany, from 4-5 November 2013 with the overall theme of ‘Key corporate governance themes and issues in a globalised and internationalised world’. The second major initiative, co-sponsored and supported by the Deakin University’s School of Law, a Forum held on the significant topic of board gender diversity, with a particular focus on gender quota legislation. Gender quota legislation originated in Norway, where since 2003 all listed companies are expected to have at least 40% males and 40% females appointed to their boards.

At the end of 2013 the European Parliament passed legislation which will eventually result in European Member States required to implement legislation to ensure, like in Norway, the appointment of at least 40% males and 40% females to board of listed companies. The question is whether these developments will have an impact on other parts of the world, including Australia.

At the Forum the key presenters and delegates will debate the pros and cons of mandatory gender quota legislation and the practical realities of achieving these quotas. The focus will also be on whether enough progress has been made in some countries to appoint more women to boards, which may indicate that legislation is not required – the ‘soft law’ approach versus the ‘hard law’ approach to reach gender quotas of between 30% and 40% will be a key theme of the Forums.
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PROGRAM

MELBOURNE 20 OCTOBER 2014

8.30-9 am
REGISTRATION

9-9.15 am
Official Opening by Professor Jane den Hollander, Vice-Chancellor and President, Deakin University, Australia

9.15-9.45 am
SESSION 1: Professor Mijntje Lückerath-Rover, TiasNimbas Business School, Tilburg University, The Netherlands  ‘The Dutch Approach: Explanations in Annual Reports of Large Dutch Companies Dictated if 30% Women or 30% Men Targets not Reached’
Chair: Professor Jean du Plessis, Deakin University

9.45-10.15 am
SESSION 2: Professor Michael A Adams, Dean of Law, School of Law, University of Western Sydney, Australia  ‘Board Diversity: More than a Gender Issue?’
Chair: Professor Samantha Hepburn, Deakin University

10.15-10.45 am
SESSION 3: Ms Janine Hills, Chief Executive Officer and Founder, Vuma Reputation Management, South Africa  ‘Board Diversity Developments in South Africa: Legislation to Push Boards to Appoint up to 50% Female Directors – Is It Achievable?’
Chair: Professor Mirko Bagaric, Head, Deakin School of Law

10.45-11.15 am
Morning Tea/Coffee

11.15-11.45 am
SESSION 4: Ms Judith Fox, National Director, Policy & Publishing, Governance Institute of Australia  ‘Key Themes and Issues Regarding Board Diversity and Mandatory Gender Quota Legislation’
Chair: Professor Danuta Mendelson, Deakin University

11.45-12.30 pm
Panel Discussion 1: Presenters, Sessions 1–4
Chair: Professor Jean du Plessis, Deakin University

12.30-1.15 pm
Lunch

1.15-1.45 pm
SESSION 5: Professor Peta Spender, ANU College of Law, Australian National University (ANU), Australia  ‘Gender Quotas on Boards – Is it Time for Australia to Act?’
Chair: Professor Louis de Koker, Deakin University
1.45-2.15 pm

SESSION 6: Mr John Stanhope, Chair, Australia Post ‘Mandatory Gender Quota Legislation is Not the Way to Go’

Chair: Professor Samantha Hepburn, Deakin University

2.15-2.45 pm

SESSION 7: Professor Raphael Koch, University of Augsburg, Germany

‘Board Gender Quotas in Germany and the EU: An Appropriate Way of Equalisation of Women and Men?’

Chair: Professor Louis de Koker, Deakin University

2.45-3.15 pm

Afternoon Coffee/Tea

3.15-3.45 pm

SESSION 8: Mr Peter Lamell, Experienced Non-Executive Director, drawing on a history of proven success as a CEO and having served on over 25 Boards in Energy, Power, Resources, Services and related sectors ‘A Balancing Act: Issues and Concerns Regarding Board Diversity and Mandatory Gender Quota Legislation’

Chair: Professor Danuta Mendelson, Deakin University

3.45-4.15 pm

SESSION 9: Professor Beate Sjåfjell, Department of Private Law, Faculty of Law, UiO, University of Oslo, Norway ‘Gender Diversity in the Board Room and Its Impacts: Is the Example of Norway a Way Forward?’

Chair: Professor Louis de Koker, Deakin University

4.15-5 pm

Panel Discussion 2: Presenters, Sessions 5–9

Chair: Professor Jean du Plessis, Deakin University

5-5.15 pm

Conclusion: Professor Jean du Plessis

5.15-7.00 pm

Canapés and Beverages
Professor Mijntje Lückerath-Rover

Professor Mijntje Lückerath-Rover is Professor of Corporate Governance at Tilburg University, TIAS School for Business and Society. Her research focuses on the relationship between executive boards and supervisory boards, including aspects such as transparency, diversity, independence and evaluations. She wrote several articles on these topics, for example in the Journal of Business Ethics (2012): Code of Conduct for Non-Executive Directors and in the Journal of Management and Governance (2013) Women on boards and firm performance. She is the co-author of the annual non-executive directors survey (since 2007) and of the Dutch Female Board Index (since 2007). She is the editor of the Yearbook Corporate Governance (Kluwer).

Professor Lückerath-Rover holds a Master (1994) and PhD (2007) in Financial Economics from Erasmus University. From 1994 till 2001, she worked at Rabobank International, firstly as management trainee and in her last assignment she was Vice President Project Finance. From 2001 till 2012 she worked at the Erasmus University at the Faculty of Law as an Associate Professor at the Master in Financial Law and she worked as a Professor of Corporate Governance at Nyenrode Business University from 2010-2013.

She is also a member of the Supervisory Boards of Achmea N.V., the investment funds and the Greenfund of ASN Bank, and the Dutch Guide Dog Foundation. She is a member of the Board of the Dutch Payment Association (‘Betaalvereniging Nederland’) and member of the Public Interest Committee of Ernst & Young Accountants LLP.
Overview

The Dutch Approach: Explanations in Annual Reports of Large Dutch Companies Dictated if 30% Women or 30% Men Targets not Reached

In the Netherlands a Bill including quota legislation for Dutch Boards was adopted unanimously by the Second Chamber on December 9th, 2009 and send to the Senate. The Bill became law, with effect from 1 January 2013 and introduced provisions to target a balanced distribution of seats between men and women on both the Executive as the Supervisory Boards of large Dutch corporations. In the specific statutory provision, a balanced distribution means that at least 30% of the seats in the Executive Board and Supervisory Board should be occupied by women and at least 30% of the seats by men. Companies subject to the proposed scheme, but that have not reached the desired targets should explain three different things in the annual report based on the ‘comply or explain’ principle:

1. Why the seats are not evenly distributed with at least 30% women or 30% men;
2. How the company has tried to balance the distribution of seats to reach the 30% targets; and
3. How the company seeks to achieve the 30% targets in the future.

No further sanctions are included. The scope of the statutory provision is limited in time and has a sunset-clause – the provisions will automatically be repealed by January 1, 2016. It is estimated that approximately 4,500 companies fall under this Legislation.

Professor Lückerath’s research focuses primarily on Dutch listed companies. In the Dutch Female Board Index she calculates (since 2007) the percentage women in both the Executive Board and Supervisory Board of these companies. The study gets enormous media attention in the Netherlands each year and is used by many organisations to monitor the progress. Professor Lückerath will show that the quota legislation (with no sanctions) had a positive effect on female Supervisory Board members but percentage of women serving on the Executive Boards are still very low.
Professor Michael A Adams

Professor Michael Adams is Dean of School of Law at the University of Western Sydney in Australia, an appointment he held since 2007.

His specialist areas are corporate law and governance. He is also an expert in financial services regulation (particularly securities markets, insider trading) and the broader legal education and technology.

He teaches, writes and presents regularly on these topics and is a major media commentator, through TV, radio, newspapers and online forums.

Professor Adams has degrees in accounting/economics and law, he is also a Fellow of the Australian College of Educators, the Governance Institute of Australia (formerly CSA/ICSA) and the Australian Academy of Law. Before 2007 he was Professor of Corporate Law, Perpetual Trustees Australia chair of Financial Services Law and the Assistant Director at the UTS Centre for Corporate Governance at the University of Technology Sydney. He is the author of ten books, 90 articles and 200+ conference presentations. He was the 2001 National President of Chartered Secretaries Australia (CSA) and served on the ICSA International Professional Standards Committee. He has been a consultant to the national law firm Ashurst (Blake Dawson) since 2003. In 2000 he was the recipient of the Australian University Teacher of the Year in “Law and Legal Studies” and in 2005 he was the recipient of the Institute’s President’s Award.
Overview

Board diversity: more than a gender issue?

There has been a lot of research conducted on the importance of corporate governance around the globe. A number of common factors, whether based on a common law or civil code systems, seem to demonstrate that longevity and sustainability does arise from quality corporate governance. However, the evidence is not as clear when a correlation is shown between a particular organisation’s governance structure and practices versus its share price. Around the world the question of board diversity is gaining a much more important and critical viewpoint. The beginning of the debate in the 1960s and onwards has been around gender. Although an essential debate to have, it is not the only part of diversity that should be considered. Also, race, culture and even age may have a direct impact on the structure of a board. Australia, particularly in ASX listed entities has a poor record of any type of diversity. The USA and Europe have a much wider range of policies to promote diversity across boards. Finally, the key question is how best to regulate to promote diversity across gender, race, culture and age? The historical approach of setting targets and disclosure do not seem to have made major inroads for change. Is it the right time to impose mandatory requirements or are there other alternative strategies? Without doubt change is required, but there will be opposition.
Ms Janine Hills

Janine Hills is the CEO and Founder of Vuma Reputation Management, a company that specialises in reputation management, which includes crisis communication, media liaison, government relations and risk management.

Janine’s extensive business knowledge, skill and intricate understanding of reputation management are the outcome of over 30 years of experience across various sectors of industry. She has been employed by Southern Sun, Sun International, Vodacom and Primovie (a division of Primedia) and has sat on the boards of Kaizer Chiefs, Ster-Kinekor Home Entertainment and Ster-Kinekor Licensing. Janine has also worked for First National Bank and was a founding member of ebucks.com, the First Rand e-Commerce initiative. Janine has been fortunate enough to travel to over 34 Countries and gained knowledge and wisdom from every sphere.

In 2003 Janine gave away all her belongings and took a year out from corporate life to further her journey of self-discovery and knowledge. She hiked to Mount Everest base camp, completed the 850km El Camino de Santiago in Spain, and trekked through Tibet and Nepal visiting monasteries and nunneries. She then returned and spent time at the feet of a Spiritual Master that brought her a deep insight into the understanding of true leadership and the importance of reputation management. This then led to her launching Vuma Reputation Management.

Vuma Reputation Management is based on the principles of sound reputation and good corporate governance, accentuating transparency, discipline, accountability and fairness at all times. Janine and her team view themselves as an extension of their clients’ business success and, over the past eight years, she has been privileged to work with at least 40 of the top Blue Chip companies in South Africa and also with several Multinational companies.

In addition to the fact that she handpicks her teams and grows them into their positions through personal encouragement, mentorship and transformation, Janine understands the key role in her business of building relationships with the media and global partnerships worldwide. Janine has been accorded exclusive membership of the International Womens Forum of South Africa (IWFSA). Janine has also been invited to speak internationally at the renowned Deakin University in Australia as well as locally at the University of the Free State. Janine also attended the INBREC (International Brand and Reputation Community) Summit and Gala Dinner as an invited guest, held at the Henley Business School in the UK.
Overview

Board Diversity Developments in South Africa: Legislation to push boards to appoint up to 50% female directors – Is it achievable?

This paper investigates South Africa’s National Policy Framework for Women’s Empowerment and Gender Equality, a Bill tabled in the South African Parliament at the end of 2013. The paper will focus on how fundamental values and principles need to be integrated into policies, practices and programs of government to ensure gender equality.

The first section of the paper will touch briefly on South Africa’s history during Nelson Mandela and Thabo Mbeki eras; two leaders who led the way in empowering women in a democratic economy. It elaborates on why women are integral entities in corporate and government leadership roles, not replacing men, but as essential partners in balancing different kinds of economic power.

The second part of the paper analyses the Bill on Gender Issues and Quota Systems, and equates these to the 2003 Norwegian Legislation, and several other 32 Nordic companies where women have advanced the farthest. It further deals with the Southern African Development Community (SADC) Protocol on Gender and Development, adopted in 2008. The paper will also focus on the important issue of Black Economic Empowerment (BEE) in South Africa – a core initiative since the demise of Apartheid. The focus will, in particular, be on South Africa’s BEE Scorecard Policies and Empowerment Strategies – how these affect quota decisions and behaviour.

The last part of the paper will deal with difficulties for women breaking glass ceilings in business and corporate environments. South Africa still carries elements of a patriarchal society and on average women still earn less than men. The paper will investigate:

- Why this is so?
- Why economic participation of women is moving sluggishly?
- Why socio-economic inequality persists?
- What measures to take to ensure equal participation of women; and
- How to work towards remuneration equality?

In the spirit of promoting a shared understanding of these challenges and commitment to finding new solutions, the paper will also review structures and drivers of growth of the South African economy and the role women play in it, supplemented by a brief social and demographic trend analysis. It concludes on findings of what actions and solutions to take and whether it is even possible to accomplish the expected 50% gender quota by the end of 2017.
Ms Judith Fox

National Director, Policy & Publishing, Governance Institute of Australia

Judith establishes effective advocacy for regulatory frameworks that foster sound practices in stewardship, accountability, transparency and ethical behaviour.

She generates new information and data on governance and risk management practice in Australia through the use of research and survey programs. She develops thought leadership papers and guidance on a range of governance and risk management issues. Judith also has responsibility for Governance Institute’s publishing arm, which produces Australia’s pre-eminent journal on governance, Governance Directions, as well as a series of publications in this area.

Since 2005, Judith has represented Governance Institute of Australia on the ASX Corporate Governance Council. She is also a member of Standards Australia’s Risk Management and Governance Committees, the Financial Reporting Council’s Taskforce on Integrated Reporting and the Australian Securities and Investments Commission’s Business Advisory Committee.
Overview

Key themes and issues regarding board diversity and mandatory gender quota legislation

The increased focus in Australia on improving the representation of women at senior executive and board levels has seen reporting obligations introduced both through the ASX Corporate Governance Council’s Corporate Governance Principles and Recommendations and legislation. The aim is to improve long-term performance and optimise the human capital available to an organisation. It is based on research supporting the economic and business case for increased participation by women in senior roles.

Without greater progress in organisations on adopting gender balance initiatives as measurable objectives, and being accountable to stakeholders on progress toward achieving those measurable objectives, the participation of women in senior roles is viewed as unlikely to increase. Disclosure obligations are intended to address this. Reporting is intended to assist entities to gather information so that they have a clearer understanding of gender balance within their organisations and what objectives they need to put in place to improve gender equality.

Yet concerns have been expressed that reporting to date is inconsistent and speaks to intention more than action. The lack of comparable data also makes it difficult, both internally and externally, to assess progress, including at a macro level. Entities seeking to improve participation and reporting can struggle to find guidance on strategies to increase gender balance at senior levels and enhanced transparency in their disclosures.

While Australia has not introduced quotas to facilitate gender balance, it is frequently noted that without measurable progress that can be reported year-on-year, quotas may be viewed as a necessary next step by the government and regulators. Yet there are strongly held views that the cultural shift that can take place within entities as they set their own targets and work toward achieving them can lead to more optimal outcomes than a compliance-based approach to meeting quotas.
Professor Peta Spender

Professor Peta Spender is a Professor of Law at the ANU College of Law, Australian National University and a Presidential Member of the ACT Civil and Administrative Tribunal (ACAT).

At ANU, she teaches and researches litigation, corporate law and financial market regulation. Her current research areas include gender and corporate law, class actions and access to justice.

At ACAT she manages the Administrative Review Division, as well as presiding over hearings and appeals in areas such as occupational regulation, administrative review and revenue.

Professor Spender has contributed to many Australian and international books and journals as well as co-authoring the leading Australian casebook on civil litigation, which is currently its fifth edition.

She is currently President of the Corporate Law Teachers Association (CLTA) and her other appointments include membership of the National Legal Profession Reform Consultative Group and the ACT Joint Rules Advisory Committee.
Overview

Gender Quotas on Boards: Is it Time for Australia to Act?

Corporations are critical actors in the public sphere and their directors influence public debate and access to resources. Therefore the representation of women on boards is a measure of women’s democratic leadership as well as their economic participation.

The percentage of women on ASX 200 boards is currently (end of May 2014) 18.2%, rising from 10.7% in December 2010. By comparison, 41% of Australian Government board positions were held by women as at 30 June 2013, exceeding the 40% target by 2015 set by the Federal government in 2010.

When considering the progress of women onto corporate boards in Australia, some commentators focus on what has been achieved by soft strategies involving the persuasion of market actors and note the collaborative effort of listed companies, markets, investors, business groups and NGOs. Others lament the ‘glacial’ progress and lobby for coercive measures such as legislation for quotas.

Although quotas were a radical change when first introduced by Norway in 2006, the legislation was preceded by nearly 8 years of consultation and dialogue with the private sector to encourage voluntary compliance. Now the appetite for gender diversity on boards is strong and global in its reach and quotas are commonplace across many economies and jurisdictions.

Has the time arrived for Australia to introduce gender quotas for boards? If so, how would such a change be implemented and what sanctions might be imposed for failure to achieve the targets?
Mr John Stanhope has extensive experience in governance, finance, accounting and business strategy. He was Chief Financial Officer and Group Managing Director, Finance and Administration with Telstra Corporation Limited from 2003 to 2011 and was an Executive Director of the corporation from 2009 to 2011. He has held numerous company directorships and has been a Director of AGL Energy Limited since 2009 and the Bionics Institute since May 2012. In November 2012 he was appointed Chairman of Australia Post.

From 2006 until 2012 John was a member of the Finance Reporting Council, the peak body responsible for overseeing the effectiveness of the financial reporting framework in Australia.

John has undertaken studies at Deakin University and Stanford University. He is a Fellow of the Institute of Company Directors, CPA Australia, the Institute of Chartered Accountants, the Australian Institute of Management and the Human Resources Management Institute. He is currently the Chair of the Melbourne International Jazz Festival (MIJF) and has been a Director of the MIJF since 2010.

John is a Government appointed Member of the Deakin University Council and Deputy Chair of the Investment Committee and member of the Finance and Business Affairs Committee.
Overview

Mandatory Gender Quota Legislation is not the Way to Go

Diversity on Boards start with the need for diversity of views. It will be argued that avoiding group think is best dealt with by such diversity. Getting the diversity on Boards must be driven from the top, in particular by the Chair of the Board.

It will be contended that mandating gender quotas by way of legislation is not the way to go. In fact, such legislation may be considered to be offensive by those who currently are not well represented on company boards.
Professor Raphael Koch

Professor Raphael Koch studied law at the University of Muenster and completed his legal studies in 2003 with the First Legal State Examination. In 2005 he obtained a Doctorate at the University of Muenster. His doctoral thesis covers a topic of Takeover Law (“The Impact of the Securities Acquisition and Takeover Act on the Purchase of own Shares”). From 2005 to 2007, he worked as a legal clerk in Duesseldorf, Cologne and New York and passed the Second Legal State Examination (Bar Exam equivalent) in 2007.

Professor Koch holds a LLM Degree of the University of Cambridge (2005) and obtained an EMBA (Executive Master of Business Administration) at the University of Muenster in 2009. From 2007 to 2012, he was Senior Research Fellow (Habilitand) at the Institute of International Business Law (Chair of Civil Law, Law of Civil Procedure and Corporate Law) at the University of Muenster. During this time, he wrote his thesis in the field of German Civil Procedural Law (“Responsibility for Participation in Civil Proceedings”) leading him to acquire his post-doctorate degree (Habilitation) in 2012.

Since 2012, Raphael Koch is Professor of Law at the University of Augsburg and holds the Chair of Civil Law, Law of Civil Procedure, Corporate Law, European Private and International Procedural Law. His main areas of research are Civil Law, Law of Civil Procedure, German and European Corporate and Company Law, Takeover Law and International Sales Law (CISG).

Professor Koch was guest lecturer at Oxford University (2008) and at the German Law School in Lodz/Poland (2011). Since 2009 he regularly lectured in several EMBA and LLM programs at the School of Tax and Business Law in Muenster.
Overview

Board Gender Quotas in Germany and the EU: An Appropriate Way of Equalisation of Women and Men?

The equalisation of men and women is currently one of the most discussed topics in corporate law. In addition to the social debate, legislative intentions in Germany and the European Union are becoming more and more concrete. In November 2013 the European Parliament voted in favor of a directive drafted by the European Commission providing for reserving at least 40% of the seats in boards of listed companies for women by 2020. Also, in Germany the new coalition government of the CDU, CSU and SPD agreed upon the implementation of legal rules concerning female quotas in supervisory boards. By the beginning 2016 this quota will obligate listed companies to appoint at least 30% women to their boards. The first guidelines for the legislative procedure have been worked out and published in April 2014.

The general problem concerning gender quotas is equalisation of men and women being primarily a sociopolitical objective. The implementation of female quotas therefore raises the question if interference with private business management can be justified by such sociopolitical reasons, especially as gender quotas can be legitimated in different ways: On the one hand, they can be regarded as an act of Corporate Governance, on the other hand it is possible to categorise the topic as a matter of Corporate Social Responsibility.

The recent development in Germany and in the EU is also an example for the conflicting national and international law: Should national states be able to implement their own rules to reduce gender discrimination? Or is there – due to globalisation and the internationalisation of the law a need for international and transnational regulation?

This paper will discuss the benefits and disadvantages of gender quotas in corporate boards and discuss recent legislation in Germany and in the EU. It will analyse different ways of incorporating the equalisation of men and women into corporate and company law. Furthermore, predictions will be made where current developments are leading to.
Mr Peter Lamell

Peter Lamell was until recently, CEO of Silcar (a Siemens/Thiess Joint Venture). He has worked in senior executive roles in the U.K., U.S., Canada, Asia and Australia. He worked for Shell for over 25 years and was a Board member of Shell Australia. His work experience has primarily been in sales, marketing, strategy plus mergers and acquisitions.

In the last few years, he has specialised in being CEO for a number of business turnarounds and has been an executive and Board member of a range of companies in the Energy, Power, Services, Telecommunications and Technology sectors. He is a Director of the Melbourne Forum, Director of Renew Australia, President of Lorne Sculpture Biennale, President of Les Amities Gastronomiques Internationales and on the Fundraising Committee of SecondBite.

He has a Senior Executive MBA from Melbourne Business School and was awarded the Corrs Prize for top student.
Overview

A Balancing Act: Issues and Concerns Regarding Board Diversity and Mandatory Gender Quota Legislation

In his presentation Peter Lamell will focus be on the following issues and concerns:

- Should diversity be considered in its widest terms and not just from the viewpoint of gender diversity? Would and/or should this impact on recognition that gender diversity is a major issue?

- Should Boards be disciplined in ensuring that they select board members against a set of criteria which cover not only the desired range of skills and competencies but also other issues such as diversity?

- Should the focus for action on Board diversity need to be far wider than just the larger ASX listed organisations? Should it include some or all of smaller listed, private unlisted, Not for Profits, Advisory Boards and family companies?

- Should we also be working to assure that concerns regarding diversity goes much deeper than just boards? What can we do to ensure that we are creating the diversity pools of the future? Also, what can we do to ensure that in pursuing diversity programs we do not generate outcomes in which groups within our population are polarised into specific skill sets?

- What are the issues and concerns regarding mandatory gender quota legislation for boards of directors? If such legislation was to be implemented how could some of the downsides that have occurred elsewhere be avoided and should it be done progressively, ie start with one area of diversity first or cover a number of areas of diversity right from the start?
Professor Beate Sjåfjell is a Professor at the Department of Private Law, Faculty of Law, University of Oslo in Norway. She is the author of ‘Towards a Sustainable European Company Law. A Normative Analysis of the Objectives of EU Law, with the Takeover Directive as a Test Case’, Kluwer Law International, 2009.

Professor Sjåfjell’s fields of interest include European company and securities law, law and economics, general EU law, environmental law and labour law. She is the project leader for the research project ‘Sustainable Companies’, the general objective of which is to examine how to integrate the goal of sustainable development and especially its environmental dimension as a decisive factor in the minds of decision-makers in companies.

She has previously written a (Norwegian) monograph on the civil procedural rules concerning cases with foreign law in Norwegian courts. She has also written a number of papers on the Takeover Directive, European company law and the integration of sustainable development, including ‘Political Path Dependency in Practice: The Takeover Directive’, Yearbook of European Law (2008), and ‘Internalizing Externalities in EU Law: Why Neither Corporate Governance nor Corporate Social Responsibility Provides the Answers’, The George Washington International Law Review (Vol 40, No 4).

Professor Sjåfjell is also head of her Faculty’s Research Group Companies, Markets, Society and the Environment and its largest externally financed project, the international Sustainable Companies project (2010-2014), as well as of the Faculty’s European Law Network. She is involved in several other research projects and is currently planning a new large project: Sustainable Market Actors – Research-based Transition (SMART).
Overview

Gender Diversity in the Board Room and Its Impacts:
Is the Example of Norway a Way Forward?

The proposal to make mandatory that public companies in Norway have at least 40 per cent of each gender on their boards has an interesting legislative history. The minister in charge voiced the proposal in a tabloid, apparently without consulting anybody else in the government. This was a carefully planned strategy as the minister feared that putting the proposal through the normal channels first would be equal to its quiet death, smothered by corporate lobby forces and bureaucracy sceptical to such drastic measures.

The strategy worked, and the new rule entered into force in January 2006. Although a gender-neutral rule, male dominance on boards of public companies meant that a large number of women directors had to be recruited within a two year period. In spite of strong protests, at the end all Norwegian public companies complied. This was the second two year period that the companies had to respond: Had Norwegian companies on average achieved 40 per cent of each gender by 2005, the rule would not have come into force.

This paper starts by presenting the Norwegian rule, its background as a corporate governance initiative rather than a gender equality one, its innovative legislative approach and the compliance by Norwegian companies. In part 2, the paper discusses the corporate governance significance of gender diversity, drawing on empirical studies of the effect on the performance of the companies. This may be especially relevant for the discussion that the Norwegian rule has inspired in many jurisdictions around the world. Third and equally relevant, the paper discusses the potentially broader impact of gender diversity in the boardroom. Can gender diversity in the boardroom help companies create sustainable value within the planetary boundaries and while respecting the interests of all parties involved?