

FACT SHEET ON PORTUGAL

Information supplied by Ana Espírito-Santo, based on her paper for the Workshop on Legal Struggles and Political Mobilization around Gender Quotas in Europe, September 2014, Florence.

CONSTITUTION
Constitutional gender equality clause, including constitutional parity provisions.
<p>Fundamental principles Article 9 (Fundamental tasks of the state) The fundamental tasks of the state are: (...) h) To promote equality between men and women.</p> <p>PART I - Fundamental rights and duties TITLE III - Economic, social and cultural rights and duties CHAPTER I - Economic rights and duties Article 58 (Right to work) (...) b) Equal opportunities in the choice of profession or type of work, and the conditions needed to avoid the gender-based preclusion or limitation of access to any position, work or professional category;</p> <p>PART III - Organisation of political power TITLE I - General principles Article 109 (Citizens' participation in politics) The direct and active participation in political life by men and women is a condition for and a fundamental instrument in the consolidation of the democratic system, and the law must promote both equality in the exercise of civic and political rights and the absence of gender-based discrimination in access to political office.</p> <p>Source: Constitution of the Portuguese Republic, 7th revision (2005), official translation into English: http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf (accessed on 15/12/2014).</p>
Constitutional reform
<p>Constitutional reform: the fourth revision of the Constitution, which took place in 1997, was crucial because a new paragraph (h) was added to article 9 (see above) and major changes were made on Article 109 (see above). These changes introduced the state's responsibility to promote equality in the political realm as a way of consolidating democratic principles and enabled the state to advance special measures of positive discrimination to ensure women's political participation and access to public office.</p>
Constitutional/Supreme Court case law on quotas
<p>Political sphere: - When the bill that eventually became the Parity Law was approved in parliament, it was sent (following the normal legislative process) to the president of the Republic for enactment. Although the president decided to</p>

veto the law (see more on this below), he chose not to ask the Constitutional Court to study the constitutionality of the law, despite calls to do so by the opposition parties. Considering the 1997 revision, it would probably not have been successful anyway.

Economic sphere:

In contrast to the case of gender quotas applied to the political sphere, there might be some space for constitutional issues to be raised concerning gender quotas in the economic sphere. The only thing that the Constitution predicts is that 'in order to assure the right to work, it is the state's duty to promote: b) the equality of opportunities in the choice of a job or kind of work, and the conditions so that the access to any position, job, or professional category is not barred or limited because of one's sex' (article 58 – see above). A measure like quotas might face a barrier here because there is no reference to promoting equality in terms of results.

NUMBERS

Number of female MPs in both chambers

Note: in Portugal there is only one chamber, the National Parliament.

Years	% of female MPs
1976	4.9
1979	6.8
1983	7.2
1985	6.4
1987	7.6
1991	8.7
1995	12.2
1999	18.7
2002	19.1
2005	21.3
2009	27.8
2011	26.5

Source: Verge and Espírito Santo (forthcoming).

Number of women in boards of biggest publicly listed companies

Years	% women in administrative boards
2003	4
2004	4
2005	6
2006	7
2007	3
2008	3
2009	4
2010	5
2011	6
2012	7
2013	9

In 2013, there were no women among the presidents of the biggest listed companies in Portugal.

Source: http://cite.gov.pt/asstscite/downloads/Relat_Lei10_2013.pdf , page 33 (accessed on 15/12/2014).

POLITICAL and PARTY QUOTAS

Existence of voluntary party quotas and other schemes

The Socialist Party (PS) has had party quotas in its statutes since 1988: a minimum representation of 25 per cent for each sex is required both in the national party organs and in all of its multi-member lists. However, the PS party quotas were in a latent status for one decade. Only around 1999 did the PS start honoring them. In 2003, the internal quota system changed from 25 to 33 per cent minimum representation for each sex.

The Left Block (BE) follows a 'soft quotas' measure (not written into the party statutes) of 33 per cent representation for each sex both in national organs and election lists.

Existence of soft measures in politics

NONE

Existence of hard legislated electoral quotas

In Portugal, a so-called, Parity Law was approved in August 2006 (Organic Law nº 3/2006, 21st August, http://www.parlamento.pt/Legislacao/Documents/Legislacao_Anotada/LeiParidade_Simples.pdf). According to that law, all lists presented for local, legislative, and European elections must guarantee a minimum representation of 33% for each sex.

Sanctions: parties that do not respect this minimum are fined. A 50 per cent reduction is applied to parties' public subsidy for electoral campaign when either sex fails to attain 20 per cent of positions, and reduced to 25 per cent when the proportion is between 20-33 per cent and when parties do not comply with the placement mandate. None of these sanctions applies if the list is shorter than three candidates (3 out of 22 electoral districts elect only 2 MPs).

Presidential veto: the first version of the parity bill was vetoed by the President in June 2006, who considered the sanctions envisioned by the decree as excessive, disproportionate, and therefore inadequate to fulfil the objective of the law. The original sanction was the outright rejection of non-compliant party lists. After the Presidential veto, the main amendments made to the bill were: the imposition of fines on parties with non-compliant lists instead of the initial outright rejection of such lists and the insertion of an article requiring that the parity law be re-assessed in five years' time based on its impact on gender balance in Portuguese electoral politics (Baum and Espírito-Santo, 2012).

Main actors: between 1998 and 2006, several bills were proposed both by the PS and the BE – the only two political parties that have pushed for the passage of the Parity Law. However, it was only in 2006, when the PS had a majority in Parliament, that one of those bills was eventually approved, with only the PS voting in its favor. The BE has abstained from voting after the first, more ambitious, version was vetoed by the president, because the new version of the bill included less stringent sanctions (Baum and Espírito-Santo, 2012: 324). The three remaining parties with parliamentary representation – the Communist Party (PCP), the Social Democratic Party (PSD) and the Centre Democratic Christian-Popular Party (CDS-PP) – are all against quotas for different reasons.

Three NGOs were visible in the media in favor of the adoption of the 2006 Parity Law: União de Mulheres Alternativa e Resposta (UMAR), the Portuguese Platform for Women's Rights (PPDM), and the Portuguese Network of Young People for Gender Equality (REDE). Their activities are aimed more at increasing the public

consciousness in terms of sexual discrimination in politics and less at putting direct pressure on political parties (Baum and Espírito-Santo, 2009). Aside from the separate actions of each NGO, there was also their official connection to the Portuguese women's policy agency (Commission for Citizenship and Gender Equality – CIG), which was particularly important to the gender quota agenda.

Implementation: the implementation of the Parity Law has been quite successfully achieved apart from the local elections, where some problems remain. According to the Parity Law (article 4), non-compliance cases should be made public through the website for the National Commission of Elections. An analysis of the website shows that for local elections, non-compliance is common for all political parties. This was even true for the last local elections, which took place in September 2013. However, the same did not apply to the European elections, where all parties fulfilled the law, or to the legislative elections, where only a few minor parties (without representation in parliament) disobeyed. So overall, the Parity Law has contributed to an increase in women's presence in political power in Portugal.

Existence of Public board quotas

NONE

CORPORATE BOARD QUOTAS

Existence of soft Corporate Board quotas/measures

The only binding measure applied to state-owned companies in the area of gender equilibrium was accomplished through a Resolution of the Council of Ministers in 2012 (RCM nº 19/2012) (Casaca, 2014: 21). That resolution compels ('it determines compulsory') all state-owned companies to implement internal equality plans aimed at: a) reaching a de facto equality between women and men in the way they are treated and in the opportunities they have; b) eliminating all kind of discrimination; and 3) facilitating the conciliation between professional, family, and personal lives (RCM nº 19/2012, p. 981). The same measure had been introduced by a previous resolution (RCM n.º 70/2008), but with no binding nature.

Although it is of a binding nature, the 2012 resolution might not be very efficacious for three reasons. The first has to do with the content of the binding measure. The only thing it compels companies to do is to implement internal equality plans; it does not say anything about how demanding the objectives established by the companies in those plans should be. In fact, the same resolution states, in another point, that each state-owned company should set goals to reach a plural presence of women and men in its board of directors (p. 981); however, contrary to the previous measure, this does not have a binding nature, as the word 'compulsory' is avoided. The second reason why the resolution will probably have little success is that the document imposes no sanctions on non-compliant companies. Following the example of electoral gender quotas, the sanctions applied to non-compliance are crucial for the efficaciousness of the measure. The third reason is that a resolution does not have the weight of a law, so it is clearly different from the Parity Law in that sense. In fact, in 2013, another resolution (CMR nº 13/2013) appeared with very similar content (Casaca, 2014: 21-22), which suggests that the previous one was not too successful.

Despite doing it in a very 'soft' way, the current center-right government (2011-2015) seems determined to pursue this agenda. The last National Plan for Equality (V Plano Nacional para a Igualdade de Género, Cidadania e Não-discriminação 2014-2017), approved in 2013, has an innovative measure: the presence of women on the boards of directors is a criterion considered in the attribution of EU funds in the case of a tie (Casaca, 2014: 22). Considering how ineffective previous National Plans for Equality have been (Ferreira et al., 2010), no great success should be expected from this one either.

Existence of hard Corporate Board quotas

NONE

QUOTAS IN OTHER DOMAINS

Legislated or voluntary measures in other domains as executive, judiciary, universities, sports federations, trade union, professions, political party structure, etc.

The only gender quotas that exist in Portugal are in the political sphere.

CONTAGION and CONNECTIONS

Contagion between different domains within the country

There is no contagion between domains for gender quotas.

Connections with other countries/ international dynamics

Political sphere:

PS's adoption of a party quota:

Interviews with female MPs conducted in 2005 pointed out the importance of the Socialist International (SI) and the Party of European Socialists (PES) – mainly the former – in the PS's decision to pursue the gender quota agenda. Furthermore, Vítor Constâncio, who was the president of the PS at the time the PS adopted party quotas in 1988, said in a personal interview that the party was influenced by what was happening in other European countries (Espírito-Santo, 2006: 158).

Parity Law:

Concerning international organizations, Portugal has been affected primarily by three of them: the United Nations, the European Union, and the Council of Europe. This is visible in the fact that the evolution of the position of both the PS and BE regarding the election of women followed closely the evolution of those three organizations (Baum and Espírito-Santo, 2012: 330-332).

Economic sphere:

For the binding measure previously mentioned in the economic sphere (in RCM nº 19/2012), the UE appears as the most important motivation.

COUNTRY SPECIFICS

Best practice

In both political and economic spheres, some key women within political parties were determinant, though there is a crucial difference. Whereas those women mainly remained in the background in the case of the electoral quotas, Secretary of State of Parliamentary Affairs and Equality Teresa Morais gave a face to the measures within the economic sphere.

The second determinant mobilizing actor that applies to the measures adopted in both spheres is the transnational actors (see more on this above).

Failures

Although overall, the Parity Law has contributed to an increase in women's presence in political power in Portugal, there are still some challenges related to it. The first is that the political parties only comply with the minimum requirements of the law – very seldom do the lists surpass the 33% minimum requirement for women's presence.

Furthermore, all the political positions that are not covered by the law, which are usually those that contain the most power, are hardly attributed to women. This limitation is recognized by some socialist and feminist female MPs (Verge and Espírito-Santo, forthcoming).

Another potential future issue related to the electoral gender quota is the percentage of each sex that the Parity Law aims to achieve, i.e. 33%. Some MPs from different parties who were recently interviewed (July 2014) have reported that, in some districts, the Parity Law works as a limitation rather than as a tool for increasing women's presence, i.e. as an excuse for parties to include only 33% women on their lists. However, all of them recognized that without quotas, fewer women would be placed on the lists of their parties - which constitutes a paradox.