

# Gender Perspectives in European Economic Law



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**Abstracts** The chapter will give an overview of the different levels how the EU can execute its influence on promoting gender equality in European economic law. First, it analyses the new directive of the EU for the composition of corporate boards as well the different initiatives for the support of female entrepreneurship. In addition, the opportunities in the regulatory fields of competition, public procurement and state aid regarding gender empowerment are also examined. Finally, the chapter focusses on the initiatives of the EU for a directive which addresses the responsibilities of companies along the global supply chain which would also include gender discrimination. Furthermore, the potential of trade agreements and the inclusion of gender related chapters is analysed.

**Keywords** Gender · Equality · Gender quota · Corporate boards · Competition law · General economic interest · Public procurement · State aid

## 1 Introduction: Different Levels of Influence

Gender equality is a fundamental principle of human rights and has been widely recognized as a key driver of economic growth and social development. In recent decades, significant progress has been made in addressing gender inequality in various areas of economic law, including employment, education, and entrepreneurship. In the context of the European Union (EU), gender equality is enshrined in the EU Treaties and has been a major priority of EU policies and initiatives. The EU has implemented a number of measures aimed at promoting gender equality in the economic sphere, including legislation and policies increasing the participation of women in the labour market and addressing the gender pay gap. Additionally, the EU has played a key role in promoting gender equality at the international level by supporting the United Nations' Sustainable Development Goals. By working to

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eliminate gender-based discrimination and promote gender equality in the economic sphere, the EU aims to create a more inclusive and equitable society for all.

European economic law does not typically have a gender perspective built into its framework. However, there have been efforts to introduce gender considerations into the interpretation and application of EU economic legislation and policies. These efforts aim to address gender-based inequalities and discrimination in the economic sphere, such as the underrepresentation of women in leadership positions. In conclusion, while gender perspectives are not built into European economic law, intrinsically efforts are underway to incorporate gender considerations into the interpretation and application of EU economic laws and policies, with the goal of promoting gender equality in the economic sphere.

The European treaties themselves provide for equality between women and men in Articles 20, 21 and 23 of the Charter of Fundamental Rights, either when the EU institutions act or when the Member States implement European law. However, no such legal obligations can be derived from the market freedoms in the TFEU, which ensure a common internal market. Rather, the fundamental freedoms are aimed at the Member States as addressees and are intended to prevent discrimination or restrictions based on nationality or comparable characteristics.

Although governments worldwide, including the EU, set different incentives to gender mainstream the business world, including company organisations, business behaviour and trade flows, there has not been enough change so that the legislators had to take action. Despite women representing more than half of the global workforce, they generate only 37% of the GDP. Closing this gender gap could lead to significant financial benefits, ranging from \$12 to \$26 trillion, depending on the extent to which the potential is realized.<sup>1</sup> Therefore, there are different regulations and initiatives to support a change in this field.

For a better understanding, the following contribution will examine the European legal framework and other initiatives at European level for the promotion of gender equality. Here, different levels can be identified which enables the European legislator to influence the progress: (1) In the business/company organisation, (2) in the regulatory field and (3) in the economic policy-making process on international level.

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<sup>1</sup> *McKinsey Global Institute*, The Power of Parity: How Advancing Women's Equality can add \$12 Trillion to Global Growth, [https://www.mckinsey.com/~media/mckinsey/industries/public%20and%20social%20sector/our%20insights/how%20advancing%20womens%20equality%20can%20add%2012%20trillion%20to%20global%20growth/mgi%20power%20of%20parity\\_full%20report\\_september%202015.pdf](https://www.mckinsey.com/~media/mckinsey/industries/public%20and%20social%20sector/our%20insights/how%20advancing%20womens%20equality%20can%20add%2012%20trillion%20to%20global%20growth/mgi%20power%20of%20parity_full%20report_september%202015.pdf), p. 8 et seq.

## 2 Gender Perspectives in the Business/Company Context

There are two major fields of action in the area of gender equality in the context of enterprises in which the EU is active this concerns. On the one hand, the organisational structure of already existing companies and, on the other hand, the start-up culture in companies run by women. In both areas, the EU has been trying for years and has at least been able to make progress in terms of the composition of decision-making bodies in companies.

### 2.1 *Quota in Company Boards*

There is still no gender parity achieved when it comes to company boards, where only 35% of women are represented as the underrepresented sex in the European Union.<sup>2</sup> There have been various initiatives to raise the number of women in decision-making positions but these voluntary actions have not made a significant change, although studies have shown that women in management positions have led to an improvement in the area of gender equality. Therefore, imposing gender quotas could help to raise the number of women on corporate boards. Overall, gender quotas can help create a more inclusive and equitable workplace, which can benefit both individual employees and the company as a whole. By implementing a gender quota, more women will be represented on corporate boards, thereby increasing gender diversity. This can bring in new perspectives and ideas, leading to better decision-making and potentially better financial performance. A gender quota can help address gender bias in the selection process for corporate board positions so that the underrepresented sex receives equal consideration for open positions. Women in leadership positions can serve as role models for younger women and girls, encouraging them to pursue careers in fields where they may have previously been underrepresented. Companies that prioritize gender diversity and equality are often viewed more favourably by customers, investors and other stakeholders. A gender quota can demonstrate a company's commitment to corporate social responsibility, which in turn can improve its reputation and bottom line. Moreover, diverse groups are often more innovative and creative than homogeneous groups. By increasing gender diversity on corporate boards, companies may be able to tap into the creativity and innovation that comes with a range of perspectives and experiences.<sup>3</sup>

Therefore, some member states have already felt compelled to legislate for a minimum number of women on boards of directors and/or supervisory boards. The regulations either stipulate that from a minimum number of members of the board, more than 0 must be women or men (at least 1 woman and 1 man as a member in

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<sup>2</sup> Cf. EWOB (2021).

<sup>3</sup> Fröhlich et al. (2023), p. 675 et seq.

each case), or a certain percentage is specified.<sup>4</sup> Here, a distinction is made between regulations for executive and supervisory boards as well as for private or public companies. By 2022, only 8 EU member states had enacted national gender quotas for board composition in listed companies.<sup>5</sup> In addition, although various soft quotas are in force, they are not equally effective,<sup>6</sup> and the different regulations lead to major regulatory discrepancies and requirements for companies, which can also constitute obstacles to the common market.<sup>7</sup>

Accordingly, the EU has been trying since 2012 to adopt a directive on gender balance in among directors in listed companies and was able to achieve success here at the end of 2022. The new directive demands in Art. 5 that at least 40% of the underrepresented gender be represented on non-executive boards of listed companies or 33% among all directors. To ensure this, Art. 6 the companies have to set up transparent appointment procedures with objective assessment based on gender neutral criteria. In case of equally qualified candidates the preference should be given to the one of the underrepresented sex. Art. 7 obliges companies to report on a yearly basis if they achieved the objectives, if not they have to explain reasons and measures to fulfil the commitments. If they do not comply with the rules in the regulation, penalties and other measures mentioned in Art. 8, which need to be “effective, proportionate and dissuasive.” They can either include fines or consequences for the decision concerning the selection of directors. Finally, the directive still needs to be implemented to national law until the end of 2024, especially by those member states who have no national quota.<sup>8</sup>

The future will show if EU wide national quota will have a sustainable effect to ensure gender equality and support the above mentioned objectives. It can be assumed that in member states which already have a gender-friendly and sensitive general law regime in place the effect will be rather limited but in those member states with limited gender equality the directive will make a difference.

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<sup>4</sup> In Germany, the law stipulates that at least 30% of the positions on the supervisory board of listed companies and companies with equal co-determination are to be filled by the other gender. In addition, these companies must have at least 1 man and 1 woman on the board of directors of 3 or more persons. This also applies to public companies and public corporations.

<sup>5</sup> EIGE (2022a), p. 43, fn. 28. Accordingly, these include France and Italy (40%), Belgium, the Netherlands and Portugal (33%), Germany and Austria (30%) and Greece (25%).

<sup>6</sup> Although 37% of posts in countries with quotas were filled by women and even with soft quotas the figure was still 31%, the number of women in countries without regulations fell to 18% (EIGE 2022a, p. 43).

<sup>7</sup> EWOB (2022).

<sup>8</sup> Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures, OJL of 7.12.2022, L 315/44, recital 20.

## 2.2 Promoting Female Entrepreneurship

In this context it also has to be mentioned that only 7% of 668 listed companies located in the EU have a female CEO.<sup>9</sup> And only around 30% of business founders are women.<sup>10</sup> Keeping in mind that female leader could be more likely to create more female and family friendly structures and opportunities, the EU finds it necessary to support the entrepreneurial initiatives of women to address the main difficulties like insufficient funding, meaning access to financial loans of banking institutions or state entities, lack of knowledge regarding the legal background and how to start a business as well as insufficient support by state enterprise agencies who support entrepreneurs or the state services like childcare.

Besides the Small Business Act of 2008<sup>11</sup> and the Entrepreneurship 2020 Action Plan<sup>12</sup> which explicitly state to support female entrepreneurs, the EU has implemented several initiatives to promote female entrepreneurship. WEGate is a European platform that offers a range of services and resources for women entrepreneurs, including access to funding, training and mentoring opportunities, and networking events.<sup>13</sup> The European Investment Fund provides financing and guarantees to support SMEs, including those led by women entrepreneurs. It also provides support for venture capital funds that invest in innovative and high-growth SMEs. The European Network of Female Entrepreneurship Ambassadors aim to promote female entrepreneurship by appointing successful women entrepreneurs as ambassadors who will encourage and support other women in starting and growing their businesses.<sup>14</sup> The European Union Programme for Employment and Social Innovation (EaSI) provides funding and technical assistance to support social innovation and promote employment, including support for female entrepreneurs. COSME is the EU programme for the Competitiveness of Small and Medium-sized Enterprises (SMEs). It offers financial support to SMEs and aims to improve their access to markets, finance, and business support services. It includes support for women entrepreneurs through the “Women Entrepreneurship” action.<sup>15</sup> These initiatives are just a few

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<sup>9</sup> Cf. EWOB (2022).

<sup>10</sup> WEGate, <https://www.wegate.eu/women-entrepreneurship/>.

<sup>11</sup> Commission of the European Communities, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, “Think Small First” – A “Small Business Act” for Europe, COM(2008) 394 final.

<sup>12</sup> Entrepreneurship 2020 Action Plan, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2012) 795 final.

<sup>13</sup> See <https://www.wegate.eu/>.

<sup>14</sup> See [https://single-market-economy.ec.europa.eu/smes/supporting-entrepreneurship/women-entrepreneurs/support-tools-and-networks-women\\_en](https://single-market-economy.ec.europa.eu/smes/supporting-entrepreneurship/women-entrepreneurs/support-tools-and-networks-women_en).

<sup>15</sup> European Parliament and Council, Regulation (EU) No 1287/2013 Regulation (EU) establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014–2020) and repealing Decision No 1639/2006/EC, OJL of 20.12.2013, L 347/33.

examples of the many programmes and resources the EU has implemented to support and promote female entrepreneurship.

### **3 Gender Perspectives in the Regulatory Field**

Besides the structure of companies also the business behaviour can be a starting point for promoting gender equality. The EU in cooperation with the member states are regulating business behaviour in the field of antitrust and merger, public procurement, as well as state aid. Until now the gender perspective is rather under evaluated but a link can be discussed. Regulatory policies can have a significant impact on gender equality by promoting a level playing field for businesses and preventing anti-competitive practices that can disadvantage women-owned businesses or limit women's opportunities in the workforce. There are different ways how competition policy can influence gender equality. Competition policy can help to promote access to markets for all businesses and prevent discrimination against businesses, including those owned by women. Encouraging innovation can provide new and better opportunities for growth and success. It can also promote diversity in the workforce by preventing anti-competitive practices that limit opportunities for women.

Beyond the economic effects, however, it must also be taken into consideration that competition regulation also serves the public interest in particular and that this must be taken into account in the different areas of law. In exercising EU law, the EU and its member states are bound by the EU Charter of Fundamental Rights and thus also by Art. 23 and 21. This can and must be understood to mean that the regulation of competition also contributes to the comprehensive promotion of this objective.

#### ***3.1 Competition Law***

Regarding competition law, respective antitrust and merger regulations, there is no explicit rule on gender issues in EU competition law, respectively Art. 101 et seq. TFEU or in the merger regulation. Nevertheless, competition law could address certain issues to fight inequalities and to promote access to markets for all businesses, including those owned by women. Such issues need to be qualified as public interest issues, so that restrictions of competition or any other issues which promote competition relating to gender could be considered in the analysis. Since the articles 101 et seq. TFEU and the CJEU are rather silent and protecting competition as such, different linkage points are discussed in literature: (1) exceptions for undertakings which execute quasi public service obligations; (2) inclusion of public interest in the substantive antitrust analysis; (3) justification of anticompetitive practices with

public interest considerations and (4) state action defense as well as general economic interest according to Art. 106(2) TFEU.<sup>16</sup>

By preventing anti-competitive practices that limit market entry, such as exclusive dealing agreements or abuse of dominant market positions, competition policy can create more opportunities for women entrepreneurs to compete and succeed in the marketplace. Competition policy can encourage innovation, which can benefit women-owned businesses by providing new and better opportunities for growth and success. By preventing anti-competitive practices that limit innovation, such as anti-competitive mergers or abuse of intellectual property rights, competition policy can create an environment that encourages innovation and supports women entrepreneurs. In particular, market participation can be restricted by legal barriers or other behavioural factors.<sup>17</sup> These include laws that either exclude women from some business sectors, deny them ownership of property, prohibit them from running a business, or even allow the husband to prohibit his wife from working.<sup>18</sup>

In addition, women are more often exposed to anti-competitive behaviour that discriminates against them both as competitors and as consumers, which in turn can have an impact on their ability to start their own businesses. For many women, access to financial services is not available on the same advantageous terms as men.<sup>19</sup> Restrictive behaviour in substitute services, such as household support services or childcare, hits women harder and restricts their economic participation. This also applies to the fact that women pay higher prices for certain products that have the same functionality but either labelled as female or designed to be attractive for women (so-called pink tax<sup>20</sup>). The question of gender-sensitive market definition, which includes gender-specific characteristics and substitutability in the market analysis, also aims in the same direction.<sup>21</sup>

Finally, besides these technical considerations, competition authorities also need to work and be staffed in a gender-sensitive manner. Moreover, they should take an active role in gender mainstreaming in their field by advocating gender equality in competition.<sup>22</sup> This would also mean to take action in product markets where mainly women be consumers and are more affected than men.

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<sup>16</sup> Dunne (2020), p. 261 et seq. Bundeskartellamt (2020), p. 15 et seq.

<sup>17</sup> Santacreu-Vasut and Pike (2018), p. 15 et seq.

<sup>18</sup> World Bank Group/World Trade Organization (2020), p. 100 et seq.

<sup>19</sup> Cf. Moro et al. (2017), World Bank Group/ World Trade Organization (2020), p. 95 et seq. and Muravyev et al. (2007).

<sup>20</sup> De Blasio (2015).

<sup>21</sup> Cf. Santacreu-Vasut and Pike (2018), p. 18, 21 et seq.

<sup>22</sup> Cf. Santacreu-Vasut and Pike (2018), p. 28 et seq.

### 3.2 *Public Procurement Law*

It is worth noting that public institutions in the EU spend around 2 trillion Euro on the goods, services and other works they purchase.<sup>23</sup> This significant scope opens up a large area in which the public sector itself can consider gender equality. Interestingly, 57% of all OECD countries established a framework on strategic objectives regarding gender-related issues.<sup>24</sup> Also, a few member states already recognized this and started to include gender aspects into the procurement process, as Estonia, Greece, Spain, France, Austria and Portugal as well as a few regions in Germany.<sup>25</sup> One main obstacle to the implementation of such objectives is a lack of understanding how to implement them. And even if they are implemented, this does not mean that they apply to the whole supply chain or all sub-contractors.<sup>26</sup>

In principle, European primary law says nothing about the consideration of gender issues in the procurement process. Only Art. 18 of the Public Procurement Directive refers to social and labour law provisions which also include gender issues<sup>27</sup>:

1. Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner. [...]
2. Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

As the procurement process is divided into three different stages—pre-procurement, procurement and post-procurement—there are several linkage points which could advance gender equality. Before the procurement, public institutions should carry out a needs assessment and market consultation for the impact of the contracts to gender, equality issues should be included in the contract, the procedure for gender-responsive public procurement needs to be adjusted, light regimes/reservations/lots which benefit the participation of women-owned businesses should be discussed and gender-sensitive language will be used. In the procurement phase criteria need to be introduced to exclude bidders for poor records on gender issues or to select bidders who have a GRPP friendly bid, technical specification need to be designed which reflect gender aspects of the contract, in the delivery of the contract award criteria should secure that specific equality issues are targeted and labels and certifications should be introduced to which certify gender compliance. Finally, after the procurement the contract performance conditions requesting actions for gender equality need to be implemented, gender monitoring and reporting need

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<sup>23</sup> See [https://single-market-economy.ec.europa.eu/single-market/public-procurement\\_en](https://single-market-economy.ec.europa.eu/single-market/public-procurement_en).

<sup>24</sup> OECD (2020), p. 7.

<sup>25</sup> EIGE (2022b), p. 22 et seq.

<sup>26</sup> OECD (2020), p. 9.

<sup>27</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. OJ L 94 of 28 March 2014, p. 65.



to be included, subcontractors should be obligated, contractual remedies need to be used to ensure compliance as well as statistics need to be implemented.<sup>28</sup>

### 3.3 *State Aid Law*

To round it up, state aid law can potentially influence gender equality by promoting fair competition and preventing anti-competitive practices that can disadvantage women-owned businesses or limit women's opportunities in the workforce. It is important to ensure that state aid is used in a way that does not perpetuate or ignore discriminatory practices, and that policies and laws are in place to promote equality and prevent discrimination.

In principle, the EU prohibits in Art. 107 TFEU state intervention but allows certain exemptions under specific criteria. Especially, in the field of labour market policies an effective incentive state aid regime could support efforts. Such subsidies could either fall under different exemptions or be legal if they fall under the *de minimis* regulation for SME which could enable female start-ups market access. Support could also be justified according to Art. 107 (2) TFEU although this rule is interpreted narrowly so that a justification is rather possible under Art. 107 (3) TFEU, in particular with the general block exemption regulation.<sup>29</sup> In this regard, state aid law can promote access to finance for women-owned businesses by allowing governments to provide financial support to small and medium-sized enterprises (SMEs), including those owned by women. This can help to level the playing field for women-owned businesses that may face barriers to accessing finance in the private sector. The same applies to support for innovation, which can benefit women-owned businesses by creating an environment that encourages innovation and supports women entrepreneurs. They could also be supported by funding and other support, particular for start-ups, which are owned by women. In particular, state aid law can play a role in promoting diversity in the workforce by only granting subsidies to such companies which guarantee an environment that encourages diversity and supports women's advancement in the workforce.

Another possible solution for gender-sensitive state support would be the provision of essential public services, like childcare, which allow women to take part in the labour market. Usually public services or services provided by public undertakings or undertakings to which Member States grant special or exclusive rights fall into the scope of Art. 106 TFEU. Nevertheless, this is not the case if the essential economic services are not anymore able to achieve their objectives or perform their tasks.<sup>30</sup>

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<sup>28</sup> For details EIGE (2022b), p. 10 et seq. and OECD (2020), p. 10 et seq.

<sup>29</sup> Finckenberg-Broman (2019), p. 163 et seq.

<sup>30</sup> Finckenberg-Broman (2019), p. 167 et seq.

## 4 Gender Perspectives in the Economic Policy-Making

Also in the field of economic policy, gender awareness should be included in policy-making. The EU started to include social responsibility, including gender issues, into its international engagement.

### 4.1 *Global Value Chain Responsibility*

Global supply chains have played a crucial role in promoting international trade and providing opportunities for companies, including those from low-income countries. This has led to job creation worldwide, with approximately 190 million women working in global supply chains, particularly in sectors like garment and textile industry.<sup>31</sup> However, many female workers find themselves in low-wage and precarious employment due to factors such as price-dumping and the demand for cheaper products. On the other hand, consumer demand for socially responsible and sustainable products, has increased, requiring changes in corporate social responsibility. The elimination of gender inequalities in the global supply chain is important not only for the well-being of individual female workers but also for the governments and companies involved.

To strengthen the women's economic empowerment, actions should be taken to reduce the gender pay gap, workplace discrimination, and promote equal opportunities. This includes addressing gender-based violence and harassment, promoting work-life balance, ensuring equal distribution of care work, increasing women's participation in business and management decision-making, and supporting their involvement in trade unions and associations. While gender equality is relatively better in high-income countries, efforts are needed at both national and international levels.<sup>32</sup>

Global value chains involve crossing borders, making international solutions preferable. However, due to a lack of binding international rules, currently only national laws exist to regulate extraterritorial situations, such as the German "Lieferkettengesetz" (Supply Chain Act).<sup>33</sup> Interestingly, the EU took also action to hold companies responsible for human rights violations along the supply chain.<sup>34</sup> The proposed directive will make those companies liable which do not set up procedures to avoid human rights violations, including discrimination of women. In contrast to other national obligations the directives provide the possibility for sanctions and liability claims.

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<sup>31</sup> ILO (2015), p. 135.

<sup>32</sup> Fröhlich (2023), p. 336 et seq.

<sup>33</sup> Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten, BGBl. I 46 v. 22.07.2021.

<sup>34</sup> European Commission, Proposal for a Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM(2022) 71 final.

## 4.2 Gender Issues in Free Trade Agreements

The connection between trade liberalization and its impact on gender inequalities cannot be overlooked. Countries that embrace trade liberalization tend to exhibit higher levels of gender equality. Recent advancements, such as the growth of the service sector, diversification of global value chains and the emergence of new digital technologies, have expanded trading and employment opportunities for women worldwide. However, the impact of trade on women's empowerment varies depending on whether the industry is predominantly male or female. Women employed in export-oriented companies often face lower representation compared to men, and those in sectors like education, healthcare, and administration may experience limited benefits from trade liberalization. Women still encounter various challenges and disadvantages arising from trade policies. They tend to be employed in low-to-medium skilled jobs or the informal sector. Women also face higher trade costs at borders, encounter discriminatory working conditions, and are impacted by import tariffs on products specific to women. These barriers to trade for women prevent countries from fully utilizing their economic potential.<sup>35</sup>

Recognizing the increasing focus on gender equality over the past decade, the World Trade Organization (WTO) has taken steps to address this issue. It has adopted the Declaration on Trade and Women's Economic Empowerment and established the Informal Working Group on Trade and Gender.<sup>36</sup> However, due to the limitations of the consensus-based system within the WTO, many countries have turned to free trade agreements (FTAs) to promote gender empowerment. Over the years, there has been an upward trend the inclusion of gender-related provisions in FTAs, with Canada and Chile leading the way in including explicit standalone gender chapters in their agreements. High- and middle-income countries, particularly in North-South agreements, have greater commitment to integrating gender shown provisions.<sup>37</sup>

In contrast, the European Union (EU) has been hesitant to include standalone gender chapters in its recent FTAs. Agreements with countries such as Singapore, Korea, Australia, Mexico, Mercosur, Vietnam, and the UK only include gender provisions within sections related to trade and sustainable development or labour standards. Notably, the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU does not have a dedicated chapter on gender issues, despite Canada prioritizing gender mainstreaming.

Although the EU's current efforts in this area are not particularly convincing, it began renegotiating its existing FTA with Chile in 2017. Chile appears to have succeeded in including a gender chapter in this agreement, as the proposed text

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<sup>35</sup> For more details and references, cf. Fröhlich (2022).

<sup>36</sup> WTO (2021), Joint Ministerial Declaration on the Advancement of Gender Equality and Women's Empowerment within Trade. WT/MIN(21)/4/Rev. 1.

<sup>37</sup> Monteiro (2021), p. 2, 4 et. seq.

already contains a draft of such a chapter.<sup>38</sup> This chapter goes beyond previous regulations in terms of structure and wording and includes notable provisions. Article 3 outlines non-discrimination obligations and incorporates an explicit derogation clause. The chapter also introduces provisions for government consultations and the option to seek expert panels for dispute resolution in cases where consultations fail. As negotiations are still ongoing, substantial changes may occur. If the parties can reach a successful resolution without significant alterations, this chapter could serve as a modern and detailed model for future EU free trade negotiations, as suggested by the European Parliament in 2016.

## 5 Conclusion

In summary, the European Union has various possibilities to promote gender equality in European economic law and is also obliged to do so by the treaties. The new regulations on gender-equitable staffing of company boards will show whether the introduction of a quota can promote gender-sensitive company policy. There may be considerable scope in the area of regulatory law, which is not yet being used in this way but which has the potential to promote gender equality by creating a more level playing field for businesses and preventing anti-competitive practices that may limit opportunities for women-owned businesses or limit opportunities for women in the workforce. However, more needs to be done and, in addition to further research on the possibility of gender mainstreaming or the effectiveness of such gender-sensitive regulation, also create awareness in the EU and the member states that gender justice can be pursued by means of regulatory law. Furthermore, the EU as well as the Member States have taken the first steps towards fulfilling their global responsibility to promote gender equality outside the EU. The future will show whether supply chain legislation is effectively implemented and has a positive impact but it emphasizes the need for comprehensive governance to address gender empowerment, which should involve public, private, and social sectors. Private governance and voluntary commitments by companies have shown limited success, leading to calls for public governance and legislative activities. However, challenges exist in implementing enforceable commitments, particularly for globally operating companies that do not directly own their production suppliers along the value chain. Finally, gender mainstreaming, not only in trade issues, should become a maxim EU external action, alongside other standards such as environmental protection.

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<sup>38</sup> Draft provisions on Trade and Gender Equality in the context of the Modernisation of the EU-Chile Association Agreement. Chapter 27. [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/chile/eu-chile-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/chile/eu-chile-agreement/text-agreement_en).

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