

# Loss of Face or Loss of Reality?

*An in-depth analysis of the factors explaining why the  
European Commission is keeping the Women on Boards  
Directive on the agenda*



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***‘Work for something because it is good, not just because it  
stands a chance to succeed.’***

*(Vaclav Havel, 1989, as cited in Commission President-Elect Von der  
Leyen, 2019, p.1)*



## Loss of Face or Loss of Reality?

# An in-depth analysis of the factors explaining why the European Commission is keeping the Women on Boards Directive on the agenda

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### ABSTRACT

This article analyses why the European Commission is keeping its proposal for a directive on gender balance in non-executive boards of listed European businesses on the agenda, despite clear resistance by the Member States in the Council. Examining this subject is interesting, as little is known about the factors explaining why the Commission decides to leave items on the agenda that have been in gridlock for a long time, while withdrawing other proposals. In this article the method of explaining-outcome process-tracing is used to explore the various contributing factors in further detail. This research finds that both the Commission and the European Parliament are strongly committed to this file. Throughout different phases of this case, the EP pressuring the Commission to keep this file on the agenda can partly explain why it is not withdrawn. Moreover, the Commission's own investment in this proposal in combination with the time and interest invested in it by other actors and stakeholders, has increased the Commission's fear for the social costs of admitting failure. The Commission would lose credibility if it removed this proposal from the agenda. Finally, the Commission has been anticipating a window of opportunity to open in the form of Germany changing its position. This means that there would no longer be a blocking minority in the Council, creating momentum for the Commission to push this file to be unblocked. While it is unclear whether this proposal will be adopted or withdrawn, its presence on the agenda certainly keeps the discussion on this topic alive.

**KEYWORDS:** Women on Boards Directive, European Commission, Gridlock, Agenda withdrawal, Window of opportunity, Credibility, Social costs of admitting failure, Process-tracing

## Introduction

The European Commission (Commission) is the only institution that has the treaty-based power to initiate and draft legislation.<sup>1</sup> It is also the only institution that can formally withdraw proposals (Haverland, Ruiter, & Walle, 2018, p. 328), although it is obliged to justify the ground of withdrawal to the Council of the European Union (Council) and the European Parliament (EP) (Lupo, 2018, p. 317). While the formal agenda-setting powers are in the hands of the Commission, the EP and the Council have gained informal agenda-setting powers throughout the creation of new treaties (Lupo, 2018, pp. 311-312). Under the Lisbon Treaty the Ordinary Legislation Procedure (OLP; former co-decision procedure) became the general rule for passing legislation, which means that the Commission is restricted in translating their policy preferences into legislative outcomes as it depends on the EP and Council (Kreppel & Oztas, 2017). Several scholars state that the increased powers of the EP and the Council have led the Commission to be more cautious of the preferences of other actors. Ponzano, Hermanin & Corona (2012), argue that this has led to the Commission initiating less ambitious pieces of legislation, as these would probably not pass the Council readings.

If this increase of power of the co-deciders is true, then we would also expect to see existing Commission proposals that have been on hold for a long time to be removed from the agenda by the Commission. This is indeed what happened when Jean-Claude Juncker was elected Commission president. On the 15<sup>th</sup> of July 2014 he presented his political guidelines for the new Commission (European Commission, 2014). In his opening speech he stated that he wants 'a European Union that is bigger and more ambitious on big things, and smaller and more modest on small things' (European Commission, 2014, p.4). His proposed legislative agenda included only 23 new initiatives, which is substantially less compared to the legislative agendas of the Commission in previous years. More importantly, the new Commission listed over 80 proposals that it wanted to amend or withdraw, which is a lot considering a year earlier only 14 proposals were withdrawn (Dehousse & Rosenberg, 2015).

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<sup>1</sup> With the exception of one policy area: 'the judicial co-operation in criminal matters and police co-operation, in which a quarter of the Member States may initiate laws (Article 76 TFEU).' (Nugent & Rhinard, 2016, p.1205)

Not all proposals that were on hold, however, were removed. One of the proposals that remained on the agenda was the Women on Boards<sup>2</sup> (WoB) Directive. The WoB Directive is a proposal that aims at increasing the gender balance among non-executive directors of European listed companies by proposing that the proportion of the underrepresented sex in these boards should be 40% by 2020 (Leszczynska, 2018, p. 37-38). The proposal was initiated by the Commission in 2012, but was immediately blocked by the Council (Council of the European Union, 2014). Since then the proposal has been ‘blocked’. In 2016, the Commission, however included the proposal in its annual Working Programme (European Commission, 2015, p.5) and also multiple Council presidency’s have made (unsuccessful) efforts to unblock the proposal. The question in this paper therefore is: *‘Why did the Commission keep a proposal that was blocked during the first reading, without any successful developments, on the agenda?’*.

With the purpose of answering the main question, the method of ‘explaining-outcome’ process-tracing is used (Beach & Pedersen, 2013). By analysing different types of primary sources such as Commission speeches, Council conclusions, EP resolutions, memos, and Parliamentary questions in addition to secondary sources this article tries to reconstruct the sequence of events that lead to this particular outcome. Additionally, five semi-elite interviews were conducted with people from different organisations on different levels (national, European) to strengthen our analysis.

### **Relevance**

The role of the Commission in European agenda-setting (Princen, 2011; Princen, 2016) and decision making processes is one that has been widely studied in European Studies literature. This literature varies from more theoretical perspectives on the Commission’s (possibly declining) role (Nugent & Rhinard, 2016; Kreppel & Oztas, 2017), to more practical empirical research that elaborates on the Commission’s agenda-setting and legislative output (Princen, 2018). We know that the Commission uses different methods to gain insight in what topics

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<sup>2</sup> The full name of the proposal is ‘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’ (Commission, 2011). Throughout the rest of this article it will be referred to as the WoB (Women on Boards) Directive. This is a common abbreviation, and is by no means used by the author of this article to make implications about the substance of the proposal.

need to be on the agenda and know the general reasons for proposals to get withdrawn (Ponzano et al., 2012). Moreover, there is also some literature on why other issues do not make it on to the agenda (Allwood, 2018, p.128). However, the focus has rarely been on the proposals that have been floating between the stages of initiation and legislation for a long time. While, for example, (overcoming) the gridlock of proposals has been researched from the perspective of the Council (Warntjen, 2013; Citi & Justen, 2016), the attitude of the Commission in these cases has not been analysed yet.

More in general this study contributes to the scientific debate on the possible 'decline' of the Commission. In more recent studies on the Commission, mostly by advocates of new intergovernmentalism, the smaller role of the Commission in the legislative procedure (Kreppel & Oztas, 2017) and the fall in volume of legislation in the past couple of years is pointed out (Nugent & Rhinard, 2016, p.1204). Others, however, suggest that the Commission's actual powers and influence within the European Union have not declined as much (or at all) (Nugent & Rhinard, 2016, p.1211). They argue that while many proposals of the Commission find their origins in preferences of other actors (e.g. Council, individual Member States), this has always been the case and therefore does not point at a huge decline of power (Nugent & Rhinard, 2016, p.1203). Moreover, they argue that the role of the Commission in framing and choosing the right moment for the initiation of proposals, making amendments, and negotiating compromises should not be understated (Nugent & Rhinard, 2016, p.1211).

This specific case is also interesting as this is a field in which there is almost no binding European legislation. This is mainly due to the reluctance of member governments to expand the European competences in the field of social policy, as this might stroke with both the (lack of) legitimacy of the institutions (Wendon, 1998, p.341) and the principle of subsidiarity. Therefore, we could argue that the WoB proposal is an extreme case that has the potential to add to the more general debate about the role of the Commission and its (expansion of) competences.

Steps regarding ensuring gender equality are undeniably made in many countries, and also in the institutions of the European Union. With Ursula von der Leyen as Commission president, the EP existing out of 39% women and the Commission almost reaching equality in their members, the European Union poses a pretty equal framework (Dudman, 2019). However, as late numbers of the European Institution of Gender Equality (EIGE) show, equality

has only been slightly increasing or has even been stalled in some Member States (Dudman, 2019). The gender pay gap is still in place, women hold only limited board positions and gender discrimination in the work place is still happening (Dudman, 2019). The Commission has come up with proposals such as the work-life balance Directive and the WoB Directive proposal, trying to diminish barriers for women to enter top positions within big companies. It is unfortunate that proposals that promote gender-equality, in a time where measures need to be taken, are in gridlock with almost no progress being made. By analysing the Commission's behaviour in this case, we might make observations that can prove helpful in avoiding gridlock on proposals related to gender equality in the future.

This article starts by laying the theoretical foundations for analysing the research question. Besides an overview of relevant literature and theories it provides some hypotheses that are tested in the analysis. Next, the methodology, including the case selection, data collection and data analysing processes are outlined. The methodology is followed by a detailed case reconstruction that helps analysing the hypotheses. In the analysis the hypotheses are tested and discussed. The conclusion provides a summary of the findings and recommendations for further research.

## **Theory**

### ***Defining the agenda***

Before exploring theories that could explain why the Commission keeps a blocked proposal on the agenda, it is important to first define what is actually meant with 'the agenda' in this study. 'Generally speaking, the agenda is the set of issues that are seriously considered in a polity' (Princen, 2007, p. 28). When a particular issue gets attention, one could say the issue is on the agenda. This, however, is a very broad definition and for the purpose of this paper it is important to focus on a particular type of agenda (Kreppel & Oztas, 2017, p.1120). While Princen (2007) makes a distinction between different types of agendas, the focus of this article is only on the political agenda. This agenda includes all issues that are seriously considered by decision-makers (Princen, 2007, p.29). Within this political agenda a distinction can be made between the governmental and the decision agenda (Allwood, 2018, p. 127). While the governmental agenda encompasses a broader range of issues discussed by policy-makers, the

decision agenda includes only those proposals that are actually tabled by the Commission (Princen, 2007, p.28). Throughout this article 'agenda' refers to the decision agenda.

### ***The European Commission as agenda-setter***

With the exception of a few special initiative rights in some areas established in the Treaties, the formal EU agenda-setting powers are in the hands of the Commission (Haverland et al., 2018, p. 328). This power to initiate legislation gives the Commission a gatekeeping function: it means that it can always choose to not introduce proposals, a power that sometimes is more powerful than that of initiating a proposal (Kreppel & Oztas, 2017, p.1121). The Commission is given the treaty-based power to act as the 'Guardian of the Treaties' which allows it to propose laws to obtain goals set out in the Treaties and to initiate proposals that promote the general interests of the EU (Nugent & Rhinard, 2016, p.1200).

Within the literature a broad distinction can be made between two views on what role the Commission takes on during the agenda-setting process. The first perspective describes the Commission as a *technical* agenda-setter or a reactive initiator, while the second view portrays the Commission as a *political* agenda-setter or policy entrepreneur. While these perspectives are mostly linked to agenda-setting they can also be used to explain why an item remains on the agenda.

Firstly, there is the view in which the Commission is seen as a *technical* agenda-setter (Kreppel & Oztas, 2017): the role of the Commission in agenda-setting is strictly formal. This means that the Commission uses its power of initiation mostly for proposals that reflect the preferences of other institutions. 'This is a largely bureaucratic understanding of the Commission in which it serves as the source of technical expertise in EU policy-making rather than as a political entrepreneur' (Kreppel & Oztas, 2017, p.1122).

In this scenario other institutions and organisations (for example, stakeholders, pressure groups) play a notable role in the agenda-setting process. While the co-deciders have no formal agenda-setting powers, they do have informal powers that can greatly influence what issues make it to the agenda. With the OLP becoming the main legislative procedure in 2009, the Commission has become more cautious towards the opinions of the co-deciders before coming up with a policy initiative (Lupo, 2018, pp.311-312). Moreover, with Art. 225 of the Treaty on the Functioning of the European Union (TFEU) other institutions have gained



the ability to request the Commission to initiate particular legislation (Kreppel & Oztas, 2017, p.1122).

Before initiating a proposal the Commission can seek information on the positions of the co-deciders to prohibit the proposal from being blocked. From this perspective it can be argued that the role of the Commission is that of a *reactive initiator* (Ponzano et al., 2012, p. 43). This role does not mean that the Commission has no/or does nothing with its own policy preferences. However, it expects that the Commission only initiates proposals based on its own preferences if those align with the preferences of (one of) the other institutions.

This technical perspective can be expanded to the phase in which a proposal is already on the agenda. When the proposal reflects the Commission preferences, it will keep it on the agenda, even when little progress is being made, if the proposal is supported by one of the other institutions. Moreover, if another institutions preferences are in line with those of the Commission, it can pressure the Commission in keeping the proposal on the agenda.

Based on the above the following explanation for keeping the WoB proposal on the agenda can be formulated.

#### **Hypothesis I:**

*Keeping the WoB proposal on the agenda can be explained by the preferences of the Commission and at least one of the co-deciders being in line with each other*

Another perspective on the role of the Commission is that it can act as a *political* agenda-setter or policy entrepreneur. 'In this case, the Commission is a political agenda setter able to effectively shape the policy debate in Europe, and achieve its own policy priorities and preferences through the strategic use of its substantial informational resources and formal powers' (Kreppel & Oztas, 2017, p.1123). This view is supported by Nugent & Rhinard (2016) who argue that the Commission combines both formal and informal powers and leadership resources to shape the agenda and exert influence in many policy areas (p.1201). By citing the words of Cram (1994) they describe the Commission as a 'purposeful opportunist' meaning 'an organisation which has a notion of its overall objectives and aims but is quite flexible as to the means of achieving them' (Cram, 1994, as cited in Nugent & Rhinard, 2016, p.1201). They describe various techniques that the Commission uses to expand its competences to new policy areas. For example, by emphasising the benefits of EU level interventions instead of

national ones, letting Commissioners actively participate in public debate and by using successes in policy areas to justify action in 'new' policy areas (Nugent & Rhinard, 2016, 1201).

This view of the Commission as a political agenda-setter using both formal and informal powers to exert influence, fits the idea that the Commission acts as a policy entrepreneur (Citi & Justesen, 2016). According to Mintrom & Norman policy entrepreneurs distinguish themselves from other actors and organizations that participate in policy making by 'their desire to significantly change current ways of doing things in their area of interest' (Mintrom & Norman, 2009, p.650).

In order to accomplish change, the right moment to promote change has to be seized, taking advantage of a *window of opportunity* (Nugent & Rhinard, 2016, p.1201). Windows of opportunity in this case can be exogeneous events 'whose occurrence cannot be directly influenced by the EU's political actors and institutions' (Wonka, 2015, p.102). Both political developments and societal problems can open micro or macro-windows of reform (Keeler, 1993, p.436). When a window opens, policy entrepreneurs have to act quickly (windows might not be open very long) (Kingdon, 2014, p.169) if they want to seize that moment in order to promote change.

A common example of a political development that could open a window of opportunity, is the coming of power of a new administration (Keeler, 1993, p.436) (Kingdon, 2014, p.168), or a change in personnel (change of someone in a key position) (Kingdon, 2014, p.169). Within the EU policy-making framework there are many relevant elections both on the European (e.g. Elections EP) and on the national level that can change positions and preferences of pivotal actors. A window of opportunity to open in this case, would have to entail opposition diminishing, as this would get the proposal adopted. In such a situation the Commission could act as a policy entrepreneur by using this window of opportunity to push for the proposal.

There are several tactics policy entrepreneurs can use to successfully make use of a window of opportunity. While these tactics might not directly influence the opening of a window, using these tactics beforehand to create a certain power base, can help policy entrepreneurs to make use of windows quicker or more steadily (Mintrom & Norman, 2009, p.659). The following tactics can be outlined: building social acuity, defining problems, building teams and leading by example (Mintrom & Norman, 2009, p.651).

In order to seize this window, building acuity is important. This can be done by successfully using policy networks and by effectively understanding and responding to the ideas, motives and worries of other actors (Mintrom & Norman, 2009, p.652). *(Re-)defining a problem* to make sure it relates to one's own interests is another element (p.652), which in this case also relates to the literature on the Commission expanding its competences in the field of social policy. *Building teams* differs from displaying social acuity as it relates more to the need for policy entrepreneurs to work together with others, or form coalitions in order to increase the probability of successful policy-change (p.653). Finally, when other actors are still sceptical about policy change, it can be helpful for a policy entrepreneur to show the workability of a proposal, by turning an idea into action and *leading by example* (p.653).

To summarize, a reason for the Commission to leave the proposal on the agenda could be that it expects a change in situation, which would open a window of opportunity. It would then seize this window as a policy entrepreneur in order to push for this proposal to get out of gridlock. Anticipating a window of opportunity to open could be a reason for the Commission to leave this proposal on the agenda.

Based on this reasoning the following hypothesis can be formulated.

#### **Hypothesis II:**

*Keeping the WoB proposal on the agenda can be explained by the Commission's believe that a window of opportunity would open that could diminish opposition*

#### **Escalation of Commitment**

If we assume that the Commission is reflexive, meaning it can learn from their actions and update its beliefs, we would expect that the Commission will withdraw a proposal when it realizes that it has little chance of getting approved or when it realizes that no change will come in the opportunity structure. This is the most common reason for the Commission to withdraw proposals: when a proposal has been stuck in the decision-making process for too long without a realistic perspective of getting out of gridlock (Ponzano et al., 2012, p. 39).

A reason related to the possible failure of an actor to update its beliefs could be because there is an escalation of commitment. 'Escalation of commitment describes the tendency to "carry on" with such questionable endeavors, regardless of whether doing so is

likely to result in success' (Sleesman et al., 2018, p.178). An example of escalation of commitment in politics is the behaviour of the American government during the war in Vietnam. When the government started the war and decided to send many troops to Vietnam, there was no way back. Backing out of the war would be a humiliating process causing the loss of many lives while financially drained the country without a victory (which is what happened anyways) (Staw, 1981, p.578). This example is probably one of the most extreme ones one could think of. However, escalation of commitment can also occur on a much smaller case, where sunk costs are, for example, a lot of time that was invested and lost.

Main drivers for escalation of commitment that can be relevant in this case are denial and social costs of admitting failure (Drummond, 2014, p.432). Firstly, when actors are in denial they tend to overstate the positive effects or opportunities and ignore the negative experiences in the process (Drummond, 2014, p.432). Actors who are in denial might genuinely believe that something is going to succeed, while many factors point at failure in the future (Drummond, 2014, p.432). In the case of the Commission, this could mean that it so truly believes that this proposal will be passed eventually that they do not clearly view the opposition anymore or do not realize that progress on this file is minimal, leading it to leave the proposal on the agenda.

Based on this explanation we can formulate the following hypothesis:

### **Hypothesis III:**

*Keeping the WoB proposal on the agenda can be explained by the Commission being in denial*

Secondly, social costs of admitting failure relates to self-preservation theory meaning that actors will try to strategically manage impressions in order to come across as competent and in control (Drummond, 2014, p.432-433). A series of studies in management literature have identified that the more executives/leaders identify with or get involved in a project, the more likely a project or process is to escalate (Sleesman et al., 2018, p.178). The making of European legislation is incredibly time consuming and involves a lot of actors. Failure of proposed legislation could lead to the Commission losing credibility and reliability and could weigh heavily on the Commission's reputation, especially if it indicated to be highly committed to the proposal. For the case of the WoB directive the social costs of admitting failure and the

anxiety to lose face (Sleesman et al., 2018, p.178) might have played a role in the decision to leave the proposal on the agenda.

In general, there might be a chance that the Commission is more resistant to admit failure in cases where it is concerned with policy domains, such as social policy, in which it has restricted competences (Wendon, 1988). Failure in these areas would emphasize the limits of the Commission's ambitions. Additionally, pressure of interest groups in the fields of gender-equality on the Commission to act at a EU level may make it harder for the Commission to admit that the proposal might have been too ambitious.

This leads us to the following explanation for keeping this proposal on the agenda.

#### **Hypothesis IV:**

*Keeping the WoB proposal on the agenda can be explained by the Commission being afraid of the social-costs of admitting failure*

### **Data and methods**

The WoB directive can be seen as an *extreme case* (Seawright & Gerring, 2008, p.301). The extreme case method selects a case because it shows unusual values on the dependent (Y) or independent (X) variable(s) (Seawright & Gerring, 2008, p.301). Extreme cases are interesting because the outcomes cannot be explained by more common accounts. It is therefore useful to particularly focus on such a case. The extreme case method has a strictly exploratory function; it is 'a way of probing possible causes of Y, or possible effects of X, in an open-ended fashion' (Seawright & Gerring, 2008, p.302). As we know little about why items remain on the agenda this is an appropriate case selection. The fact that this proposals has been on the agenda for a long time, but instead of experiencing a slow 'death' has been giving priority by the Commission and several Council presidency's makes it an extreme case. The value of the dependent variable, the fact that the proposal is still on the agenda, is unexpected, given the persistent resistance of the Council to adopt the proposal.

In order to test the four hypotheses and answer the research question, this article applies the qualitative research method of process-tracing which fits the exploratory nature of the extreme case method. Process-tracing in general allows for conducting a detailed case-study which carefully describes the sequence of events that lead to a specific outcome (George

& Bennett, 2005). However, Beach & Pedersen (2013) argue that tracing this sequence of events alone is not enough, and that it also about assessing the way a causal process works. Beach & Pedersen (2013) make a distinction between three types of process-tracing, namely: theory-testing, theory-building and explaining outcome (p.13). The research method that best fits this particular research is that of *explaining-outcome process-tracing*: ‘this type of process-tracing can be thought of as a single- outcome study, defined as seeking the causes of a specific outcome in a single case’ (Beach & Pedersen, 2013, p.18). This type of process-tracing is case-centric instead of theory-centric and tries to explain an interesting and puzzling outcome by analysing the process. Moreover, this method often includes case-specific causes, which applies well to extreme cases. This type of process-tracing provides a minimal sufficient explanation for a particular outcome (Beach & Pedersen, 2013, p.18).

The data collection existed of two phases. Firstly, different types of document were selected to reconstruct the sequence of events and to research the hypotheses in order to answer the main question. The documents varied from policy documents, Commission speeches, and newspaper articles to secondary academic literature to unravel possible explanations for the value of Y. Secondly, five semi-structured, (semi-)elite interviews with European/national officials and representatives from interest groups, were conducted to get a deeper understanding of the (possible) effects of the X’s on the outcome.

### **Operationalisation**

The dependent variable of this article is whether or not a proposal remains on the agenda. A proposal is removed from the agenda when it is formally withdrawn by the Commission. The Y is therefore a dichotomous variable, a proposal either remains on the agenda, or is removed.

In order to test the four hypotheses different explanatory factors can be outlined. Firstly, in order to (dis)confirm the first hypothesis the *preferences of the co-deciders* have to be mapped. This is done by analysing the formal positions of these institutions (from EU institutions databases), by checking Council conclusions to see if these gave the Commission an informal mandate (Ponzano et al., 2014), press releases on the institutions positions, EP resolutions, debates in these institutions regarding the proposal, (Parliamentary) questions asked, and to look at the consultation process prior to the proposals initiation. This document analysis is complemented with semi-elite interviews in which the respondents were asked about their and other institutions/organisations (informal) positions on the proposal.

Moreover, respondents were asked if they thought the Commission feels pressured by one of the co-deciders to leave the item on the agenda.

For the second hypothesis document analysis with a focus on the *expectations of the Commission*, is conducted. First, in order to find out if the Commission behaves as a policy entrepreneur in this file we analysed different types of documents, but mainly speeches, memo's and press releases. Based on the interviews and position papers we analysed whether the Commission anticipated a window of opportunity would open that it could seize. The interviewees were furthermore directly asked if they thought the Commission expected change in positions of Member States/Council and if so, what they expected this change to be.

Concerning the third hypothesis, we look at the plausibility of the Commission being in *denial* about a possible failure to adopt this proposal. This factor is operationalised by analysing Commission documents, and by asking the Commission official respondent whether the Commission believes the proposal will get adopted eventually. If the Commission is convinced that the proposal gets adopted (without hesitation) this points at denial.

For the fourth and last hypothesis, regarding *social costs of admitting failure*, positions of interest groups and other stakeholders are taken into account to see if these groups put more pressure on the Commission to leave this proposal on the agenda in order to save face. For this variable interviewees were asked if they felt the Commission would lose credibility if they removed this proposal from the agenda, and whether they thought this would be a reason for the Commission to leave this proposal on the agenda.

### **Reliability, generalization & validity**

The reliability of a research refers to the consistency and replicability of a research (Golafshani, 2003, p.598). Conducting (semi-structured) interviews is often necessary when researching motivations or preferences (Rathbun, 2008). As analysing the Commission's motivations behind keeping the WoB directive on the agenda is the main aim of this research, interviewing is a valuable method. In order to ensure that a broad range of perspectives were represented in this study, five people from different organisations/institutions, whose views and positions differed, were interviewed. People who were interviewed were from the Commission, the EP, the permanent representation of the Netherlands, an employee of a Dutch Ministry and a policy officer from BusinessEurope.

Due to the busy schedules and travel restrictions because of the coronavirus not all interviews could be conducted face-to-face. Two interviews were therefore conducted via e-mail, one via telephone, one via skype and one face-to-face (pre-corona). To strengthen the reliability of this study two interviews were recorded and transcribed. For another interview direct notes were taken (Personal Communication Respondent A,B,E). To avoid respondents providing socially desirable answers (based on their institutions/organisations views) we ensured anonymity.

In addition, the internal validity of this article is enhanced by triangulation of data. Triangulation refers to the use of multiple data collection methods to measure the same thing (Heath, 2001, p.1509). By combining document analysis with the use of semi-structured interviews to measure the same variables this article aims at diminishing the risks that comes with the subjective interpretation of data.

When employing an extreme case method it is important to note that the results of such a case-study should not be generalized (Seawright & Gerring, 2008, p.301). This study should be used as a stepping stone for further research into the factors that lead the Commission to not withdraw a proposal that has been stuck on the agenda for a long time, not as a blueprint. A limitation of this study is that external validity is relatively low.

## **Case reconstruction**

This part gives a detailed overview of the sequence of events that lead the proposal for a directive to be put and kept on the agenda. The process is divided into three different time phases: the agenda-setting phase (2010-2012), the first reading (2012-2014), and the proposal being in gridlock (2014- present).

### ***Phase I: Agenda-setting (2010-2012)***

The issue of women on boards was first mentioned by the Commission in their 'Strategy for Equality between Women and Men in **2010** (European Commission, 2011a, p.7). This strategy discusses the underrepresentation of women in decision-making in general, and also more specifically in economic decision-making. The Commission argues that better gender-balanced boards improve business performance. In this strategy the Commission does not name any



specific measures yet, but mentions the need to *consider* targeted initiatives to improve this balance (European Commission, 2011a, p.7).

In **2011** the Commission, and especially Commissioner for EU Justice, Viviane Reding, gets more serious about prioritizing the issue of gender equality in economic decision-making, or simply put, the representation of women in the boardroom (Commissioner Reding, 2011, p.2). In 2011, Reding hosted a Business Leaders Summit together with Gertrude Tumpel-Gugerell, Member of the Executive Board of the European Central Bank, to discuss the presence of women in boardrooms (European Commission, 2011b). Present at this meeting are CEO's of several companies from all over Europe and people from several big networks/organisations such as BusinessEurope and European's Women Lobby<sup>3</sup> (European Commission, 2011b, p.2). Following these talks, on March 1, 2011, Reding invites business leaders from European listed companies to sign the 'Women on Board Pledge for Europe' by 2012 (European Commission, 2011d, p.1). When signing this pledge the companies would make a *voluntary* commitment to increasing the presence of women on corporate boards to 30% in 2015, and 40% by 2020 (European Commission, 2011d, p.1). At the time only 12% of board members were women. With the initiative Reding announced the last opportunity for companies to self-regulate, and declared that a year later the Commission would assess the progress to decide if European regulatory measures were necessary.

In that same year, the EP called for legislation on this issue. In their resolution of 6 July 2011, the EP welcomes the initiative taken by Reding and urges companies to reach the thresholds set in the pledge. Moreover, it calls on the Commission to propose binding legislation, including quotas, if the self-regulating measures proposed by companies are found to be inadequate (European Parliament, 2011, p.6).

By March **2012**, only 24 companies signed the pledge. For the Commission this was a sign that self-regulation was not sufficient and further action had to be taken. From March until the end of May the Commission therefore held a public consultation. The fact that the Commission received 485 responses to this consultation indicated widespread interest in the issue (Commissioner Reding, 2012). The responses to the consultation, together with requests by the EP in 2011 and 2012 to propose legislation, caused the Commission to adopt the proposal for a directive 'on improving the gender balance among non-executive directors of

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<sup>3</sup> Full list can be found in (European Commission, 2011c)

companies listed on stock exchanges and related measures’ on 14 November 2012 (European Commission, 2012).

The purpose of the proposal is to substantially increase the number of women in corporate boards of European listed companies. In the proposal an objective of 40% among non-executive directors is set, which has to be reached by 2020. The Member States are free to decide what laws, regulations and administrative provisions are installed at the national level in order to ensure compliance with the EU directive (European Commission, 2012b).

The legal base for acting in this area is Article 157(3) TFEU, which stipulates that the Commission is allowed to introduce binding measures that are aimed at ‘ensuring the application of the principle of equal opportunities and equal treatment of men and women in the workplace’ (Clark & Pang, 2012). While basing intervention on this Article means that the proposal falls under the responsibility of DG Justice (Gorriz, 2014, p.3) the Commission’s arguments for initiating this proposal are mainly based on economic reasons that emphasize financial benefits rather than social motives (Gorriz, 2014, p.1-3).

European legislation on gender equality is scarce, but the Commission has always been very vocal about its ambitions to ensure gender equality and has shown its committed by launching several gender equality strategies and programs throughout the years (Gorriz, 2014, p.7). In order to attract as much support as possible, an often successful strategy of the Commission is to link issues to single market or other central concerns of the EU (Allwood, 2018, p.126; Debusscher, 2015, p.1). This proposal is also framed in a market-oriented way. While the overarching goal is gender equality (value-oriented) the legal base of this proposal is linked to the labour market (market-oriented) (Gorriz, 2014, p.14).

### ***Phase II: First reading (2012-2014)***

On 13 February 2013 the European Economic and Social Committee, whose opinion is officially needed in the legislative procedure, adopted an opinion in which it welcomed the Commission proposal (European Economic and Social Committee, 2013). The Committee of the Regions also adopted a positive opinion on 30 May 2013 and emphasised the need for legislative action with binding objectives (The Committee of the Regions, 2013). On 20 November 2013 the EP amended and adopted the proposal with a firm majority after a first reading (European Parliament, 2013).

While the two Committees and the EP welcomed the proposal, not all Member States were as enthusiastic about the proposed directive. In general, the Member States believe that diversity in the boardroom is beneficial for business and necessary in terms of the overall goal of gender equality in decision-making. Nevertheless, there are strong differences in opinions about the way this objective should be obtained. Parliaments of the Netherlands, Denmark, the United Kingdom, one of the two chamber of the Czech Republic, Poland and Sweden submitted so-called reasoned opinions to the Commission before the deadline in January 2013, based on the proposal's possible breach with the principle of subsidiarity (European Women's Lobby, 2017). Moreover, an additional five Member States send the Commission comments on the proposal (Havelková, 2019, p.188).

Besides reservations based on subsidiarity, the four new 'post-socialist' Member States, such as Poland, had strong reservations not only regarding the means to ensure this objective, but also regarding the overall objective of the proposal. Despite debates in the Council in **2014**, the different objections proved to be too strong to be overcome and the Member States were therefore not able to agree on a general approach on this Directive (Council of the European Union, 2014). The proposal was therefore not adopted by the Council in the first reading of the legislative procedure.

This opposition by the Council could not have been very surprising. All the interviewees, including the Commission official, imply that since the beginning there was clear opposition of some of the Member States (Personal Communication Respondents A,B,C,E) which the Commission must have known about (Personal Communication Respondent D). Moreover, also lobby organisations, such as BusinessEurope, representing many businesses from all over Europe, have remained sceptical towards the proposal since the beginning. Already during the roundtable with Viviane Reding - while expressing their support for the overall objective that ensures more boardroom diversity - they said that they would not support measures on a EU level. Throughout the years they have continued to have talks on a DG and Commissioner level, but they have not, and will not in the future, change their position on the subject (Personal Communication Respondent E).

### ***Phase III: Blocked on the agenda (2014- today)***

Throughout time the EP has not changed its position on this proposal and urged the Commission and the Council to move forward with the proposal. There have been multiple

instances where they (e.g. in press releases, speeches, MEP's individual efforts) urged the Commission to unblock the proposal (European Parliament, 2015; European Parliament, 2019; Personal Communication Respondent C). One of the interviewees confirmed this idea by arguing that the EP will do everything to keep this issue on the agenda and to find a majority in the Council (Personal Communication Respondent C). Despite these efforts the proposal remained in gridlock.

In **2015** the Luxembourg Council Presidency made efforts to unblock the proposal by drafting a compromise text which included an additional flexibility clause (sunset clause) and that extended the target date to the end of 2022 instead of 2020. The flexibility clause would allow Member States to opt out of the provisions if they already installed sufficient measures on a national level (European Women's Lobby, 2017).

This happened against the background of a change in the Council qualified majority voting rules. The 'old' qualified majority from before 2014 required 74% of Member States representing at least 63% of the total EU population to vote in favour of a proposal in order for it to be passed. The new rules, however, require 55% (16 out of 28) of the Member States representing at least 65% of the European population to vote in favour of the proposal. Under the new rules there can also be blocking minority however, when four member states that represent at least 25% of the EU population are against a proposal (European Women's Lobby, 2017). In general, the new system favours bigger Member States that make up a bigger part of the EU population over smaller or medium-sized Member States, although the voting power of Poland and Spain has been reduced under these rules (Devaney & Poptcheva, 2014, p.1).

On 7 December 2015 the Council debated this redrafted version of the proposal, but while the EP urged ministers to unblock the proposal in a press release (European Parliament, 2015) the Council was still not able to reach agreement.

Despite the limited progress, the Commission did not withdraw its proposal. At the end of 2015, the Commission, in fact, presented its work programme for **2016**, in which they named the adoption of the WoB directive as a priority. 'The Women on Boards Directive should be adopted in 2016 and the Commission will continue its practical work to promote gender equality' (European Commission, 2015, p.5). Furthermore, Commissioner Vera Jourova published a factsheet in 2016 in which she reports on the progress regarding women in boards positions in the Member States. In this document she emphasises that the countries with the

most progress (e.g. France & Germany) are those who have taken legislative action already (European Commission, 2016). In this document Jourova also indicates that progress on the issue at stake is slow.

While its intentions seem to be sincere, - the Commission believes in gender equality and wants to create a levelled playing field in which all Member States implement measures to ensure equal opportunities for men and women in the top layer of businesses (Personal Communication Respondents A, D) - one of the respondents argues that efforts such as including the proposal in the 2016 Commission Working Programme were rather done for show than to seriously push for the proposal to be unblocked (Personal Communication Respondent B). The efforts and encouragement of the EP and Commissioner Vera Jourova, and also including the proposal in the Working Programme had little effect: the Council Presidency's in 2016 (The Netherlands & Slovakia), decided to not put the issue back on the table of the Council (European Parliament, 2020).

In **2017**, the Maltese Presidency, however, decided it was time to unblock the proposal as it had not been discussed by the Council since 2015, and 'adjusted the implementation calendar, the target dates, the reporting deadlines and the sunset clause by adding two years' (Council of the European Union, 2017, p.4). However, reservations based on the principles of subsidiarity and proportionality remained an issue for some Member States (Havelková, 2019, p.188), making them unable to support the draft Directive (Council of the European Union, 2017).

In this same year Spain declared that they were willing to change their position and support the proposal (European Women's Lobby, 2017) (Parliamentary Questions, 2018). Table 1 shows which countries supported the proposal in 2017. Since Spain turned, all eyes have been on Germany, whose change in position would, with an eye on reaching a 'new' qualified majority, unblock the proposal (Personal Communication Respondents A,B,C,D; European Women's Lobby, 2017). Almost all respondents, the Commission official included, and also other organisations are speculating about, and have been anticipating a change in the position of Germany since (Personal Communication Respondents A,B,C,D).

An interesting development that could have lead the other Member States and institutions to anticipate a change in the position of Germany, is that since the proposal was initiated, Germany has put measures similar to those of the EU proposal in place in 2016 (Fedorets, Gibert & Burow, 2019, p.2). With the flexibility cause in the proposal, this would

mean that they would not have to take further measures to comply with the European directive. However, them blocking the proposal was based on principled (subsidiarity) reasons which remained intact regardless of the sunset clause.

A second political development that could have influenced Germany's stance on this file was the 2017 German federal election. A change of national government might have put a party or coalition of parties, in power that did support this proposal. However, did this not happen and the status quo remained intact (BBC News, 2018).

Despite the remaining lack of progress, the Commission did still not withdraw the proposal. According to the respondents this can be explained by the fact that this proposal goes beyond the EU competencies; making this proposal not only extra controversial (Havelková, 2019, p.187), but also harder to withdraw. According to the respondents, it is politically almost impossible to withdraw this proposal (Personal Communication Respondents A,B,C,D,E). The grounds of withdrawal for this proposal would be hard to justify, as the objective has not been accomplished (Personal Communication Respondents D, E).

Furthermore, the respondent working for the Commission confirmed the idea that there is a lot of outside pressure on the Commission, from many different stakeholders to keep this proposal on the agenda (Personal Communication Respondent D). He argues that withdrawing the proposal would be very difficult to explain and justify to the many stakeholders and supporting Member States, which makes it politically almost impossible to do so (Personal Communication Respondent D). All respondents argue that because of the many actors involved and the time invested in this proposal, the Commission would lose credibility, or lose face, if it removed this item from the agenda (Personal Communication Respondents A,B,C,D,E).

Additionally, the respondent of BusinessEurope also emphasises that leaving this item on the agenda, despite little progress, keeps stimulating the broader debate on gender equality and diversity in the boardroom (Personal Communication Respondent E). At the same time the Commission, however, did not make any serious or proactive efforts to unblock the proposal in the Council (Personal Communication Respondents A, B, C). One of the interviewees even is astonished by the lack of bilateral talks between the Commission and the blocking Member States (Personal Communication Respondent A).

The contrary is true for the EP. Our interviewee that works for the Commission says that the Commission and the Council were and are strongly pressured by the EP to keep this

proposal on the agenda. The EP is ‘constantly asking the Council and the Commission to seek to unlock the file’ (Personal Communication Respondent D). In 2017 they adopted two resolutions which pushed for a swift adoption of the WoB Directive (European Parliament, 2016; European Parliament 2017). The EP, and individual MEP’s, can act as an important ally in convincing member of the Council to unblock the proposal. Moreover, if the Commission wants to withdraw the proposal, it has to explain its grounds for withdrawal to the Council and the EP (Lupo, 2018, p.317). If the EP pressures the Commission so much into unblocking this proposal, it is very likely that they will not accept the Commission withdrawing it.

**Table 1**

***Positions of the Member States on the WoB proposal in 2017***

Austria	+	France	+	Malta	+
Belgium	+	Germany	-	Netherlands	-
Bulgaria	+	Greece	+	Poland	-
Croatia	-	Hungary	-	Portugal	+
Cyprus	+	Ireland	+	Romania	+
Czechia	+	Italy	-	Slovakia	-
Denmark	-	Lithuania	+	Slovenia	+
Estonia	?	Latvia	-	Spain	+
Finland	+	Luxemburg	+	Sweden	-
UK	-				

*Note:* Taken and adapted from European’s Women Lobby, 2017, p.2

In **2018** the Parliament asked the Council questions on behalf of the S&D group regarding the proposal. The questions were asked in light of changes in the behaviour of the Spanish government, who (while it was already speculated before) officially announced to the Austrian Presidency (in 2018) that they were willing to withdraw their reservations and work together towards an agreement (Parliamentary Questions, 2018). The Romanian Presidency, which was head of the Council during the time this question was answered in a debate (in 2019), responded that they were having bilateral talks with the blocking minority in order to seek a solution to unblocking this file (Ciot, 2019). It is unclear whether these bilateral talks were actually held, but the file was not discussed further or unblocked during the term of the Romanian Presidency.

The somewhat passive stance of the Commission under Juncker changed when Ursula von der Leyen became Commission president. Ursula von der Leyen has pushed for this

proposal to be unblocked and has repeatedly stated that this proposal has been blocked for too long (European Commission, 2019; Sánchez Nicolás, 2019). The Commission seems to be realistic about the slow progress on this item. Our respondents do not think that the Commission has an unrealistic view of the future of this proposal, and think it also not in denial about the slow progress (Personal Communication Respondents A,B,C,D,E).

In **2019** the Commission briefed the Council on the WoB progress (which was none), and the issue was not further discussed. The new Commission under Ursula von der Leyen and Helena Dali as equality Commissioner reaffirmed that the proposal is still very important to the Commission and needs to be unblocked as soon as possible (Sánchez Nicolás, 2019; Commission President-Elect Von der Leyen, 2019). They are aware that more efforts have to be undertaken in order to unblock this file. Von der Leyen becoming the new Commission president, could also have fostered a change in position of Germany. Building on her network, she could have had bilateral talks with her national government to unblock this file.

The new Commission (especially Commissioner Dali) believes that it can play an active role in unblocking the proposal actively engaging with Member States (Sánchez Nicolás, 2019). According to the respondent from the Commission, matters such as reservations with the principle of subsidiarity are mainly based on a misperception of the proposal. Therefore, he argues that with a little more political will and a better explanation by the Commission the file can possibly be unblocked and adopted in the future (Personal Communication Respondent D). It is believed that the, growing attention for gender inequality in general (Personal Communication Respondent C) can help with this.

On a final note, an important future development in unblocking this file could be Germany's position as head of the rotating Council presidency from July 2020 onwards. Having an office-holding position in the Council, gives this Member States tools to overcome gridlock on certain proposals. 'The Council presidency acts as the 'agenda manager' in the Council (Tallberg 2006: 82-112) and can use its procedural prerogatives to push for legislation according to its own national priorities (Warntjen 2007)' (Warntjen, 2013, p.40). While Germany is not in favour of this proposal in general, it could still be an opportunity for them to get this file out of gridlock. According to our EP respondent being the Council presidency not only gives a Member State more power over the agenda, but also puts more responsibility on a Member States to represent the best interests of the EU in general. According to her, this



would be a good moment for Germany to reconsider its position on the proposal (Personal Communication Respondent C).

## Analysis

In order to answer the research question we need to test the various hypotheses that were formulated based on existing theories. These hypotheses are tested based on the detailed case description.

### *Hypothesis I*

The first hypothesis is that the Commission keeps a proposal on the agenda if it is *in line with the preferences* of at least one of the co-deciders. To test whether this expectation is met in practice we have analysed the positions of Commission and the co-deciders. As respondent nicely put it: 'it takes two to tango!' (Personal Communication Respondent D).

From the description we can gather that the positions of the co-deciders and the Commission have remained constant throughout the different phases of this process. The position of the Commission on this subject is clear. It voiced the need for this specific directive and initiated the proposal. It is strongly in favour of more gender equality, and wants to expand its competences in the field of social policy. The EP is also very much in favour of the proposal. Even before the Commission initiated the directive, the EP requested the Commission to come up with binding legislation on this issue in a resolution (European Parliament, 2011, p.6). Based on this we could therefore state that the preferences of the EP are in line with those of the Commission.

From the case reconstruction we can tell that the Council is definitely not as positive about the proposal. While the Member States (mostly) agree on overall objective of the directive, the number of reasoned opinions that were sent in and the failure to unblock this proposal suggest that opinions differ to that of the Commission regarding how to obtain this overarching goal. We can therefore state that the preferences of the Council are not, and have not been since the beginning, in line with those of the Commission on this proposal.

Moreover, the case-study shows that the EP is actively and continuously pressuring the Commission to undertake steps in unblocking the proposal, in the form of resolutions, press releases and speeches, making it politically very hard for the Commission to withdraw this proposal. While the Commission can view the EP as a valuable partner in unblocking this file,

it can also feel pressured by it to leave it on the agenda as it would also probably not accept the Commission formally withdrawing it. This contributes to the idea that it is politically almost impossible to withdraw this proposal when the preferences of one of the co-deciders are in line with those of the Commission. Based on these findings we can confirm hypothesis I.

### **Hypothesis II**

The second hypothesis is that the Commission will keep a proposal on the agenda if it believes that *opposition will diminish because a window of opportunity opens*. In order to test this hypothesis we have to research what this possible change in situation can be, to what extent the Commission believes this change in situation will actually lead to diminished opposition and if it would also be able to successfully use this as a window of opportunity.

First, it is important to see if the Commission acted as a policy entrepreneur. Doing so could help the Commission to successfully use the window of opportunity if opposition would diminish. More in general, from the case study we can see that the Commission acted as a *proactive initiator* in this case. In the agenda-setting phase the Commission definitely showed signs of policy entrepreneurship. Firstly, it *defined the problem* mainly in economics terms instead of based on justice, which is the actual base they used to justify interference. Secondly, it *displayed social acuity* by using its professional and personal network, which becomes visible from the many views they took into consideration before tabling this proposal. This helped them to be able to understand the ideas, motives and concerns of other actors and incorporate some of these views and input in their proposal. However, while taking these ideas into consideration, they did not actively use this information to actually address these concerns (for example, concerns regarding subsidiarity). While not using all tactics successfully, it does seem that the Commission acted as a policy entrepreneur in the earlier phases of this proposal.

Nevertheless, this view of the Commission as a policy entrepreneur weakens if we look at the phases after the proposal has been issued. It did not expand or use the tactics of displaying social acuity and defining problems in the later phases of the process. It also did not seem to have been *building teams*, for example, throughout the entire process. However, the Commission has been using the policy entrepreneurial tactic of *leading by example* by showing the workability of the proposal by continuously emphasising that Member States with national legislative measures in place in general show greater progress on the overall objective.

Now that we have established that the Commission did show signs of policy entrepreneurship throughout the process, it is important to analyse whether the Commission actually anticipated a window to open. A change in several external factors could lead to the opposition diminishing and open a window. Factors that could change positions of the opposition could be, a change of national government, the upcoming Council presidency of a country or changes in the composition of the Commission, EP or Council in general.

From all of the information acquired by the document-analyses and interviews, we learn that this diminishing opposition would most likely occur if Germany would decide to change its position on the proposal and leave the blocking minority (Respondents A,B,C,D). Since the sunset clause was added by the Luxembourg Presidency in 2015 (which was reinforced by the work of the Maltese Presidency in 2017), and more specifically when Spain expressed its (new) support for the proposal in 2017, there have been a few moments in which relevant actors anticipated a possible change in the position of Germany. This was when Germany implemented national measures similar to the ones in the EU proposal in 2016, when German held federal elections in 2017, when Ursula von der Leyen became Commission president and the Commission might be anticipating a change when Germany becomes the rotating Council Presidency from July onwards.

If the Commission would assume that a country such as Germany would turn, this would be a good reason to keep the proposal on the agenda. We do find proof for the expectation formulated in hypothesis II that the Commission believes that opposition would diminish throughout the last phase (from 2016/2017 onwards) of this process. While the first three possible political developments (implementation of national measures, change of government/mandate, von der Leyen becoming Commission president) did not lead to a change in the German position on this proposal (and therefore not open a window), they might have explained why the Commission kept the proposal on the agenda from 2016 onwards. The upcoming German Council presidency could be a reason why it is still on there today. The Commission anticipating a window to open in the form of Germany leaving the opposition, can therefore be seen as a sufficient explanation for why the Commission chose to leave this proposal on the agenda in the later phases of this process (2016 onwards). Therefore, we can confirm hypothesis II.

### ***Hypothesis III***

The third hypothesis was that the Commission will keep a proposal on the agenda if it is in *denial* about its (lack of) progress. Firstly, multiple documents and statements by Commission members indicate that the Commission is not really in denial about the progress of the proposal. In the earlier stages of this proposal denial could not really have existed, as Commission proposals in general take a long time to be adopted. The Commission had to wait for Council presidency's to look at the proposal and amend it if necessary.

Moreover, when the proposal had been in gridlock for a relatively long time the Commission started to admit that progress on the item was slow and that the proposal has been in gridlock for too long (Commission, 2016). If not ignoring the slow progress, the Commission was at least not denying the lack of action on this topic. This is still the case today. For example, the Commission has repeatedly stated that this proposal has been blocked for too long (Commission, 2019; Sánchez Nicolás, 2019). Additional proof that the Commission is not in denial comes from the conducted interviews. None of the respondents appear to believe that the Commission is in denial about this proposal's future.

However, it could be argued that the Commission is in denial about the possible breach of subsidiarity this proposal is posing. While it is clear that some countries oppose this proposal because they think legislation on this subject is outside the EU competencies, the Commission keeps re-stating that this is just a misperception (Commission, 2016, p.5) (Personal Communication Respondent D). Nevertheless, the Commission might still be able to convince the Member States that this proposal is not a breach with the principle of subsidiarity.

While the Commission might be in denial about some aspects of this proposal and the implications of these respective aspects on its progress, denial does not seem to be a significant factor in explaining why this proposal remains on the agenda. Hence, we do not have sufficient evidence to confirm hypothesis III.

#### **Hypothesis IV**

The fourth hypothesis was that the Commission will leave a proposal on the agenda because of self-preservation theory. This means that the Commission might choose to leave the WoB proposal on the agenda if it is afraid of the social-costs of admitting failure (Drummond, 2015).

From the case reconstruction it becomes clear that many stakeholders have been involved in the creation of this proposal. Not only European and national institutions and

governments but also NGO's, interest groups, lobby organisations, specialists, several committees and the public were consulted before this proposal was tabled and have been involved throughout the rest of the process. All of these parties have spent a lot of time and efforts in creating, discussing, amending and lobbying for or against this proposal. Furthermore, all of our respondents believe the Commission would lose credibility if it withdrew this proposal.

One of the respondents described the Commission as a 'proud animal' unlikely to withdraw a piece of legislation that they are so invested in (Personal Communication Respondent A). According to entrepreneurial literature, the social costs of admitting failure are higher when an entrepreneur is highly invested in a project. Besides the note of this respondent, we have also seen the Commission (at least outside) investment in this proposal. This might therefore make it extra hard for this, already politically impossible, proposal to be withdrawn.

Based on this analysis, hypothesis IV can be confirmed: the Commission being afraid of the social-costs of admitting failure can partly explain why the Commission is not withdrawing this proposal.

## Conclusions

This article provided an in-depth analysis of the factors leading the Commission to keep the WoB directive proposal on the agenda. Drawing on existing literature from a variety of academic fields, several possible factors leading to a proposal remaining on the agenda for a long time, were outlined. Based on extensive document analysis of different types of EU documents, and five (semi-) elite interviews almost all expectations were confirmed. The following conditions can (partly) explain why the Commission decided to keep this proposal on the agenda.

The Commission's preferences being in line with those of the EP can partly explain why this item is still on the agenda. From the technical perspective (Kreppel & Oztas, 2017) it can be argued that the Commission's role is mainly to act upon the *co-deciders preferences*. While the Council has remained sceptical towards the proposal, and has been continuously blocking it, the EP has pressured the Commission to undertake steps towards unblocking it. This can partly explain why the proposal is still on the agenda, and why it is politically very difficult to withdraw. Nevertheless, this factor alone cannot completely explain the situation. The

Commission has been showing signs of policy entrepreneurship, and can therefore not be argued to have been acting as a purely reactive actor. The Commission might have been strategically waiting for a window of opportunity to open in order to push for this proposal since Spain has changed its position. It has been anticipating a switch in the position of Germany since 2017, which would ensure a qualified majority in the Council. Multiple factors could foster a shift in position. The Commission *believing opposition would diminish because of a window of opportunity* can therefore be a factor that explains why the Commission has been keeping this proposal on the agenda in the later stages of the process.

Besides the Commission being a little bit too optimistic about Member States putting aside their reservations based on the principle of subsidiarity, it seems to be quite realistic about the progress of the proposal. It does not seem to be in *denial* about whether this directive is going to be adopted or not. However, the Commission does seem to be afraid of *the social costs of admitting failure* because of not only its personal investment in the proposal, but also the time and efforts invested in it by other actors (interest groups, other institutions). Their own investment in combination with that of other actors is putting pressure on them to leave the proposal on the agenda.

All in all, this analysis shows that there is not one factor that can completely explain the Commission's behaviour in this case. Various factors have contributed to this issue remaining on the agenda and play a different role over time. Based on this research and the factors outlined, we can furthermore argue that it is politically almost impossible for the Commission to withdraw this proposal, and therefore chances are high that this will not happen anytime soon.

By studying this extreme case, this article adds to the scientific debate as it gives more insight in why proposals remain on the agenda for a long time, a stage that is often overlooked in research on EU agenda-setting. Moreover, it adds to the more general debate on whether the Commission is in decline by analysing the different roles the Commission has taken on throughout this process. It showed that while the expansion of co-decision procedure has formally increased powers of other institutions, the Commission is definitely not merely a puppet of the co-deciders. This case-study shows that the Commission still risks proposing legislation on sensitive issues, and moreover dares to remain committed to it.

Of course, this research has some limitations. Firstly, the fact that only one of the interviews could be conducted face to face might have increased the likelihood that the

respondents gave socially desirable answers. This is mainly the case for the two interviews conducted via email. Secondly, we were not able to get in contact with a respondent from an interest group lobbying for gender-based interests, while they play an important role in this process. While being able to read their general positions online, an interview might have given different, or new, insights. Thirdly, employing an extreme case method causes the external validity of this research to be relatively low. In order to generalize the results, multiple similar case studies have to be conducted to see if these factors apply to other cases.

Besides investigating other cases, a recommendation for further research would be to approach this question from a more comparative or quantitative perspective. For example, one could take many cases that have been on the agenda for over five or ten years to see if there are similarities between those cases and whether the factors outlined in this article would be sufficient to explain why these cases remained on the agenda for such a long time. Moreover, it would be interesting to see if other factors can play a role too. Identifying as many factors as possible could help to avoid gridlock in the future.

Finally, this case shows the continuous relevance of the debate on gender equality, and the EU's role within obtaining this objective. Like Ursula von der Leyen said in her opening speech as Commission president-elect: 'Work for something because it is good, not just because it stands a chance to succeed' (Vaclav Havel, 1989, as cited in Commission President-Elect von der Leyen, 2019). While this proposal might not be adopted, this in-depth analysis has shown that keeping this proposal on the agenda also ensures that the debate on this topic persists to exist. This proposal keeps Member States and businesses on their toes, and that will always remain very important to the functioning of the European Union.

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